

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.91/86.

Shri B.S. Narwade,
At & Post - Biswa Bridge,
Tal. Nandura,
Dist. Buldana (Maharashtra State) ... Applicant.

V/s.

1. Union of India through
General Manager,
Central Railway,
Bombay V.T.
Bombay.
2. The General Manager,
Central Railway,
Bombay V.T.
Bombay.
3. The Secretary,
Railway Board,
Rail Bhavan,
New Delhi.

Coram: Hon'ble Vice-Chairman, B.C.Gadgil,
Hon'ble Member (A), J.G.Rajadhyaksha.

Appearances:

1. Shri T.T. Antony, Advocate for the Applicant.
2. Shri S.R. Atre, Advocate for the Respondents.

ORAL JUDGMENT:

(Per Vice-Chairman, B.C.Gadgil)

Dated: 19-1-87.

The applicant is challenging the order dated 18-3-85, whereunder he was removed from service after holding a departmental enquiry. A few facts may be stated briefly to understand the case.

2 The applicant was a Head Ticket Collector working with Central Railway. A departmental proceeding was started against him on 24-3-1980 and he was removed from service by the Senior Divisional Commercial Superintendent, Bhusawal. His appeal against his removal was dismissed on 16-6-1980. He filed a Writ

Petition No.3107/80 in the High Court of Bombay, Nagpur Bench. On 3-3-1980 the Writ Petition was allowed on the technical ground that disciplinary action had not been taken by the appointing authority. The final order in the Writ Petition is at page 17 of the compilation. Consequent upon this decision, the applicant was reinstated on 8-6-83 (vide page 19 of the compilation). Thereafter, he earned two promotions. On 22-3-84, he was promoted to the post of Assistant Chief Ticket Inspector (vide page 21 of the compilation). There are two commendatory letters dated 11-2-85 and 6-3-85 appreciating the work done by the applicant (vide page 23 of the compilation). Not only that, on 29-3-85, the applicant was further promoted as Chief Ticket Inspector (vide page 21 of the compilation).

3 As we have already stated, the High Court has quashed the penalty on the ground that it was not imposed by the appointing authority namely the General Manager. Hence after considering the enquiry report the General Manager passed an order dated 18-3-85 removing applicant from service (vide page 25 of the compilation). However, it appears that this order did not reach the Divisional Manager, Bhusawal before 29-3-85. Thus as stated above, there was the promotion order appointing the applicant as Chief Ticket Inspector on 29-3-85. The applicant had preferred an appeal against the penalty of removal. That appeal was dismissed. The said dismissal has been communicated vide letter dated 17-2-86 (page 29 of the compilation).

4 Mr. Antony raised a number of contentions before us. For example, he drew our attention to some administrative instructions whereunder it was recommended

that disciplinary authority should pass a proper order within 20 days of the receipt of the enquiry report. According to him, these administrative instructions have not been obeyed and consequently the impugned penalty order is bad. His second contention is that it will not be permissible for the Railway Administration to proceed with the enquiry report after promoting the applicant to higher posts. We have already stated that the applicant was so promoted twice once on 22-3-84 and the second occasion on 29-3-85. He earned these promotions after he was reinstated in service in terms of the orders of the High Court. He relies upon the decision of the Madhya Pradesh High Court in the case of Lal Audhraj Singh vs State of Madhya Pradesh reported in A.I.R. 1967 M.P 284. The relevant head-note read as follows:

"A master cannot impose any punishment on a servant for a misconduct which he has condoned. If the lapse or misconduct is one which is known to the authority before the person is promoted and not one which comes to light subsequent to the promotion, and if the authority concerned knowing of this lapse or misconduct promotes the civil servant without any reservation, then it must be taken that the lapse or misconduct has been condoned and, therefore, the servant cannot be punished for his lapse or misconduct".

5 Mr. Atre submits that such promotions would not affect and curtail the power of the disciplinary authority for completing the departmental proceedings and for inflicting penalty.

6 We do not intend to consider the above mentioned submission of Mr. Atre in great detail as in our opinion, the matter will have to go back to the appellate authority for fresh decision on the appeal.

7 The Supreme Court in the case of Ram Chander Vs Union of India and Others reported in 1986(2) SLR 608 has held that the appellate authority should decide the appeal after giving an opportunity to the appellant of being heard in person, and should also pass a speaking order. While deciding the appeal in the present case the appellate order, as was the order before the Supreme Court is a cryptic order vide page 29 of the compilation. The Supreme Court remanded that matter to the appellate authority for a fresh decision. We think that it would be necessary to follow the above mentioned course as laid down by the Supreme Court. Hence we issue the following orders.

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Order

The application partly succeeds. The departmental appeal filed by the applicant to the Railway Board (dismissal of which has been communicated vide letter dated 17-2-86 vide page 29 of the compilation) is remanded to the appellate authority for fresh decision with a direction that before deciding the appeal, the appellant should be given an opportunity of being heard and the appellate authority should pass a speaking order. It is needless to say that the appellate authority will be able to proceed ex parte if the appellant, after receiving notice of hearing, chooses not to remain present for hearing the matter.

The appellate authority should decide the appeal expeditiously say within four months from to-day. The parties to bear their own costs of this application.

B.C. Gadgil
(B.C. GADGIL)

VICE-CHAIRMAN

J.G. Rajadhyaksha
(J.G. RAJADHYAKSHA)
MEMBER(A)