

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.No.179/86

V.S.Sumant,
Railway Quarter No.RB/I/672/A'15' Block,
Railway Colony,
Central Railway,
BHUSAWAL.

... Applicant

vs.

1. The Union of India
through
The General Manager,
Central Railway,
Bombay V.T.
2. The Senior Divisional
Engineer(South),
Central Railway,
Bhusawal.
3. The Assistant Engineer,
Central Railway,
Chalisgaon.

... Respondents

Coram: Hon'ble Member(A)S.P.Mukerji

Hon'ble Member(J)M.B.Mujumdar

Appearances:

1. Mr.D.V.Gangal
Advocate for
the applicant.
2. Mr.V.G.Rege,
Advocate for the
Respondents.

JUDGMENT

Date: 8-1-1988

(Per M.B.Mujumdar, Member(J))

In this application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has challenged the order of penalty imposed upon him as a result of departmental enquiry and requested for his promotion to the post of Head Clerk.

2. The applicant was working as a Senior Clerk since 1964. Along with the memorandum dtd. 16-12-1981 a copy of the chargesheet ~~along~~ with

....2/-

the necessary accompaniments was served upon him. The charge was for (i) disregard and disobedience of Orders, (ii) insubordination and breaches of discipline, (iii) late of irregular attendance, (iv) improper behaviour such as quarrelling on duty, (v) inefficient, careless, obstructive working, and (vi) failure to observe rules and regulations. As the applicant pleaded not guilty to the charges a departmental enquiry was held against him. The Chief Public Way Inspector (N) Chalisgaon (Shri M.L. Pachoriya) who has appointed as Inquiry Officer held that the charges against the applicant was proved. Relying upon that report the Disciplinary Authority (Shri S.R. Raje) imposed the penalty of reduction to a lower post/grade of junior clerk in the scale of Rs.260 - 400. He further directed that ~~until~~ ^{as and when} the applicant was found fit by the competent authority after a period of three years from the date of order, the applicant should be restored to the higher post/grade of senior clerk in the scale of Rs.330-560. On restoration the period of reduction was not to have any effect in the seniority. The pay of the applicant was fixed at Rs.400/- which was the pay from which he was reduced. The applicant preferred an appeal against that order and the Appellate Authority i.e. Senior Divisional Engineer, Bhusawal, by his order dtd. 26-5-1986 confirmed the order of penalty. On 4-6-1986 the applicant challenged the order of the Disciplinary Authority as well as the order passed by the Appellate Authority by filing this application. As the applicant had prayed for interim relief against the order of penalty this Tribunal had directed that status quo should be

maintained if the applicant was not ~~already~~ reverted.

3. After the application was filed, Additional Railway Manager (EC/T), Bhusawal, suo moto reviewed the order of penalty and by ^{the} ~~his~~ letter dtd. 17/24-11-86 the applicant was informed as follows:

"Your case is reviewed by ADRM (EC/T) BSL on 7-11-86 who has ordered that the punishment imposed by AEN CSN on 11-1-86 and confirmed by Sr. DEN (S) on 17-5-86 be set aside and that the Enquiry Officer is directed to submit denovo findings after considering the evidence of Shri Topa Laxman recorded on 30-1-84 and by ignoring ~~the~~ evidence of Shri Sharma"

It may be pointed out that the evidence of witness Sharma was recorded after the defence evidence was over and as it was seriously objected to, the Reviewing Authority directed that it should be ignored. The same Inquiry Officer (Shri M.L. Pachoriya) again arrived at the same finding that the charges against the applicant ⁱⁿ ~~was~~ proved by his report dtd. 10-12-1986. Relying upon that report the Disciplinary Authority imposed the penalty of reduction to the lower post/grade of junior clerk in the scale of Rs. 950-1500 for a period of one year. He directed that the applicant would be restored to the higher post/grade of senior clerk after the period was over and on restoration the period of reduction would not have any effect on the seniority. The pay of the applicant was fixed at Rs. 1,500/- ^{p.m.} in the grade of Rs. 950-1500. The applicant has preferred an appeal against that order on 18-4-1987 but it is not yet decided.

4. By an office order dtd. 8-4-1985, 26 senior clerks including the applicant ^{had been} ~~were~~ promoted and posted as Head Clerks. The promotions were given because the posts of Senior Clerks were upgraded to the post of

Head Clerk consequent upon some scheme for restructuring of ministerial staff of Engg.NP Cadre of Bhusaval Division with effect from 1-1-1984. In that order the name of the applicant was ^{at the top} at Sr.No.1. Though all the remaining persons below the applicant in that order [^] were promoted, the applicant was not promoted probably because of the pendency of this departmental proceedings as well as some penalty imposed upon him in another departmental proceedings.

5. In this application the applicant ^{has} challenged the order of penalty and he has also prayed ^h that he should be promoted with retrospective effect in view of the order dt. 8-4-1985.

