

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 698/99

Date of Decision : 27th May 2002

A.K.Srivas

Applicant

Shri G.K.Masand

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri S.C.Dhawan

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri S.K.Agarwal, Member (A)

(i) To be referred to the reporter or not ? yes

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? No

(iii) Library yes

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.698/99

Dated this the 27th day of May 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri S.K.Agarwal, Member (A)

Anil Kumar Srivas,
Deputy Chief Claim Officer,
Central Railway,
New Administrative Building,
5th Floor, CST, Mumbai.

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the Ministry of
Railways, Rail Bhawan,
New Delhi.

2. Chairman,
Railway Board,
Rail Bhavan, New Delhi.

3. General Manager,
Central Railway,
Mumbai CST.

4. K.M.Rao,
Retd. General Manager
of South Central Railway,
presently residing at Flat No.3,
Housing Society Colony,
Four Bunglows,
Near Machhi Market,
Juhu Versova Link Road,
Andheri, Mumbai.

... Respondents

By Advocate Shri S.C.Dhawan

S.L.Jain

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the impugned order dated 27.7.1998 (Ex. 'A') by which the penalty of stoppage of two sets of passes has been imposed with the direction to the respondents to ignore the impugned order of penalty while considering the claim of the applicant for promotion to the Senior Administrative Grade for which he has become due since 1993 with all consequential benefits.

2. The applicant has also filed OA.NO.905/99 seeking the relief regarding his promotion with consequential benefits since 1993. He has rightly done so in view of Rule 10 CAT (Procedure) Rules, 1987, as the applicant is entitled to seek the relief which is based on single cause of action. The juniors to the applicants have been promoted ignoring the applicant in subsequent years as such we are proceeding to consider only the relief in respect of impugned order dated 27.7.1998.

3. The applicant while working as Dy.Chief Commercial Manager (Project) was served with chargesheet dated 10.2.1994 on 28.3.1994 which relates to 5 charges. After denial of the charges by the applicant vide letter dated 16.8.1995, enquiry officer and the presenting officer were appointed. After an enquiry, the enquiry officer Shri S.N.Trivedi submitted the

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.. 3/-

report to the disciplinary authority. The enquiry officer in respect of Article of Charge I, III, IV & V the applicant was not found guilty as the charges are not proved. The enquiry officer did not record the finding in respect of Article of Charge II and the finding/conclusion was left for decision by the disciplinary authority. Thereafter, the disciplinary authority furnished the copy of enquiry officer's report dated 8.10.1997 vide his letter dated 5.5.1998. The applicant submitted the representation in respect of the said enquiry officer's report vide his representation dated 5.6.1998 and the further representation dated 11.6.1998. After consideration of the representations, the disciplinary authority arrived to a finding that the applicant is guilty in respect of Articles of Charge I & II and imposed the penalty of withholding of two sets of passes.

4. During the course of pendency of the OA., the Memorial of the applicant was decided by the President which was filed earlier to the filing of the OA. vide its order dated 23.6.2000 and the penalty was modified to that of Censure. OA. was admitted on 17.12.1999. Section 19 (4) of Administrative Tribunals Act, 1985 is worth mentioning which is as under :-

"19 (4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

S. V. S. /
..4/-

Perusal of the same makes it clear that after admission of an application by a Tribunal under sub-section (3) thereof, every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate. As there was no direction by the Tribunal, the respondents have errored in pursuing to decide the same Memorial.

5. The scope of judicial review is limited one. When examining the case keeping in view the scope of judicial review, we have to examine whether, the applicant was penalised in accordance with law after following the procedure prescribed. If the decision is arrived by the respondents after following the due procedure prescribed by law which is not perverse - the decision is not based on no evidence, the Tribunal in its judicial review cannot sit as an appellate authority to appreciate the evidence and come to a different conclusion.

6. None of the parties have placed on record the letter dated 5.5.1998 along with the enquiry officer's report was sent to the applicant, as such, we are unable to arrive to a conclusion that whether the disciplinary authority has furnished the grounds to the applicant in respect of disagreement of the finding with respect of Article of Charge I. The disciplinary authority is bound to furnish the reasons for disagreement if he disagrees with the finding of the enquiry officer's report in respect of Article of Charge I.

Sugunan — ..5/-

7. The Railway Servants (Discipline & Appeal) Rules, 1968, Rule 9 (25) is worth mentioning which is as under :-

"9 (25) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain -

(a) the articles of charge and the statement of imputations of misconduct or misbehaviour,

(b) the defence of the Railway servant in respect of each article of charge.

(c) assessment of the evidence in respect of each article of charge; and

(d) the findings on each article of charge and the reasons therefor."

Perusal of Rule 9 (25) (i) (d) makes it clear that it is the duty of the enquiry officer to record the finding on each article of charge and the reasons therefor. Thus, the enquiry officer has failed to perform his duty in respect of article of charge II by not submitting the finding as the finding was left for decision by the disciplinary authority.

8. In such circumstances, the disciplinary authority was duty bound to refer the matter again to the enquiry officer to record a finding in respect of Article of Charge II. The disciplinary authority also failed to perform his duty.

9. The disciplinary authority has acted in such a manner which causes certainly prejudice to the applicant. The reason being the applicant who is not aware of the conclusion of the disciplinary authority, without being awarded of the reasoning and the opportunity of defending the same was penalised.

10. In view of breach of Rule 9 (25) (i) (d) of the Railway Servants (Discipline & Appeal) Rules, 1968 which prejudice the case of the applicant, the order dated 27.7.1998 (Exhibit-'A') imposing the penalty of withholding of two sets of passes which is modified by the penalty of 'Censure' is hereby quashed and set aside.

11. The matter shall go to the enquiry officer to record the finding in respect of Article of Charge II and thereafter submit the enquiry report to the disciplinary authority who shall in turn proceed further for decision in accordance with rules and law. The enquiry officer shall decide in respect of Article of Charge II within one month from the date of receipt of the copy of the order. Thereafter, the disciplinary authority shall pass the order after receipt of the enquiry officer's report within one month in accordance with Rules and law. There shall be no order as to costs.

(S.K.AGARWAL)

MEMBER (A)

(S.L.JAIN)

MEMBER (J)

mrj.

Oct. 19 _____ instant despatched
to Apt. _____ respondent(s)
on 24/6/02

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