

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.294/2000.

Dated: 26.2.2004

Hon'ble Shri Anand Kumar Bhatt, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

N.S.Nikhare,
Rly. Officer's Clat No.P-61,
Badhwar Park,
Wode House Road,
Colaba,
Mumbai - 400 005.
(By Advocate Shri H.A.Sawant)

...Applicant.

Vs.

1. The General Manager,
Western Railway, HQ Office,
Churchgate,
Mumbai - 400 020.

2. The Union of India
Acting through the Secretary
Railway Board,
Ministry of Railway,
Railway Bhavan,
New Delhi - 110 001.
(By Advocate Shri V.S.Masurkar)

...Respondents.

: O R D E R :

{Anand Kumar Bhatt, Member (A)}

In the present Original Application, the following relief
has been sought :

"8.2 That this Hon. Tribunal may be pleased to hold
and declare that :-

- (i) That the charge memorandum issued to the applicant, is based on the irregular, illegal and arbitrary allegations.
- (ii) That the punishment imposed by the Railway Administration on the applicant is without the application of mind, as the same is based on the I.O.'s report which is unjust, perverse, and arbitrary.
- (iii) That the I.O.'s report has been prepared on no evidence and without taking into consideration factual position and rules in connection with tender processes.

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- (iv) That the inquiry proceedings were delayed unreasonably and thereby the applicant is put to great monetary loss and mental tension, due to promotions of his no. of juniors.
- (v) That there is no misconduct on the part of the applicant and therefore punishment imposed on him is invalid.
- (vi) That after a long lapse of delays, the Inquiry Proceedings and alleged punishment required to be quashed and set aside.

- 8.3.1 That this Honourable Tribunal is prayed for, calling of relevant records from the office of the Central Vigilance Commission, Railway Board and make a judicial review of the decision making process on the part of the I.O., The Railway Board Officials.
- 8.3.2 That this Honourable Tribunal may be pleased to set aside, the DAR proceedings and punishment and direct/order the respondents to consider the case of the applicant for promotion, from the date from which his juniors was promoted.
- 8.3.3 That this Honourable Tribunal may also kindly declare any other order, as deemed fit in the interest of justice and equity.
- 8.4.4 That this Honourable Tribunal, may also direct/order the respondents for the costs."

2. The facts of the case, in brief, are that the charge memorandum was issued on 2.2.1993 and the Disciplinary Authority passed the penalty order on 15.7.1998 and a penalty of reduction in time scale by two stages for a period of six months with cumulative effect was imposed on the applicant. Appeal was dismissed on 18.8.2003.

3. Shri H.A.Sawant was present on behalf the applicant and Shri V.S.Masurkar on behalf of Respondents. Shri Masurkar on behalf of the respondents has made a preliminary objection that vide Railway Board's order dt. 14.9.2001, the applicant was dismissed from service, the said order became effective w.e.f.

jr

...3.

18.9.2001. In view of the fact that the applicant is already dismissed from service, the present application in a way becomes infructuous. Such submission has been made by the Respondents in M.P. No.399/2002 which was submitted by them on 28.5.2002. On behalf of the applicant, the Learned Counsel Shri H.A.Sawant has stated that he wants disposal of the present O.A. as he has gone on an appeal against the conviction by the Court of Special Judge, C.B.I., Mumbai under section 7 and 13 (2) read with section 13 (i) (d) of the Prevention of Corruption Act, 1988. The sentence was three years imprisonment and fine of Rs.1 lakh. In Criminal Appeal No.719/2000 before the Bombay High Court, he was granted bail by the Court. The applicant had come earlier in O.A. No.213/2001 in which an order was passed on 12.9.2001 by the Tribunal. The applicant in the said O.A. had prayed for quashing of the show cause notice for dismissal based on the conviction of the Special Judge of C.B.I. The O.A. was dismissed, after which the order dt. 18.9.2001 imposing the penalty of dismissal from service has been imposed on the applicant. The present O.A., is in a different case, where the penalty of reduction in time scale by two stages for a period of six months with cumulative effect was imposed and appeal was also rejected. In view of the fact that now the applicant has been dismissed on his being convicted in a criminal case, the present O.A., thus becomes infructuous against ^{the}an order of punishment of reduction in time scale by two stages for a period of six months with cumulative effect. The main ground taken by the applicant is that, in case he is acquitted by the High Court or the Apex Court, he does not want the present penalty to be in his way. We feel that, looking

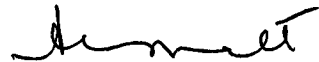
...4.



into the present status of the applicant when he stands dismissed from service there is no point in considering the present O.A. in which lesser major punishment has been imposed. If he is able to get some relief from the Tribunal in the present O.A., this will have no effect as he has already been dismissed by virtue of order of dismissal dt. 18.9.2001. However, it would be appropriate in this case, if he is given liberty to come before the Tribunal for the present grievance in a fresh O.A., in case he is able to get relief by the higher Courts against his conviction in the Criminal Case and as a consequence gets relief as regards his dismissal order, as well. Accordingly, it is ordered that applicant is at liberty to come to this Tribunal for the present grievance in the case of his getting the aforesaid relief. The present O.A. is dismissed. No costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(ANAND KUMAR BHATT)
MEMBER (A)

B.