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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 26/87

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DATE OF DECISION 2.5.1991

Shri Eddy James Devasakayam, Petitioner

Mr. E. K. Thomas, Advocate for the Petitioner (s)

Versus

General Manager, C.R., IInd Respondent
floor, D.N. Road, Bombay VY & others

Mr. V. G. Rege Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. U.C. SRIVASTAVA, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Jb*
 2. To be referred to the Reporter or not ? *no*
 3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
 4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.26/87

Eddy James Devasakayam,
52/406, Motilal Nagar-III,
Mahatma Gandhi Road,
Bangur Nagar, Goregaon (West),
Bombay - 400 090.

.. Applicant

vs.

1. General Manager
Central Railway,
Second Floor,
D.N. Road,
Bombay V.T.
PIN 400 001.
Divisional Superintendent,
2. Office of the Divisional
Railway Manager,
Central Railway,
VT Annexe Building,
Ground Floor,
Bombay - 400 001.
3. Assistant Commercial Supdt.,
(Headquarters),
Central Railway,
Office of the Divisional
Railway Manager,
V.T. Annexe Building,
Ground Floor,
Bombay - 400 001.

.. Respondents

Coram: Hon'ble Shri Justice U.C. Srivastava, Vice-Chairman
Hon'ble Shri M.Y. Priolkar, Member(A)

Appearances:

1. Mr. E.K. Thomas
Advocate for the
Applicant.
2. Mr. V.G. Rege
Advocate for the
Respondents.

ORAL JUDGMENT:
(Per U.C. Srivastava, Vice-Chairman)

Date: 2-5-1991

The applicant in this application has prayed that the chargememorandum issued to him be quashed and it may be declared that the appointment of the Inquiry Officer and Presenting Officer be declared as unconstitutional and illegal and the respondents be directed to regularise the suspension period from 14-8-1975 to 19-3-1981 as duty for all purposes including payment of wages and allowances and they may also be directed to treat the suspension period as service and to restore the

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below mentioned benefits forthwith which includes annual increments, refixation of pay and promotion to the higher grade and Difference of Productivity Linked Bonus and all other attendant benefits and privileges.

2. The applicant was charged under Section 120-B of Indian Penal Code read with Sections 409, 467, 402 and 477-A of the Indian Penal Code. He was also tried for charges under Section 409 of Indian Penal Code as well as 471 of the Indian Penal Code and further under Section 471 and 420 of the Indian Penal Code also charges were preferred against him. He was also charge sheeted under Section 5(1)(d) and 5(1)(c) punishable under Section 5(2) of the Prevention of Corruption Act. The charge against him was that he hatched a conspiracy by dishonestly receiving the missing blank paper ticket-book by forging such tickets and converting them into validly issued tickets by using these tickets as genuine, by cheating the railway authorities, by making false entries in the D.T.C. Book, by misappropriating the amount which was entrusted to the applicant on behalf of the railway administration and cheated the railway administration. It was further alleged that tickets from the blank paper ticket-book (which was missing) came to be issued from different counters at VY railway station and refunds were also made within a short time. In fact no such refund was made and the accused pocketed an amount of Rs. 37,154.90 from the refund amount, and that the applicant dishonestly

used as genuine, the tickets issued from the missing B.P.T. book and has committed several other offences. It is also alleged that while he was sitting on his own counter he approached other Asstt. Coaching Clerks from that station and demanded the amount of Rs.2,388.75 by falsely misrepresenting to him that this amount was required for making the refund of two tickets and thereby committed yet another offence. It is alleged that the applicant that he abused his official position as a public servant and obtained a pecuniary advantage to the tune of Rs.38,543.65 and thus he is guilty of an offence punishable under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. Lastly it is alleged that as Assistant Coaching Clerk the applicant was entrusted with the amount of Rs.37,154.90 but he has not accounted for this amount as he retained this amount with him and thus he has committed an offence punishable under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act.

3. The Criminal Court came to the conclusion that there was no misappropriation by the applicant and all other charges against him were also not proved. Accordingly, he was acquitted, vide judgment dated 17.11.1980.

4. It appears that after his acquittal the applicant who was under suspension was reinstated in service and now departmental proceedings against him have started and he has been given a chargesheet pointing out two articles or charges. The oral and documentary evidence mentioned in the chargesheet appears to be the same which has been argued before the Criminal Court. On behalf of the applicant

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it was contended that once the applicant has been acquitted by the Criminal Court no departmental proceedings can take place against him in respect of the same charges. The contention is not entirely without substance. Undoubtedly the applicant has been acquitted by the Criminal Court in respect of all the charges which are levied against him and those charges obviously cannot be investigated for taking action under departmental proceedings against him. But the chargesheet against him in the departmental proceedings indicates that although the matter may be the same there is variation in the charges this time as the charges have been confined to the violation of departmental rules. Obviously if there is any overlapping the department can still modify the charge and the applicant can approach the authorities concerned that there cannot be overlapping. So far as the jurisdiction of the Criminal Court is concerned it is somewhat different. It is only for finding out whether any criminal offence within the meaning of law of the country has been committed. So far as the departmental action is concerned it is in respect of misconduct or violation of the rules. Merely because he has been acquitted in trial Court it cannot be said that action cannot be taken against him for committing certain offence of misconduct or violation of the rules which obviously were not directly the subject matter of the trial before the Criminal Court.


5. In these circumstances, the application deserves to be dismissed but in view of the fact that the applicant has been reinstated back after his acquittal from the criminal case, the respondents are bound to pay him whatever salary or allowances may be due to him, in accordance with the rules, and they cannot postpone this payment as it will be deemed that the applicant

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has continued in service. Let the amount which is payable be calculated within a period of two months and same may be paid to him within this period.

6. With the above observation and direction the application is otherwise dismissed. There will be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER(A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN