

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 213/88
XXXXXX

198

DATE OF DECISION 11-10-1991

P. SETHU MADHAVAN

Petitioner

MR. D V GANGAL

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS

Respondent

MR. R K SHETTY

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U C Srivastava, V.C.

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

1. Whether Reporters of local papers may be allowed to see the Judgment? 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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 BOMBAY BENCH, "PRESOT ROAD - GULESTAN"
 BUILDING NO.6; PRESOT ROAD; BOMBAY-1.

OA.NO.213/88

P. SETHU MADHAVAN
 C/14 4th floor
 Ashok Apartment
 Gopal Nagar
 Kalyan Road
 Dombivili (E)
 Dist. Thane

..Applicant

V/s.

1. Union of India
 through General Manager
 Central Railway
 Bombay V.T.

2. Divisional Railway Manager
 Central Railway
 Bombay V.T.

..Respondents

Coram: Hon. Shri Justice U C Srivastava, V.C.
 Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. D V Gangal
 Advocate
 for the Applicant

Mr. R K Shetty
 Counsel
 for the respondents

ORAL JUDGMENT
 (PER: M Y Priolkar, Member (A))

DATED: 11-10-1991

The applicant was working as Senior Assistant Parcel Clerk at Dadar Station of Central Railway against whom a departmental inquiry was conducted on certain charges of misconduct and after following the prescribed procedure the disciplinary authority imposed upon him the penalty of withholding of increments for 18 months vide order dated 18.10.1986. His appeal dated 5-12-83 was considered by the Appellate Authority i.e., Senior Divisional Commercial Superintendent ^{who} ~~but~~ confirmed the penalty imposed by the disciplinary authority. The grievance of the applicant is that he has not been granted promotion to the scale of Rs. 455-700 and other further higher grades while his juniors have been granted the said promotions. He also prays that the penalty imposed upon him in the Disciplinary Proceedings should be quashed on the ground that the punishment imposed is with reference to the incident which had

taken place about six years prior to the date of penalty order.

The respondents filed their reply stating that while imposing the penalty the procedures prescribed under the Discipline and Appeal Rules have been strictly followed. Regarding the second grievance i.e., denial of promotion to the higher grades they have said that the grade of Rs.455-700 was a selection grade and that in the written test of selection held on 9.2.85 the applicant did not qualify ^{for} in the viva-voce test and therefore he was not considered for promotion. In the written test for the second selection which was held on 13.12.1986 though the applicant had qualified to be called for viva-voce test, he failed in the viva-voce held on 15.4.1987 and therefore he was not empaneled.

We have seen the proceedings of the DPC which had assessed the candidates who were called for viva-voce test on 15.4.1987 and 2.4.87. It seems the applicant had obtained in the interview only 10 marks out of 15 and the total of all his marks comes to 58% whereas the minimum required for qualifying was 60%. The Selection Committee had, therefore, not found the applicant suitable for promotion. It is seen from these proceedings that two other candidates who had got 59% marks were also similarly held to be unsuitable for promotion. Other candidates who had obtained more than 65% marks were declared to be suitable.

The learned counsel for the applicant argued that under the Railway Board's instructions dated 25.2.1971 moderation by way of awarding grace marks to the candidates is allowed. The only condition imposed is that it should not be resorted to within the authority of the Selection Board. According to him, therefore, it was incumbent on the Selection Board to consider the desirability of moderation and award of

grace marks in the case of all these three candidates who have been found to be unsuitable by few marks.

Learned counsel for the respondents on the otherhand has brought to our attention the order dated 30.3.1985 in which Ministry of Railways have instructed that while the existing instructions did not provide for award of grace marks in ~~fa~~ so far as moderation of results are concerned, the instructions contained in the Ministry letter dated 25.2.71 will continue to apply.

In any case moderation is resorted to only where the valuation of the candidates is rather found to be harsh or the percentage of candidates is much lower than the average. In the present case we find only three candidates were found to be unsuitable by a couple of marks and in case moderation is resorted to then all these candidates will have also to be declared as suitable. Even excluding these candidates it cannot be said that the results were not liberal. In fact even without any moderation in our opinion the results have been ~~as~~ fairly liberal and normally no moderation is required to be ~~done~~ in such cases. The instructions also did not make it obligatory that in case ~~of~~ ^{such} declaration of results question of moderation is necessarily to be considered.

We therefore ~~can~~ reject the contention raised on behalf of the applicant that his case ought to have been considered by awarding grace marks.

The only ground on which the penalty is challenged is the delay of almost six years in issuing the charge sheet after the incident in which it is alleged that the some cases booked from Nagpur to Dadar were delivered 491 kg. short, and a claim of Rs.4530/- had to be paid. Open delivery was granted in this case on 24.11.1977. The Railway Administration were therefore aware of the damage ^{done} to them by this

alleged negligence or misconduct on the part of the applicant, still no explanation was given by them in their written reply nor the learned counsel could explain as to why more than 6 years were required to serve charge sheet on the applicant.

We are, therefore, of the view that the charge sheet is not sustainable in view of the abnormally long delay for which there is no convincing reply. We, therefore, quash and set aside the punishment order dated 18.10.1983 imposing punishment of withholding of increment for 18 months as also quash the order of appellate authority confirming the penalty.

With the above directions the application is disposed of with no order as to costs.


(M Y PRILKAR)
MEMBER(A)


(U C SRIVASTAVA)
VICE CHAIRMAN