

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A.NO.306/2000

Tuesday, this the 4th day of March, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri K.V.Sachidanandan, Membe (J)

Rodricks, S.
Ex. Chief Power Controller
Mechanical Branch
Western Railway
Churchgate
Mumbai 400 020

Residing at Railway uarter 44/5
Western Railway Colony
Malad (E)
Mumbai - 400 097

C/o Mr. G.S.Walia
Advocate, High Court
16, Maharashtra Bhavan,
Bora Masjid Street, Fort,
Mumbai - 400 001.

...Applicant
(By Advocate: Shri G.S.Walia)

Versus

1. Union of India through
General Manager/Additional
General Manager,
Western Railway, Headquarters Office
Churchgate, Mumbai - 400 020

2. The Chief Motive Power
Engineer (R&L)/ Chief Mechanical Engineer
Western Railway, Headquarters office
Churchgate, Mumbai - 400 020.

...Respondents
(By Advocate: Shri R.R. Shetty)

O R D E R (ORAL)

Shri Govindan S. Tampi:

Reliefs sought for in this case are as below:

"a) This Hon'ble Tribunal will be pleased to call for the records of this case which led to passing of the impugned orders i.e. (i) Order of removal of the Applicant from service, dated 03.12.1999, passed by Respondent No.2; and (ii) the Appellate Order passed by the Addl. General Manager

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Western Railway, under his letter dated 29.02.2000 and after going through its propriety, legality and constitutional validity, quash and set aside the same.

b) This Hon'ble Tribunal will be pleased to hold and declare that the Applicant continues to be in service and is entitled for all the consequential benefits such as continuity of service, back wages, arrears of salary, increments, seniority, promotion, retirement benefits, etc. as if no punishment has been imposed upon the Applicant.

c) Any other and further order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case be passed.

d) Cost of this Original Application be provided for."

2. The applicant in this case, who was working as Chief Power Controller, Western Railway, had been proceeded against under Railway Servants (Discipline & Appeal) Rules, 1978, at the culmination of which, he has been removed from service by order dated 3.12.1999. The same has been upheld ^{in appeal} on 23.2.2000.

3. We have heard Shri G.S.Walia, Learned counsel appeared for the applicant and Shri R.R.Shetty, Learned counsel appeared for the respondents.

4. The learned counsel for the applicant points out that the applicant, who had put in as many as 36 years of service without any stigma, has been removed from service nearing his retirement, thereby washing away the entire service in a very

harsh manner for absence from duty. The applicant could not attend the office during the said period because he was unwell and he had informed the respondents time and again about his inability to attend the office but the respondents had not accepted the same and had imposed on him an extreme penalty of removal from service. The proceedings initiated against him were faulty in that he had not been given the proper opportunity for defending his case and even railway doctor's certificate, indicating that he was unwell, has not been duly taken into consideration. The penalty imposed and upheld in the appellate order was totally harsh and the same called for intervention from the Tribunal to render him justice. It is also pointed out by the learned counsel for applicant that the applicant's date of superannuation is also over.

5. Opposing the above plea, Shri R.R. Shetty, learned counsel for respondents points out that the action had been correctly taken by the respondents for willful and unauthorised absence of the applicant. The requisite procedures have been gone through and the applicant had been given a chance to explain his conduct. Nothing further was expected from the respondents and the respondents having acted correctly through out and imposed on the applicant a just and fair penalty of removal from service, Tribunal's intervention was not warranted.

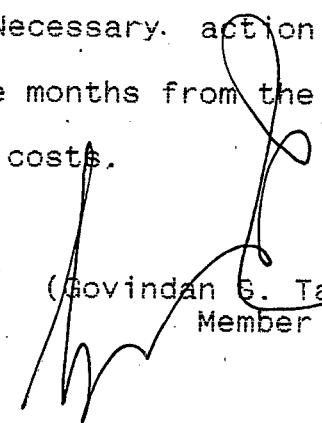
6. We have carefully considered the matter. The facts brought on record and not disputed, show that the applicant was absent in an unauthorised manner and, therefore, the initiation of the proceedings against him and the imposition of penalty cannot be called in question. However, we observe that the individual had put in nearly 36 years of service and

was nearly on the verge of retirement when the penalty has been imposed on him. While upholding the validity of the proceedings initiated against the applicant, we cannot help observing that the penalty of removal imposed on the applicant was a bit too harsh and unconsonable, keeping in mind the nature and gravity of the misconduct. We do not intend to substitute our judgment, as to what could have been the suitable penalty in this case, but we have to record that the penalty imposed in this case is harsh, which shocks the judicial conscience, as has been held by the Hon'ble Supreme Court in the case of B.C. Chaturvedi Versus Union of India & Others.

7. In the above circumstances, we quash and set aside the impugned orders of the disciplinary authority and remand the matter to the said authority with the directions to impose on the applicant any penalty less harsh than removal from service, so that the applicant, who had put in nearly 36 years of service, is not totally denied of the benefits of his long service. As the applicant has already retired on superannuation, he should be deemed to have been reinstated in service from the date of his removal and permitted to continue till his normal date of superannuation, subject to the regularisation in accordance with law of the period from the date of his removal to the date of his normal superannuation, keeping in mind the penalty that might now be passed, as directed in this order. Necessary action should be completed within a period of three months from the date of receipt of a copy of this order. No costs.


(K.V. Sathidanandan)
Member (J)

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(Govindan G. Tampi)
Member (A)