

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Application Stamp No 45/1987 / O.A. No. 97 of 1987

Mr. R.S. Chowdhari,
Railway Quarter No. G/30,
Near OHE Depot,
Bhusawal.

.. Applicant

Vs

- 1) The Union of India through
The General Manager,
Central Railway,
Bombay V.T.400 001.
- 2) The Chief Vigilance Officer,
Central Railway,
Bombay V.T.-400 001.
- 3) The Divisional Railway Manager,
Central Railway,
Bhusawal - 425 201.
- 4) The Senior Divisional Electrical (G) Engineer,
Central Railway,
Bhusawal - 425 201.
- 5) The Divisional Electrical Engineer,
Central Railway,
Bhusawal - 425 201.
- 6) Dr. Pramod Bankar,
Assistant Personnel Officer,
Central Railway,
Bhusawal.
- 7) Shri Sitaram Dayaram,
Head Train Examiner,
Central Railway,
Bhusawal.

.. Respondents

Coram: Hon'ble Member (A) J.G. Rajadhyaksha

Hon'ble Member (J) M.B. Mujumdar

ORAL JUDGEMENT
(Per M.B. Mujumdar)

Dated: 23.1.1987.

Heard Mr. D.V. Gangal, learned counsel for the applicant for about two hours. After hearing him, we find that the application is misconceived and does not deserve to be admitted at all.

The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985. He has made three prayers in the application. The first is for declaring him eligible to be granted promotion

to the post of Head Train Examiner in the scale of Rs.550-750 with effect from 1.1.1984. The second is for declaring the charge-sheet filed against the applicant on 14-3-86 to be illegal. Lastly, the applicant has prayed that the transfer order passed on 9.7.86 transferring him from Bhusawal to Itarsi should be declared illegal. The applicant has also prayed for ~~interim~~ relief in respect of all these three prayers made in the application.

We will first deal with the second prayer regarding the charge-sheet. The charge-sheet is Annexure-I to the application. Two charges have been framed against the applicant and they are as under:

Article I

" Shri Chaudhari although he was in the knowledge that the coach No.CR 4574 CTS was fit for movement during April '85 acted in connivance with Shri Gulam Hussain HSK Fitter Gr.I working under him and marked sick the said tourist coach on false reasons with the sole intention to favour with the tourist agency in getting an alternative higher capacity passenger coach.

Article II

Shri Chaudhari unauthorisedly booked the tourist coach No.CR 4574 CTS on 22.5.85 to MTN shop for POH though he was fully aware that the said coach was not due for POH, with the motivation solely to favour the tourist agency in getting an alternative higher capacity passenger coach.

By the above acts, Shri R.S.Chaudhari contravened the provisions of Rule 3.1 of Railway Service (Conduct) Rule 1966"

Annexure II to the application is the statement of imputations of misconduct in support of articles of charge. Annexure III to the application is a list of documents and Annexure IV is a list of witnesses in support of the charges.

It may be noted that the charges are framed against him after the matter was investigated by the Vigilance Department of the Railways. During the Vigilance Department's enquiry, the applicant was examined at length by the Vigilance Officer.

Mr.Gangal challenged the charges on the ground that the applicant was on leave from 24.4.85 to 25.4.85. But, his absence on these days has nothing to do with the charges. After hearing Mr.Gangal, we do not find that the charges should be ~~scrapped~~ ^{quashed} at this stage. The applicant has already given his explanation and the departmental enquiry is going on. If the result of the departmental enquiry goes against him and if the decision of the appeal also goes against him, he is at liberty to approach this Tribunal by filing a fresh application.

Then, Mr.Gangal vehemently argued and also cited some authorities to show that this Tribunal has all the powers of a High Court and it can interfere even at the stage of submission of the charge-sheet. There cannot be any dispute that we have all the powers of a High Court and we can interfere at any stage, but Section 20(1) clearly lays down that the Tribunal should not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies

available to him under the relevant service rules.

This legal bar was not there before the Tribunal was constituted, though the High Court were following the same principle, barring exceptional cases. After hearing Mr. Gangal, we do not think that this is a fit case where we should quash the charge-sheet at this stage.

Now regarding the non-promotion of the applicant, Respondent No.7 who is junior to the applicant is promoted as Head Train Examiner. The order is attached as Annexure 'B' to the application. The order itself shows that Respondent No.7 was promoted to officiate as Head Train Examiner as was on turn for promotion. Moreover, according to the order, his promotion on posting is provisional in an officiating capacity on trial basis. According to the applicant, he is senior to Respondent No.7. We find that the Respondent No.7 most probably must have been promoted in preference to the applicant because of the vigilance case and the subsequent departmental enquiry going on against the applicant.

As the promotion of Respondent No.7 is on officiating and provisional basis, if the departmental inquiry is finally decided in favour of the applicant, he can certainly move the authorities for his promotion. At this stage, we do not find that the applicant is wrongly superseded and Respondent No.7 is wrongly promoted.

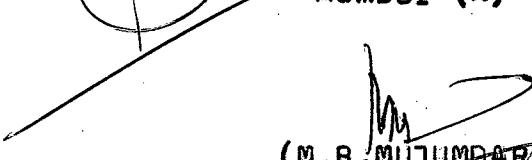
Regarding the last prayer viz. cancellation of order of transfer from Bhusawal to Itarsi, we do not find that the applicant is having a good case at this stage. The transfer order is at Annexure 'J' to the application. The order is dated 9.7.86. The applicant has challenged this order on the ground of his personal difficulties as well as on the ground that it is contrary to the rules

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as he is working as Treasurer of the Central Railway Mazdoor Union, Bhusawal Branch. Against this order, he has already made a representation on 28.8.86. His union has also made a representation on 22.7.86. Mr. Gangal stated before us that the applicant has not received any reply so far. But, the applicant has also not been relieved from his Bhusawal post as yet. We, therefore, find that the challenge to the transfer order is premature.

In the result, we find that the applicant has not made out a good case showing that his grievances deserve to be adjudicated upon by the Tribunal. We, therefore, reject the application summarily under Section 19(3) of the Administrative Tribunals Act, 1985.


(J.G. RAJADHYAKSHA)
Member (A)


(M.B. MUJUMDAR)
Member (J)