

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

M.A. 254 of 1996 with
O.A. 436 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

Nirmal Kumar Singh, s/o Late Raj Kumar Singh, working as Shop Superintendent, Moulding Shop, Steel Foundry, C.I.W.M., Chittaranjan under Chief Mechanical Engineer, residing at Quarter No. D/3, Street No. 60, P.O. Chittaranjan, Dist. Burdwan.

.... Applicant

-Versus-

1. Union of India, service through the General Manager, C.I.W.M., Chittaranjan, Dist. Burdwan ;
2. Railway Board, service through the Chairman, Railway Board, Rail Bhavan, New Delhi ;
3. General Manager, C.I.W.M., Chittaranjan, Dist. Burdwan ;
4. Chief Personnel Officer, C.I.W.M., Chittaranjan, Burdwan ;
5. Chief Mechanical Engineer, Steel Foundry, C.I.W.M., Chittaranjan, Dist. Burdwan ;
6. Sri Samir Topo, working for gain as Dy. Chief Mechanical Engineer (Production), Steel Foundry, C.I.W.M., Chittaranjan, Dist. Burdwan, Enquiry Officer.

.... Respondents

Counsel for the applicant : Mr. S.K. Ghosh

Counsel for the respondents : Mr. P.K. Arora

Heard on : 13.5.1997 - Order on : 10.6.1997

O R D E R

A.K. Chatterjee, VC

The petitioner while working as a Shop Superintendent of C.I.W.M. was served with a major penalty charge-sheet dt. 28.10.92 for certain alleged gross mis-conduct committed by him in 1989

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when he was working as an Assistant Inspecting Engineer(M) on deputation to Rail India Technical and Economic Services(RITES for short) said to be a non-Governmental Establishment under the Railway Board. The petitioner gave a reply thereto but it is pending to this date. In the meantime, the petitioner had appeared in a written and viva-voce test in August, 1993 and January, 1994 respectively for promotion to the post of Assistant Works Manager/ Assistant Mechanical Engineer/Assistant Production Engineer etc. on the basis of selection and a provisional panel containing 10 names was published on 8.3.94 indicating therein that the position of panelist was liable to be altered as the name of one staff was not included for want of vigilance clearance. Promotion has also been given to some employees junior to the petitioner superseding his claim and a representation given by him on 5.2.96 for promotion even on an adhoc basis in terms of the Railway Board's letter circulated under Srl. No.192/88 had fallen on deaf ears. The petitioner contends that the DA proceeding is not sustainable for legal infirmities and in any case, it should have been concluded within a period of 470 days in terms of the Board's letter dt.10.5.94. He, therefore, prays for a direction to cancel, withdraw etc. the charge-sheet and also for adhoc promotion to the post of AWM etc. from the date of promotion of the employee next below him.

2. The respondents in their reply states that due to the pendency of the DA proceeding drawn up against the petitioner for causing huge pecuniary loss to the railway to the tune of Rs.4½ lakhs, the case of the petitioner for promotion could not be considered and the result for promotion to the post of AWM etc. so far as it relates to the petitioner has been kept in a sealed cover in accordance with the extant rules and a post has been kept reserved to accommodate him in the event of his exoneration in the DA proceeding.

The respondents have also contended that the DA proceeding does not suffer from any legal infirmity and regarding the claim for adhoc promotion, it is stated that the matter has been reviewed twice by the competent authority in terms of the Board's letter referred to by the petitioner but no scope was found to promote him at this stage because of his alleged involvement in the serious and gross mis-conduct. The time limit fixed by the Board for concluding the DA proceeding as per its letter dt. 10.5.94 was said to be not mandatory but only a guideline.

3. The petitioner has filed a rejoinder disputing the contention of the respondents that the DA proceeding was perfectly legal and other grounds raised in the counter.

