

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 459/2001

Dated this Friday the 12th day of October, 2001

B.G. Ghate

Applicants.

Shri G.S. Walia

Avocate for the
Applicant.

VERSUS

Union of India & Anr.

Respondent.

Mr.R.R. Shetty,

Respondents.

CORAM :

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman

Hon'ble Smt. Shanta Shastry, 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. ✓

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(Smt. Shanta Shastry,
Member (A)).

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Dated this Friday the 12th Day of October, 2001.

Coram : Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastry, Member (A).

B.G. Ghate,
working as DSK II,
Dy. COS M PR,
Central Railway,
Dr. B.A. Ambedkar Road, Parel,
Mumbai-400012.
Residing at
34/57, BDD Chawl,
Dr. G.M. Bhosle Marg,
Worli, Mumbai-400018.

.. Applicant.

[Applicant by Shri G.S. Walia, Advocate]

Vs.

1. Union of India, through
General Manager,
Central Railway, CST,
Mumbai.
2. Chief Material Manager (G),
Disciplinary Authority,
Office of Controller of Stores,
CST, Mumbai - 400001.

.. Respondents.

[Respondents by Mr.R.R. Shetty, Advocate]

ORDER (Oral)
[Per : Smt. Shanta Shastry, Member (A)]

The applicant has challenged the impugned order dated 27.4.2001 imposing the penalty of reversion from the post of Depot Store Keeper (DSK) II in the pay scale of Rs.5500-9000 (RSR) to the Junior Clerk Grade Rs.3050-4590 (RPRS) permanently fixing his pay at Rs.3050/- on bottom seniority.

2. According to the Counsel for the applicant, this order is

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void as there is no such punishment prescribed in the Railway Servants (Discipline & Appeal) Rules, 1968 and therefore he has prayed to quash and set aside the same.

3. The applicant is entitled to go in Appeal against the order of the Disciplinary Authority. However, the applicant has chosen not to file any appeal against this. Learned Counsel for the applicant contends that since the order is void it was not necessary for the applicant to go in appeal and applicant could come to the Tribunal without exhausting available remedies. According to the Learned Counsel, Ordinarily an appeal lies against the order of the disciplinary authority but this is a special case and not covered by the word 'ordinarily'. The Learned Counsel insisted that in this matter the applicant need not go in appeal and he therefore prays that Tribunal may consider the O.A.

4. We have looked into this. Normally the appeal lies to any order of the Disciplinary Authority and rightly before coming to the Tribunal the applicant should have exhausted all the remedies available to him. However, now as the pleadings stand~~s~~ mutually exchanged and the dispute can be finally adjudicated upon, we are not inclined to direct that the applicant could go in appeal. We therefore dispose of the application on merits.

5. Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968 describes the ~~following~~ penalties to be imposed on the

railway servant for good and sufficient reasons. Items 1 to 4 deal with minor penalties while items 5 to 9 deal with major penalties. The penalty No.6 under Rule 6 reads as follows:-

"(vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service".

The respondents have imposed the penalty of reducing the applicant from the post of Depot Store Keeper (DSK) II in the pay scale of Rs.5500-9000 (RSRP) to the Junior Clerk Grade Rs.3050-4590 (RPRS) permanently fixing the applicant's pay at Rs.3050/- on bottom seniority. The Railway Board from time to time has clarified by way of instructions that the penalty of reduction to a lower service, grade or post or to lower time scale should invariably be imposed for a specified period unless it is considered necessary that the period of reduction should be for an indefinite period. The Railway Board have issued the orders vide letter dated 10.7.1971 that every order passed by a competent authority imposing the penalty of reduction to a lower stage in time scale should indicate:

- (a) The date from which it will take effect and the period for which the penalty shall be operated;
- (b) The stage in the time scale to which the Railway servant is reduced; and
- (c) The extent to which the period referred to in (a) above should operate to postpone future increments.

The reduction to a lower stage in a time scale for an unspecified period or as a permanent measure is not permissible under the rules.

6. Thus reduction to a lower grade permanently is not

permissible. In the present case the applicant has been reduced to a lower grade permanently and therefore impugned order imposing penalty of reduction to a lower grade permanently is void and illegal. The Disciplinary Authority has gone far beyond what is statutorily prescribed under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. In our considered view, therefore the impugned order dated 27.4.2001 deserves to be quashed and set aside.

7. The Learned Counsel for the respondents submitted that though the period for filing the appeal had expired, the Tribunal could perhaps consider ~~by~~ giving directions to the applicant to file an appeal and the respondents shall consider the same by ignoring the delay and pass appropriate orders as per rules. As already stated, we do not consider it necessary to ask the applicant to file an appeal, as we find that the impugned order is void in law and needs to be reconsidered. We therefore, quash and set aside the impugned order of penalty and remand the same to the Disciplinary Authority for reconsidering the penalty in accordance with law. This shall be done within a period of 2 months from the date of receipt of copy of this order.

8. The O.A. is allowed at the admission stage itself, without ordering any costs.

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(Smt. Shanta Shastry)
Member (A)

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(Birendra Dikshit)
Vice Chairman.