

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No:163/99

Date of Decision:2/8/99

Shri G.V.Ohal

Applicant.

Shri B.Dattamoorthy

Advocate for
Applicant.

Versus

Sh Union of India & Anr.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. B.N.Bahadur, Member(A).

- (1) To be referred to the Reporter or not? ~~~
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ~~~

abp.


(R.G.VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO:163/99.

DATED THE 2ND DAY OF AUGUST, 99.

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN

HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Shri G.V.Chal,
Senior Postmaster,
Sangli, H.P.O.,
residing at :
Vishwanath Bunglow, Ganesh Nagar,
Near Sanchayani Bhawan,
At P.O.Sangamner
Taluo-A District,
Ahmednagar Pin 422 605.

... Applicant.

By Advocate Shri B.Dattmoorthy.

V/s.

1. Union of India,
Through
Chairman, Postal Services Board,
Dak Bhavan, Sansad Marg,
New Delhi-110 001.

2. Chief Postmaster General,
Maharashtra Circle,
Old G.P.O. Bldg, IInd Floor,
Near C.S.T., Mumbai-400 001.

... Respondents.

By Advocate Shri V.S.Masurkar

I ORDER I I ORAL I

I Per Shri R.G.Vaidyanatha, Vice Chairman I


This is an application filed under section-19 of Administrative Tribunals Act. Respondents have filed reply. We have heard both the counsels at the admission stage and since the point involved is a short point, we are disposing of the OA at the admission stage.

2. Few facts which are necessary for disposal of application are as follows:-

The applicant was earlier working as



Inspector of Post Offices and was due for promotion as Assistant Superintendent of Post Offices sometime in 1982. But a disciplinary enquiry was instituted against the applicant in 1977 and therefore due to pendency of the disciplinary enquiry, he could not be considered for promotion in 1982. He came to be exonerated in the enquiry by order dated 21/6/84. But in the meanwhile, the second charge sheet had been issued against applicant on 31/1/84 which ultimately ended in awarding a minor penalty of withholding of one increment for one year by order dated 22/7/85. However, the said order came to be modified by Presidential order dated 17/10/88 by substituting penalty of 'Censure'. The applicant filed previous OA-348/90 claiming retrospective promotion. The OA came to be allowed by order dated 8/12/93 by directing the administration to grant notional promotion to applicant and then decide by speaking order whether the applicant is entitled to actual monetary benefits or not. There is no dispute that the applicant has since been promoted as Assistant Superintendent of Post Offices and further promoted in the HSG Grade-I. He has been given only notional promotion but no actual monetary benefit. In pursuance of the order in the previous OA, the Competent Authority has since passed an order dated 4/12/98 rejecting the claim of the applicant for actual monetary benefits. Being aggrieved by that order, the applicant has approached this Tribunal for direction to respondents to grant him the actual monetary benefits and the Impugned order dated 4/12/98 to be quashed. Respondents have filed reply justifying the order dated 4/12/98.




3. The point for consideration is whether the applicant has made out any case for interfering with the Impugned order dated 4/12/98.

4. As noted earlier, the Tribunal has given direction in the previous OA to the respondents to pass a speaking order in case they come to conclusion that the applicant is not entitled to monetary benefits. It is also noticed that in Janakiraman's case (1993 SCC L&S - 387), the supreme Court has ruled that an official is entitled to promotion in case he is exonerated by the Disciplinary enquiry without there being a "not even a minor penalty of Censure". Then the supreme Court actually considered the question of monetary benefits. Infact the supreme Court has observed in page-399 of reported judgement that one more clause should be read into Government Memorandum to provide a clause that the question of entitlement of arrears of pay for the period of notional promotion shall be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Therefore, the supreme Court itself has given a direction that the matter should be left to the discretion of the Competent Authority to decide about actual monetary benefits. In the present case, the Impugned order dated 4/12/98 is passed by Competent Authority ^{by} taking into account/consideration the facts and circumstances of the case and also the ^{ground} ~~stand~~ under which the applicant came to be exonerated in the first disciplinary enquiry.

By

It is clearly mentioned that it was not a case of a honourable acquittal but it is a case of enquiry being closed for want of sufficient evidence. The order of Disciplinary Authority is at page-25 of the paperbook. The order is dated 21/6/84 and it shows that the disciplinary authority was shocked by the subsequent development in which most of the witnesses turned hostile. He even thought of remanding the matter for further enquiry. But since it is time consuming and witnesses having turned hostile he did not want to remand the matter. He even endorsed a view about involvement of applicant but still he closed the matter since it will be time consuming if fresh enquiry is ordered. These circumstances have been taken into consideration by the Competent Authority in denying the claim of the applicant being given actual monetary benefits. The authority has also taken into consideration the subsequent fact that one more disciplinary enquiry was started against the applicant which resulted in a punishment of 'Censure'. Hence, taking everall picture into consideration, the Competent Authority has passed a speaking order that the applicant is not entitled to monetary benefits.

5. After having ~~heard both~~ sides, we feel that the order of the Competent Authority suffers from ^{no} any legal infirmity. We are not sitting in appeal ~~over~~ the order of Competent Authority. We are not sitting as an Appellate Authority, ^{we cannot interfere,} but while exercising judicial review, even /if another view is possible. Since the Competent Authority has applied its mind on the circumstances of the case



and passed a well reasoned speaking order. We are not inclined to interfere with the same. We can also notice that the applicant ^{has} ~~got~~ both the promotions and retired from service in 1992 and now we are in 1999.

6. In the result, the application is rejected at Admission stage. There will be no orders as to costs.

B. N. Bahadur

(B.N. BAHADUR) ..
MEMBER (A)

R. G. Vaidyanatha

(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.