6. The respondents have resisted both the prayers by filing their exhaustive statement. We have heard Mr.Gangal, the learned advocate, for the applicant and Mr.V.G.Rege, the learned advocate, for the respondents at length.

7. As already pointed out the Inquiry Officer was required to give his report afresh in view of the order passed by the reviewing authority i.e. Additional Divisional Railway Manager on 7-11-1986. It is in pursuance of that report that the Disciplinary Authority has awarded practically the same penalty to the applicant with some modifications.

8. It was submitted by Mr.Gangal that the Inquiry Officer ^{has} submitted his report dtd.10-12-86 by disregarding the directions given to him by the Reviewing Authority. We have already quoted the order

.....5/-

passed by the Reviewing Authority. By that order the Reviewing Authority had asked the Inquiry Officer to submit denovo findings after considering the evidence of Shri Topa Laxman recorded on 30-1-1984 and by ignoring the evidence of Shri Sharma. There is no dispute between the parties before us ^{that the evidence of Sharma deserves to be ignored.} However, Mr. Gangal submitted that the Inquiry Officer was required to consider the evidence of Shri Topa Laxman recorded on 30-1-1984 ^{only} and he has ^{erroneously} heard in considering not only the other evidence but the evidence of Shri Topa Laxman recorded on ^{a later} earlier date. The report of the Inquiry Officer dtd. 10-12-1986 no doubt shows that the evidence of Topa Laxman recorded on both the dates as well as the evidence of other witnesses excluding that of Sharma was considered by the Inquiry Officer. Mr. Rege submitted that the word 'only' is not there in the order of the Reviewing Authority and hence the Inquiry Officer was justified in taking into account the other evidence as well as the evidence of Topa Laxman recorded on 28-6-1985

9. We are of the view that the confusion has arisen because of the ambiguous order passed by the Reviewing Authority. When denovo findings are to be given there was no reason why the other evidence and the second statement of Topa Laxman should not be considered. We are, therefore, inclined to set aside the order passed by the Reviewing Authority and the consequent findings given by the Inquiry Officer ^{the basis of} as well as the order passed on that finding.

10. As regards the promotion claimed by the applicant to the post of Head Clerk we may point out that he was given promotion under a scheme ^{for} on restructuring of ministerial staff in the Engineering cadre of Maheswar Division. In view of that fact

of Bhusaval Division. In view of that scheme 26 posts of Sr.Clerks were upgraded to the post of Head Clerks.

We were told that in a previous departmental enquiry ^{the penalty} of withholding of one increment for three years was imposed upon the applicant. But inspite of it the applicant was given the promotion by the order dtd. 8-4-1985. Hence the previous penalty should ^{not} have come ^{again} in the way ^{of} ~~for~~ giving actual promotion to the applicant.

11. Mr.Rege suggested that the pendency of this case also might be the reason why the applicant was not given promotion in view of the order dtd.8-4-85. There was no doubt that there is a clause at the bottom of the order dtd. 8-4-85 which says that the promotions were subject to the conditions that the orders will not be effective in respect of those who may be undergoing disability under Railway servants (D&A) Rules,1961 which would disentitle them for promotion to higher grades. But the authorities should have considered this rule before passing the order of promotion. In our opinion mere pendency of a departmental proceeding would not come in the way of giving effect to the order dtd. 8-4-1985 as it was passed under a scheme of upgradation of posts consequent upon restructuring of ministerial staff of the cadre at Bhusaval division. We are,therefore, inclined to direct the respondents to give promotion to the applicant as Head Clerk in pursuance ~~of~~ to the order dtd.8-4-1985 with all consequential benefits.

12. In result we pass the following order:

- (i) The order passed by the Reviewing Authority i.e. Additional Divisional Railway Manager (EC/T) Bhusaval on 7-11-1986 which was

conveyed to the applicant by the Divisional Engineer(S) Bhusawal by his letter dtd. 17.11.1986 is hereby quashed and set aside.

- (ii) Similarly the Inquiry Officer's report dtd. 10.12.1986 as well as the order of penalty passed by the Disciplinary Authority on 5/6.1.1987, are hereby quashed and set aside.
- (iii) The respondents are, however, directed to appoint some Inquiry Officer, other than Shri M.L.Pachoria, and ask him to submit a fresh report after considering all the evidence laid before the previous enquiry officers, except the evidence of Shri Sharma.
- (iv) The Disciplinary Authority may pass appropriate order on the basis of fresh report of the Inquiry Officer after giving a copy of that report to the applicant and after giving him a chance to make a written representation regarding the report of the Inquiry Officer.
- (v) The respondents are directed to promote the applicant to the post of Head Clerk as per office order No.82/85 dtd. 8.4.85 with effect from 8.4.1985, by ignoring the pendency of the departmental proceeding as well as the order of penalty passed in another departmental proceeding, with all consequential benefits including arrears.
- (vi) Parties to bear their own costs.

 8.1.88

(S.P. MUKERJI)
MEMBER(A)


(M.B. MUTUMDAR)
MEMBER(J)