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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 471/89
T.A. No.

198

DATE OF DECISION 25.10.1989

Shri S.S.Amrite Petitioner

Mr.L.M.Nerlekar Advocate for the Petitioner(s)

Versus

Deputy Chief Engineer, CR, Pune Respondent

Mr.S.C.Dhavan Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.M.B.Mujumdar, Member(J)

The Hon'ble Mr.P.S.Chaudhuri, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *~~No~~ Yes*
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*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.471/89

Shri S.S.Amrite,
Room No.8,
Railway Quarters,
M.S.R.B.II,
Dombivli,
Dist.Thane.

.. Applicant

vs

Deputy Chief Engineer,
(Construction)
Central Railway,
Pune 411 001.

.. Respondent

Coram: Hon'ble Member(J)Shri M.B.Mujumdar
Hon'ble Member(A)Shri P.S.Chaudhuri

Appearances:

1. Mr.L.M.Nerlekar,
Advocate for the
Applicant.
2. Mr.S.C.Dhavan,
Advocate for the
Respondent.

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

Date: 25.10.1989

The relevant facts as gathered from the application and record are these: The applicant is working as Chief Permanent Way Inspector with the Central Railway. Along with the memorandum dtd. 27.2.1987 a chargesheet was served on him. The charge was that in January, 1987 while incharge of maintenance and laying of track in Karjat Yard, he failed to ensure proper maintenance and laying of track which contributed to the derailment of two wagons at about 15.10hrs on 25.1.1987. On that charge a regular departmental inquiry was held. The Inquiry Officer submitted his report dtd. 4.1.1988 holding the charge partially established. By memorandum dated

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1/5.2.1988 the applicant was given an opportunity of making a representation against the proposed penalty. The proposed penalty was reduction to the lower stage of Rs.2,750/- in the time scale of Rs.2,375 - 3,500(RPS) for a period of one year, which was to have the effect of postponing his future increments. A copy of the relevant portion of that memorandum is attached at Ex."G" to the application. It is the case of the respondent that by this memorandum the penalty mentioned therein was imposed on the applicant. However, treating this as a show cause notice the applicant submitted his reply dated 23.2.1988. As he did not receive any reply he sent two more representations dtd. 6.3.88 and 17.12.88. In the last representation he pointed out that the memorandum did not impose any penalty, but by that memorandum he was merely asked to show cause against the proposed penalty. No reply was sent to any of these representations and hence the applicant has filed this application on 5.7.1989 praying that if any penalty^{is} is imposed by the memorandum dtd.1/5.2.88 then the same should be quashed and set aside and his original pay should be restored.

2. In view of the facts and after hearing the learned advocates for both the parties we admit the application and dispose ~~of~~ it ^{of} finally.

3. We have seen the memorandum dtd. 1/5.2.88. It appears that in the copy of the

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memorandum which was sent to the applicant no date was mentioned. However, the month January, was mentioned. We say this by comparing the copy of the memorandum produced by the applicant at Ex."G" and by seeing the original memorandum from the record. The original memorandum in the record gives the date as "1/5" and the month "February" is written by scoring out the word "January". But that is not at all material in this case. What is material in this case is that the memorandum by itself did not impose any penalty on the applicant. It only says that the penalty of reduction to a lower stage of Rs.2750/- for a period of one year which will have effect of postponing future increments was proposed and gives the applicant an opportunity to make a representation about it. The authorities seem to have assumed that the said penalty was actually imposed on the applicant with effect from 1.1.88 as can be seen from letter of 1/5.2.88 by which the memorandum was forwarded for service. But we have no doubt that the memorandum did not impose any penalty on the applicant.

4. We were told that the respondents have in fact implemented the penalty treating the memorandum as having imposed the penalty mentioned therein on the applicant. Hence we are required to clear the position and quash and set aside the penalty. At the same time the respondents shall have to be given liberty to pass appropriate orders if they so want.

5. In result we pass the following order:

(i) The respondents shall treat the memorandum dtd.1/5.2.88 as a showcase notice given to the applicant. The applicant is in possession of the Inquiry Officer's report. Hence the respondents should give him a further chance (by sending another memorandum) to make a representation against the proposed penalty and the findings in the Inquiry Officer's report within 15 days. After considering the representation the competent authority may pass an appropriate order. If the competent authority awards any penalty to the applicant, the applicant will be at liberty to approach this Tribunal by way of filing a fresh application under Section 19 of the Administrative Tribunals Act after exhausting the departmental remedies available to him.

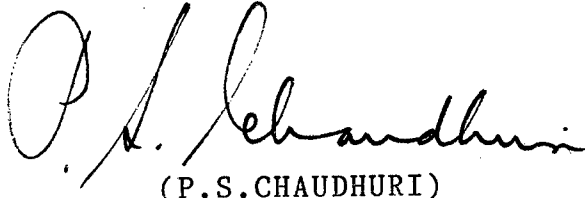
(ii) Needless to say that if the respondents have treated memorandum dtd.1/5.2.88 as imposing on the applicant the penalty of reduction to the lower stage of Rs.2750/- in the time scale of Rs.2375-3500(RPS) for a period of one year with the effect of postponing future increments, then that penalty is hereby quashed and set aside. The pay of the applicant should be restored to his original pay by ignoring this so called penalty and the applicant should be given the arrears due to him on that basis.

(iii) The above order should be implemented within three months from the date of receipt of a copy of this order.

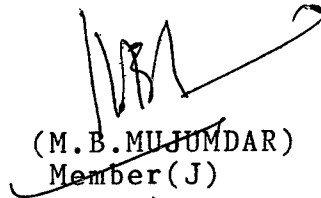
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6. There will be no order as to costs.



(P.S. CHAUDHURI)
Member (A)



(M.B. MUJUMDAR)
Member (J)