

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 821 of 1999.

Dated this Wednesday, the 23rd day of February, 2000.

V. A. Jogdand Applicant.

Shri G. S. Walia, Advocate for the
applicant.

VERSUS

Union Of India & Another, Respondents.

Shri R. R. Shetty, Advocate for the
respondents.

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

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

- (i) To be referred to the reporter or not ?
(ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
(iii) Library.


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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V. A. Jogdand,
Sr. Section Engineer,
C/o. C.R.S.E. Head Quarters,
Mumbai C.S.T.,
Mumbai - 400 001.

... Applicant

(By Advocate Shri G. S. Walia)

VERSUS

1. Union of India through
The General Manager,
Central Railway,
Head Quarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.

2. Divisional Railway Manager,
Mumbai Division,
Central Railway,
DRM's Office, Mumbai C.S.T.,
Mumbai - 400 001.

... Respondents.

(By Advocate Shri R. R. Shetty).

OPEN COURT ORDER

PER.: Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard the Learned Counsel appearing on both sides. Since the point involved is a short point, we are disposing of the application at the admission stage.

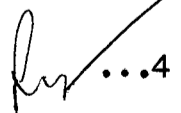
2. The applicant is a Section Engineer in the Central Railway. He is due for promotion as Senior Section Engineer. He has not been promoted but his juniors came to be promoted. It is also stated that applicant had received a minor penalty charge-sheet on 15.10.1996, for which he sent a reply. He has not been communicated any decision of the Disciplinary Authority regarding penalty or otherwise. His juniors got promotion by order dated 19.03.1997. The applicant should have been promoted as per his seniority since it is a non-selection post. When the applicant made enquiry with the administration by giving a written representation as to why he was not promoted, he was informed that since the disciplinary case has ended with a minor penalty, he could not be promoted. The applicant had filed a previous O.A. where he was given a copy of the penalty order and therefore, we disposed of the previous O.A. No. 555/98 by order dated 26.03.1999 giving liberty to the applicant to file an appeal before the proper authority. The applicant preferred an appeal and now the appellate authority has disposed of the appeal by reducing the punishment. Being aggrieved by the orders of the Appellate Authority and the Disciplinary Authority and his non-promotion, the applicant has approached this Tribunal.

3. The respondents in their reply have justified the action taken by them and they have also justified the applicant's non-promotion not only on the basis of penalty

but also on the basis of service record. It is not necessary to consider the pleadings in detail in view of the short legal point urged by the Learned Counsel for the respondents.

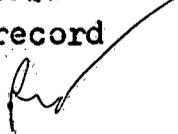
4. The Learned Counsel for the applicant has raised two points before us. Firstly, the order of the Disciplinary Authority is liable to be quashed, since it is a non-speaking order and prepared in a cyclostyled form. The other argument is, that even ~~X~~ ^{after} such a penalty which was prospective, to be effective from 31.03.1997, the applicant should have been promoted when his juniors are promoted from 19.03.1997 and the penalty could have been operated in the promotional ^{Post} period, as provided in the rules.

The Learned Counsel for the respondents has controverted both the submissions and further submitted that the order of the Disciplinary Authority dated 18.11.1996 is supported by an order passed by the Disciplinary Authority with reasons in the file and therefore, it is not a case of an order suffering from non-application of mind. As far as the question of promotion is concerned, it was argued that applicant was found not suitable not only on the basis of penalty, but also on the basis of service record. As far as the argument of the applicant that the impugned order which is at page 15 suffers from ^{the} vice of non-application of mind is well founded. On the face of it, the order

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at page 15 is not a speaking order and in the cyclostyled form columns are filled in. Therefore, we need not refer to the decisions relied on by the Learned Counsel for the applicant and we can straight-away say that the order which is at page 15 is not sustainable in law. But if this was the only thing, then probably we would have allowed the application on the short ground. But at the time of argument, the Learned Counsel for the respondents placed before us the original file which contained the order in the form of page 15 of the O.A. and also a reasoned order prepared and signed by the Disciplinary Authority on 12/14.11.1996. This is a brief order where there is reference to the allegations against the applicant and then the Disciplinary Authority has formed an opinion that there is a lapse on the part of the applicant. It is seen that the first portion of the order is the office note dated 12.11.1996 giving facts and below that, the Disciplinary Authority in his own handwriting has written a brief order which shows application of mind to the facts of the case. There is a signature of the authority with date/ as 14.11.1996.

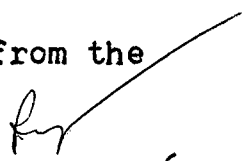
The Learned Counsel for the respondents, on our instructions, shows the concerned order of the Disciplinary Authority to the applicant's counsel and we direct him to furnish a xerox copy of the order to the Learned Counsel for the applicant. A copy of the original office note alongwith the order of the Disciplinary Authority in his own handwriting and signature is now given to the applicant's counsel. Now when the record



shows that the Disciplinary Authority has passed a written order by applying his mind, the earlier argument that the order of the Disciplinary Authority is in a cyclostyled form and therefore not valid, will not hold the field. Now that we are satisfied that the original file shows the reasoned order of the Disciplinary Authority, we find that no ground is made out for quashing the order of the Disciplinary Authority.


5. As far as the applicant's claim for promotion is concerned, applicant's counsel contends that even if a future penalty is given, then it will not come in the way of granting immediate promotion and the penalty can be effected in the promotional post. If the applicant had been superseded only on the ground of penalty, the matter could have been different. But the respondents in their written statement have clearly stated that the applicant was superseded not only on the basis of penalty but also on the basis of service records.

Now atleast the appellate authority has reduced the penalty to with-holding of increment to one year. Therefore, a review D.P.C. must be called to decide whether on the basis of one year penalty and other service records, the applicant was suitable for promotion when his juniors got promotion on 19.03.1997. The review D.P.C. shall consider the same and then decide whether the applicant is suitable or not. If the review D.P.C. comes to the conclusion that the applicant is suitable for promotion, then he should be given promotion from the



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date his immediate junior is promoted, namely -
with effect from 19.03.1997 with all consequential
benefits permissible under the rules. If however, the
Review D.P.C. holds that the applicant is not suitable,
then applicant may be given written information about
the decision of the Review Committee.

6. In the result, the O.A. is disposed of subject
to the observations mentioned above. The competent
authority shall decide the question of reviewing the case
of the applicant for promotion, as observed in his
order either by himself or through a D.P.C. as per rules
and pass appropriate orders within a period of three
months from the date of receipt of a copy of this order.
No order as to costs.



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


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

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