4. The petitioner has also filed a Misc. Application on 16.8.96 for a direction upon the respondents to promote him on an adhoc basis to the post of AWM and also to restrain them from conducting any enquiry during the disposal of this case.

5. The respondents have filed a reply to the M.A. reiterating what they have said in the counter to the O.A.

6. The petitioner has filed a rejoinder to the reply of the respondents to the Misc. Application pointing out the inordinate delay in finalisation of the DA proceeding for no fault of the petitioner and non-applicability of sealed cover procedure in the present case of selection to a Group-D post.

7. An interim order was passed on 15.5.96 directing that any appointment to the post of Assistant Works Manager from among the Shop Superintendents should abide by the result of the application provided the appointees were impleaded as parties.

8. We have heard the ¹d. Counsel for the parties and perused the records before us.

9. The root cause of supersession of the claim of the petitioner for promotion, which is no doubt ^{his} principal grievance, is the pendency of the DA proceeding against him. He has questioned the legality of the procedure as according to him, the lending authority had no power to initiate any disciplinary proceeding for alleged mis-conduct committed by him while he was working in RITES on deputation. Now since a railway servant even on deputation does not cease to be so under its definition, he remained subject to ~~Railway Servant~~ (D&A) Rules and, therefore, *prima facie* the respondents can proceed against him specially after his repatriation in the parent office. Thus *prima facie* the DA proceeding cannot be said to be illegal.

10. It is ofcourse true that the DA proceeding is pending for long five years and the petitioner has produced the record of the proceeding dt. 14.10.96 indicating that even the Presenting Officer had failed to turn up on atleast four occasions. None of the witnesses to sustain the charge was present inspite of advance intimation. Thus, even though the respondents appear to be sore about the alleged mis-conduct of the petitioner resulting in loss to the railways amounting to about 4½ lakhs, still they themselves are unable to ensure the attendance of the witnesses and even the Presenting Officer. The Ld. Counsel for the respondents has stated that the DA proceeding in this case was found to be a lengthy affair as a large number of documents have to be produced and as many as 23 witnesses have to be examined. We might not appreciate some force of this contention if only they were diligent enough to proceed with the case. It is ~~judicous~~ that on atleast four dates fixed by the Enquiry Officer, none of the witnesses would remain present and the Presenting Officer would also remain absent and still the respondents should justify the delay for so many years on ground of

long list of witnesses and the large number of documents to be produced.

11. The petitioner has also pointed out that under the Board's letter, an outer limit of 470 days ^{for} have been fixed for finalisation of DA proceeding. Even if this is considered to be directory and not mandatory, the respondents are certainly expected to make ^{all} endeavour to stick to it and not to observe ^{it} in its breach. There is hardly any satisfactory explanation for the tardy progress or rather no progress made in the DA proceeding over these years. If inspite of best efforts of the respondents DA proceeding could not be finalised for unavoidable reason or due to laches on the part of the delinquent, then there might be some valid ground for inability to conclude the DA proceeding within the time limit fixed by the Board ; but in the present case, the respondents cannot be heard to say that the Board's letter is only directory and not mandatory, which would only betray contumacious disregard for the Board's letter.

12. However, as a last and final opportunity to the respondents to substantiate the charges framed against the petitioner, we are disposed to grant some time to conclude the DA proceeding against him with a suitable default clause. In such situation, no order restraining the respondents from carrying on the DA proceeding can be given as prayed in the Misc.Application, nor any other direction upon the respondents of the nature prayed for in the Misc.Application.

13. For reasons aforesaid, the Misc.Application is rejected and the O.A. is disposed of with a direction upon the respondents to finalise the DA proceeding against the petitioner within ~~four~~ ^{six} months from the date of communication of this order; in default of which the petitioner shall stand exonerated of all charges.

14. No order is made as to costs.

Ansus { 08/6/97
(M.S. Mukherjee)
Member (A)

A.K. Chatterjee
(A.K. Chatterjee)
Vice-Chairman