

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.777/88

Pandurang Ramchandra Mahimkar,
Shrirang Housing Society,
Building No.E 43,Block No.11,
First Floor,
Near Costle Mill,
Thane.

.. Applicant

vs.

1. Union of India
through
The General Manager,
Western Railway,
Churchgate,
Bombay.
2. The Chief Workshop Engineer,
Western Railway,
Churchgate,
Bombay.

.. Respondents

Coram: Hon'ble Member(J)Shri M.B.Mujumdar
Hon'ble Member(A)Shri M.Y.Priolkar

Appearances:

1. Mr.D.V.Gangal
Advocate for the
Applicant
2. Mr.Dinesh C.Shah
Advocate for the
Respondents.

Oral Judgment:
(Per M.B.Mujumdar,Member(J)

Date: 10.3.1989

The applicant was appointed as a Khalasi in 1959 and now he is working as a Head Clerk. Along with the memorandum dtd. 13.2.1985 a statement containing one article of charge was served on him. The charge was that while working as such in the Establishment Branch he had indulged in cheating and forgery with an intention to get unintended multiple benefits in his promotion by declaring himself falsely as belonging to Scheduled Tribe community. As he denied the charge a departmental enquiry was held against him and the Inquiry Officer by his report dtd. 12.5.1986 held that the charge was proved. Then the applicant filed O.A.260/87 challenging that order. But at the stage of admission on 27.4.1987, the applicant's advocate requested for withdrawal of the application provided the Tribunal was inclined to grant

an opportunity to cross examine Principal R.Borges of the Antonio D'Silva High School. Hence the application was disposed of as withdrawn but the Inquiry Officer was directed to give an opportunity to cross examine Principal R.Borges. However, in para 3 of the order it was made clear that the said direction will not be operative if the Disciplinary Authority had already passed an order.

2. But though the Disciplinary Authority had passed an order on 17.4.1987 dismissing the applicant from service, the Inquiry Officer gave an opportunity to cross examine Principal R.Borges. After considering the cross examination and other evidence, the Inquiry Officer again in his report dtd. 29.2.1989 arrived at the same finding, viz. that the charge was proved. Accepting that finding the Disciplinary Authority i.e. Deputy Chief Electrical Engineer(POH), Mahalaxmi, by his order dtd. 10.3.1988/24.9.1988 awarded the penalty of reduction to the lowest grade in the Clerical grade i.e. Junior Clerk in the grade of Rs.950-1500 with a starting salary of Rs.950/- as a permanent measure. It was also ordered that for all future considerations, he will be deemed to be belonging to general community and not to ST community.

3. The applicant has preferred an appeal dtd. 24.10.1988 against that order. It is mentioned in the appeal memo that the applicant was not supplied with a copy of the Inquiry Officer's report as it was not demanded by the applicant. Even now the applicant's advocate complained that the copy of the Inquiry Officer's report is not given to him till today. The appeal preferred by the applicant is still pending.

4. Hence we hold that the present application filed by the applicant on 26.10.1988 is premature inasmuch as he has come to this Tribunal without waiting for the decision of the appeal. Of course the reason is obvious

and it is because generally the appellate authority does not stay such orders. Hence we propose to pass a similar order in this case as we have passed in some other similar cases.

9. In result we pass the following order:

- (i) The application is rejected as premature.
- (ii) The respondents shall dispose of the appeal preferred by the applicant by 24.10.1988. As the applicant is not given a copy of the Inquiry Officer's report till today we direct that the respondents shall give a copy of the Inquiry Officer's report dtd. 12.5.1986 and 29.1.1988 as early as possible, but not later than one month from today. After the receipt of the copy of the Inquiry Officer's report, the applicant may file, if he so wants, a supplementary appeal memo to the appellate authority thereafter within 15 days.
- (iii) The appellate authority shall dispose of the appeal after giving a personal hearing to the applicant and by passing a reasoned order.
- (iv) The operation of the impugned order dtd. 10.3.1988/24.9.1988 is stayed till the disposal of the appeal preferred by the applicant on 24.10.1988. In case the appeal is decided against the applicant the operation of the said order shall remain stayed for 15 days after the appellate order is served on the applicant.


(M.Y. PRIOLKAR)
Member (A)


(M.B. MUJUMDAR)
Member (J)