

(13)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

OXXXXX
T. A. No. 460/87

198

DATE OF DECISION 18-1-1991Shri Krishna Patil

Petitioner

Shri D.V.Gangal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents

Sh.A.I.Bhatkar for Sh.M.I.Sethna Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. J.P.Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
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*



(14)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr.A.No. 460/87

Shri Krishna Patil

... Applicant

vs.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar
Hon'ble Member (J) Shri J.P.Sharma

Appearance

Mr.D.V.Gangal
Advocate
for the Applicant

Mr.A.I.Bhatkar
(for Mr.M.I.Sethna)
Advocate
for the Respondents

JUDGEMENT

Dated: 18-1-1991

(PER: M.Y.Priolkar, Member (A))

This is an original Writ Petition (W.P.No.2743 of 1981) filed in the Bombay High Court, which on transfer to this Tribunal, has been numbered as Transferred Application No. 460/ of 1987. The applicant, while working as Turner 'C' grade, at the Machine Tool Prototype factory at Ambernath, passed the test held for the post of Turner 'B' grade, the results of which were declared on 30.12.1980. The grievance of the applicant is that while four other employees who had passed the test along with him were promoted on 27.4.1981 as Turner 'B' grade, although they were junior to him, he was not so promoted on the ground that disciplinary action against him was pending.

2. The applicant states that there was a disciplinary proceeding instituted against him in 1975-76 which was closed by order dated 28.12.1976 imposing the penalty of 'Censure' on him. The applicant contends that no further

proceeding subsequently against him was either taken up or is pending, and since the punishment had already been imposed in the earlier disciplinary proceeding, withholding of promotion would amount to double punishment for the same alleged misconduct.

3. The respondents in their written reply have denied the correctness of the applicant's statement that after 28.12.1976 no further proceedings were taken or pending against him. They have asserted that based on a written complaint from his immediate superior of physical assault on him on 23.3.1981 in his office room while on duty by the applicant, the competent authority initiated disciplinary action against the applicant under Rule 14 of C.C.S.(C.C.A.) Rules, 1965 under Memorandum of chargesheet dated 21.4.1981. According to the applicant, he had received some communication in English from the respondents in April 1981 but since he does not know English, he had returned it on 29.4.1981 requesting the respondents to send it along with a Hindi or Marathi translation. The respondents state that the charge-sheet was again sent to the applicant by Registered Post A.D. and the same was received by him but he returned it once again demanding that the same should be in Hindi, although he was advised to take the assistance of a friend as provided for in Sub-rule (8) of Rule 14 of the CCS(CCA) Rules, 1965. It is further stated by the respondents that pursuant to the aforesaid charges, disciplinary enquiry was conducted against the applicant and by order dated 4.2.1984, penalty was imposed of "Reduction of pay from Rs.250 to Rs.210 p.m. for a period of three years". The appeal dated 16.3.1984 submitted by the applicant against this penalty has also been dismissed by the appellate authority by his order dated 16.6.1986.

4. Evidently, the applicant's action of returning the charge sheet demanding that the same should be in Hindi cannot be construed as amounting to absence of disciplinary action against him as contended by him. The charge against him was of physically assaulting his superior while on duty inside the factory premises. According to his own statement, the applicant has passed S.S.C. and even if he did not know English adequately, he should have taken the assistance of a friend and participated in the enquiry, as provided for in the rules. The applicant claims to be an active trade union worker and it should not, therefore, have been difficult for him to defend himself adequately with the assistance of someone who was well versed in English.

5. The prayers in this transferred application are for quashing the letter dated 27.4.1981 (Exhibit 'B') promoting certain employees junior to the applicant and for cancelling the letter dated 23.5.1981 (Exhibit 'C') informing the applicant that because of the disciplinary/departmental action taken against him, his case for promotion along with others was not considered. These prayers are primarily based on the grounds of discrimination and double jeopardy on the premise that there was no disciplinary action pending against the applicant after his passing the test for promotion. As the applicant himself has stated in para 8 at page 8 of the petition, he "cannot be disqualified (for promotion) unless a disciplinary action is taken afresh against him". Since it is now established that there was in fact such second departmental action pending against the applicant, when the juniors were promoted, we have to reject the prayers made in this application.

6. This transferred application is, accordingly, dismissed as devoid of any merit, with no order as to costs.

J.P.Sharma
(J.P.SHARMA)
MEMBER (J)

M.Y.Priolkar
(M.Y.PRIOLKAR)
MEMBER (A)