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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW BOMBAY~~
NEW BOMBAY

O.A. No. 492/1987

198

~~NEW BOMBAY~~

DATE OF DECISION 12/4/1988

Shri Pratap Singh Choudhary. Petitioner

Shri G.S. Walia. Advocate for the Petitioner(s)

Versus

Union of India, through General Manager, Respondent
Western Railway, Churchgate, Bombay & 2 OTHERS.

Shri R.K. Shetty. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.G. RAJADHYAKSHA, MEMBER(A)

The Hon'ble Mr. M.B. MUJUMDAR, 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*

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A.No.492/1987

Shri Pratap Singh Choudhary,
Deputy Chief Engineer, (Computer),
Headquarters Office, Churchgate,
Bombay-400 020.

.. Applicant

vs.

1. Union of India, through
General Manager, Western Railway,
Churchgate,
Bombay.
2. Railway Board, through Secretary,
Railway Board, Rail Bhavan,
New Delhi.
3. General Manager,
Western Railway,
Churchgate,
Bombay.

.. Respondents.

Coram: Hon'ble Member(A) Shri J.G. Rajadhyaksha.
Hon'ble Member(J) Shri M.B. Mujumdar.

Appearances :

1. Shri G.S. Walia, Advocate
for the Applicant.
2. Shri R.K. Shetty, Advocate
for the Respondents.

ORAL JUDGMENT

Date: 12/4/1988.

(PER: Shri M.B. Mujumdar, Member(J))

The applicant, Shri Pratap Singh Choudhary, has filed this application under section 19 of the Administrative Tribunals Act, 1985.

2. 'The applicants' case in short is as follows :- On 31-3-1964 he was appointed Temporary Assistant Engineer at Nandurbar on selection by the Union Public Service Commission. On 1.7.1980 he was made permanent with effect from 1.7.1975. Along with a memorandum dtd. 14.5.1975, a statement containing three charges was served on him. The charges were regarding purchase and sale of car in 1971-72 without obtaining prior approval of the competent authority. One Shri R.K. Kamal, Commissioner for Departmental Enquiries was appointed as Enquiry Officer (EO) and Shri G.S. Chavan, Inspector of C.B.I. was appointed as presenting Officer.

The applicant did not appoint any defence assistant but he himself conducted his defence. Five witnesses were examined before the Enquiry Officer. The applicant also examined himself in support of his defence. By report dtd. 23.10.1976, the Enquiry Officer held that all the charges were fully established. Along with memorandum dtd. 21.1.1977 from the General Manager of the Western Railway, a copy of the Enquiry Officer's report was sent to the applicant. The applicant was informed that the General Manager was agreeing with the findings of the Enquiry Officer and holding that all the charges were proved. The applicant was further informed that the General Manager had provisionally come to the conclusion to impose the penalty of reduction of pay by two stages for a period of one year, affecting future increments. The applicant was given an opportunity of making a representation on the proposed penalty within 15 days from the date of receipt of the memorandum. The applicant replied to that memorandum on 20.2.1977. By order dtd. 6.5.1977, the Disciplinary Authority i.e., the General Manager, awarded the penalty of reduction of pay by two stages for a period of one year affecting future increments to the applicant. The applicant preferred an appeal dtd. 29.5.1977 against the above order, but in spite of about 10 reminders sent by the applicant, that appeal was not decided by the Appellate Authority. Hence, on 22.9.1986, the applicant preferred O.A.No . 278/86 in this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. That application was decided by this Tribunal on 22.9.1986. By our order passed on that date, we held that the application was barred by limitation as it was not filed within one year from expiry of six months from the date of the last reminder. Hence, we rejected the application under Section 19(3) of the Administrative Tribunals Act. We, however, directed the respondents to dispose of the appeal preferred by the applicant on 29.5.1977 within three months from the date of receipt of a copy of the order. The applicant was given liberty

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to move the Tribunal in accordance with law after the appeal was decided. The Appellate Authority i.e., the Railway Board, rejected the appeal on 9.4.1987. The decision of the Railway Board was conveyed to the applicant by the General Manager by his letter dtd. 5.5.1987.

3. Being aggrieved by that decision, the applicant has preferred this application under section 19 of the Administrative Tribunals Act, on 7.7.1987. The respondents have resisted the application by filing their exhaustive written statement.

4. We have heard Mr. G.S. Walia, learned advocate for the applicant, and Mr. R.K. Shetty, learned advocate for the respondents.

5. Mr. Shetty today made a statement after taking instructions from the respondents that the General Manager had at the relevant time no power and authority to pass the impugned order of penalty dtd. 6.5.1977. He also conceded that the order of penalty was, therefore, void ab-initio.

6. However, Mr. Shetty submitted that as the previous application of the applicant was barred by limitation, the directions given by us for disposing of the appeal filed by the applicant were also without jurisdiction. In this connection, we may point out that the appeal preferred by the applicant on 25.9.1977 was not disposed of by the Appellate Authority even though the applicant had sent 10 reminders. Apart from the legality of the directions given by us while disposing of the previous application, the Appellate Authority i.e., the Railway Board, has disposed of the appeal on 9.4.1987. The applicant has preferred ~~and filed~~ the present application on 7.7.1987 and hence in our opinion, the present application shall have to be held as being filed within

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the period of limitation as prescribed under section 21(1) of the Administrative Tribunals Act.

7. In the result, we shall have to set aside the impugned order of penalty dtd. 6.5.1977 as well as the order of the appellate authority dtd. 9.4.1987, communicated by the General Manager on 5.5.1987.

8. Mr. Walia, learned advocate for the applicant, submitted that we should not give liberty to the respondents to complete the inquiry and pass suitable order, as about 11 years have elapsed since the order was passed. We are not impressed by his submission because if the respondents so want, we do not want to come in their way of passing a suitable order after giving an opportunity to the applicant of being heard. We would like to clarify that this order is not intended to direct the respondents to hold a fresh Departmental Proceedings.

9. With this, we pass the following order.

ORDER

- i) The impugned order of penalty dtd. 6.5.1977 passed by the General Manager of the Western Railway, and the order passed by the Railway Board on 9.4.1987 on the appeal preferred on 29.5.1977 are hereby quashed, and set aside, with all consequential benefits.
- ii) The Disciplinary Authority, however, will be at liberty to take up and complete the departmental enquiry from the stage where the Enquiry Report was submitted to it by the Enquiry Officer; and

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pass appropriate orders after giving an opportunity to the applicant of making a representation regarding the findings of the Enquiry Officer.

- iii) If the respondents propose to complete the enquiry and pass appropriate order, they shall do so within six months from the date of receipt of a copy of this order.
- iv) Parties to bear their own costs.

(S. S. RAJADHYAKSHA)
Member (A)

(M. B. MURDAR)
Member (J)

dms.

M. P. No. 466/88
for orders.

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25.8.88