

69

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NO. 712/88.
~~XXXXXXXXXX~~

199

DATE OF DECISION 07.07.1994.

C.K. Gangotri.

Applicant(s)


Versus

Union of India & Ors.

Respondent(s)

1. Whether it be referred to the Reporter or not ? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *no*

MEMBER


VICE CHAIRMAN

mbm*

6

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, CAMP AT NAGPUR.

Original Application No.712/88.

C.K.Gangotri.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri N.Y.Phadnis.
Respondents by Shri R.P.Darda.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 7.7.1994.

Two prayers have been made by the present application. One is in respect of the departmental inquiry in which the applicant was charged on three heads of charges and penalty of stoppage of one increment with cumulative effect imposed on him by the order dt. 9.6.1988 and the second is about the seniority which according to the applicant should be re-constructed as on 16.10.1981.

2. On 31.7.1988 a charge sheet was served on the applicant on three heads of charges. On 5.9.1986 the applicant made an application to the Director General making certain allegation of bias against the Enquiry Officer ^{who} was appointed to hold the inquiry. No action was taken by the Director General in respect of the allegations which came to be made. But the inquiry was held ex parte because the applicant did not participate at the inquiry and the punishment as stated above was imposed on him. He appealed and the appeal was rejected by the appellate authority.

3. The grievance of Shri N.Y.Phadnis, the learned counsel for the applicant was that under Rule 14(15) of the CCS(CCA)

Rules the inquiry has to be stayed when application is made against the inquiry officer's appointment on the ground of bias. Under the Government of India, Department of Personnel D.M. No.39/40/70-Ests.(A) dt. 9.11.1972 it is laid down that wherever an application is moved by a Government servant against whom disciplinary proceedings are

initiated under CCS(CCA) Rules, against the Inquiry Officer on grounds of bias, the proceedings should be stayed and the application referred, along with the relevant material, to the appropriate reviewing authority for considering the application and passing appropriate orders thereon. No action was taken by the authorities in accordance with these requirements. Obviously, the applicant who had made an application against the Inquiry Officer on the ground of bias did not participate in the inquiry, but without following the spirit of Sub-rule 15 quoted above the Enquiry Officer proceeded with the inquiry ex-parte against the applicant and imposed the penalty on him. The Appellate Authority did not notice the mandatory requirement and affirmed the order. It is therefore, difficult to sustain the findings and the penalty imposed on the applicant which are the consequence of a procedure which was not in accordance with the mandatory provisions. The finding of guilty and penalty imposed on the applicant are therefore quashed.

4. With regard to the seniority, the applicant's contention is that he was appointed as a Carpenter on 1.3.1978 by the Respondent No.2 and was transferred on 10.10.1983 as Junior Examiner on the assurance that his pay would be protected. It must be noted that the applicant was inclined to accept the transfer because according to him there was no promotional avenues for a Carpenter. The transfer to the post of Junior Examiner was done after holding a Trade Test. The two cadres of Carpenter and Junior Examiner were merged and later seniority was granted w.e.f. 16.10.1981 on the basis of the date on which the applicant entered the skilled trade. The position that an oral assurance was given to the applicant has been denied by the Respondents. It is obvious that after the merger of the two cadres some provision had to be made by which the seniority can be fixed. The scale of pay of Carpenter's cadre initially was Rs.225-308 while that of Junior Examiner Rs.210-290.

Wich

5. The applicant has contended that he should have been placed above Y.R.Ghadi who is at Sl.No.32 in the seniority list of IEs prepared on 25.1.1986, his position being at Sl.No.15, Ghadi was shown as senior. The remark against Ghadi shows that that was because he was given seniority w.e.f. 26.8.1985 that is the date of joining in the Inspectorate from CPE, Itarsi and was promoted to Ex HS - II w.e.f. 30.12.1985. No reasons have been given nor any grounds stated in the OA as to how the seniority should have been fixed. Unless proper basis was laid down in the OA by making proper pleadings it would not be open to the applicant to refer to certain documents only and urge that he should have been placed higher than Ghadi. In view of this position, we see no merit in the applicant's ^{contention} that the seniority should be re-constructed as on 16.10.1981.

6. The present application is rejected so far as the question of re-construction of seniority list. We grant the prayer 7(i) by quashing the finding of guilt and the penalty of stoppage of one increment with cumulative effect. All the entitlements of the applicant should be paid to him in view of the quashing of the penalty within three months from the date of the communication of the order to the Respondents.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A)

(Signature)
(M.S. DESHPANDE)
VICE-CHAIRMAN

8.