

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

R. P. NO.: 24/99 IN O.A. NO.: 1008/96.

Dated the 26<sup>th</sup> day of July, 1999.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

Union of India & 3 Others ... Review Petitioners.  
(Original Respondents.)

## VERSUS

Shri A. B. Mishra ... Respondents.  
(Original Applicant).

**Tribunal's Order on circulation**

This is a review petition filed by the respondents seeking review of a part of a direction given by us in our order dated 16.06.1999 in O.A. No. 1008/96. We have perused the contents of the review petition and the entire case papers.

2. In the operative portion of the order we have quashed the enquiry report and the orders of the Disciplinary Authority and higher authorities and then remanded the matter to the Disciplinary Authority for fresh disciplinary proceedings as per the observations made in para 18 of the order. We have further given direction that the applicant shall be reinstated forthwith and he should be paid full backwages from the date of removal from service till the date of reinstatement. The review petition is filed only for the limited purpose of reviewing our direction of reinstatement with full backwages.

3. The respondents', the petitioners in the review petition, grievance is that this direction is contrary to Rule 5(4) of Railway Servants (Discipline & Appeal) Rules, 1968. In our view, this contention has no merit. Rule 5(4) is the power given to the Disciplinary Authority to take further action like fresh enquiry when the order of termination has been set aside by a Court or Tribunal. Rule 5 does not deal with the powers of a Court or Tribunal. The powers of this Tribunal are governed by the provisions of the Administrative Tribunals Act. Rule 5(4) applies to the Disciplinary Authority and not to a Court or Tribunal. Instances are not wanting in reported judgements where Courts and Tribunals have granted full backwages in many cases whenever the orders are quashed and matter was remanded for fresh enquiry. In some cases 50% backwages are allowed. In few cases backwages are denied having regard to the conduct of the delinquent official. Therefore, grant of backwages is fully at the discretion of Court or Tribunal and Rule 5 does not come in the way of the powers of a Court or Tribunal to grant backwages either in full or partly or not at all. Therefore, Rule 5 does not govern or limit the powers of a Court or Tribunal in the case of reinstatement.

4. In the review petition reliance is placed on two authorities. In our view, both the decisions have no application.

In the case of Nelson Motis V/s. Union Of India [1993 SCC (L&S) 13] the Supreme Court was only concerned with the question of deemed suspension when a order of disciplinary authority is quashed only on a technical ground like non-furnishing of enquiry report. The question in the case of order of reinstatement whether the Court or Tribunal has power to grant full backwages or not was neither raised nor decided by the Supreme Court in the said decision.

In 1999 SCC (L&S) 623, [U.P. (Madhya) Ganna Beej Evam Vikas Nigam Ltd. & Others V/s. Prem Chandra Gupta & Others] it was a case of High Court setting aside the an order of the Disciplinary Authority and ordering reinstatement due to the defect in the enquiry in not furnishing the copy of enquiry report. The Supreme Court referred to the decision of the Constitutional Bench in Karunakar's case [1993 SCC L & S 1184] and then gave a direction that on reinstatement the official can be placed under deemed suspension and the question of backwages will be considered by the competent authority after the enquiry is over.

The Constitutional Bench in Karunakar's case has clearly held that when an order of the Disciplinary Authority is set aside on the technical ground of non-furnishing of enquiry report, then the official must be deemed to be under suspension

and then the question of backwages will have to be considered by Disciplinary Authority after the conclusion of the enquiry. These observations will not apply to other cases where the order of Disciplinary Authority is set aside on different grounds and not on the ground of non-furnishing of enquiry report.

In the present case we have held that the whole enquiry is vitiated due to a biased officer being appointed as an Inquiry Officer. We have pointed out in our order how the Inquiry Officer was biased against the applicant due to personal rivalry and union rivalry and due to criminal cases and we have ordered de novo enquiry from the beginning and the entire evidence recorded earlier should be ignored. Therefore, this is not a case of order being set aside on technical ground of not furnishing enquiry report. Here the whole enquiry proceedings have been quashed and a de novo enquiry has been ordered and therefore the above two decisions have no bearing on the point under consideration.

5. In our view, there is no apparent error in ordering reinstatement with back wages and having regard to the facts of the case, namely - the whole enquiry being vitiated. No ground is made out for admitting the review petition.

6. In the result, the review petition is rejected.

(D. S. BAWEJA)

MEMBER (A).

(R. G. VAIDYANATHA)

VICE-CHAIRMAN.