

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 176/92

Date of Decision: 9.12.1999

D.M.Ramnath

.. Applicant

Shri G.S.Walia

.. Advocate for
Applicant

-versus-

G.M.C.Fly.Bombay V.T.

.. Respondent(s)

Shri S.C.Dhawan

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

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

(1) To be referred to the Reporter or not ? *yes*

(2) Whether it needs to be circulated to *NO*
other Benches of the Tribunal ?

(3) Library *yes*

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

DA.NO.176/92

Thursday this the 9th day of December,1999.

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

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

D.M.Ramnath,
District Controller of Stores,
Central Railway, Curry Road
Stores Depot, Bombay.

...Applicant

By Advocate Shri G.S.Walia

V/S.

General Manager,
Central Railway,
Bombay V.T., Bombay.

...Respondents

By Advocate Shri S.C.Dhawan

O R D E R (ORAL)

(Per : Shri Justice R.G.Vaidyanatha,VC)

In this application, the applicant is challenging his non promotion in 1984 and consequential loss of seniority. The respondents have filed reply opposing the application. The applicant's case is that he was due for promotion in 1983 and atleast in 1984 when his immediate junior came to be promoted and therefore he should be promoted to Grade 'A' from 1984. It is also admitted that subsequently the applicant has been promoted

to Group 'A' sometime in 1990. The applicant wants retrospective promotion from 1984 since it will help him getting seniority and consequential monetary benefits.

2. The stand of the respondents is that the application filed in 1992 claiming retrospective promotion is barred by limitation. Then, on merits they say that the applicant was issued a chargesheet in 1983 and the DPC which was held in 1983 considered his case and kept the result in sealed cover. The applicant was awarded minor penalty. Subsequently, the applicant has been considered as per his turn and promoted in 1990.

3. After hearing both sides, we find that admittedly chargesheet dated 24.3.1983 was issued against the applicant. The chargesheet ended in awarding minor penalty to the applicant on 30.5.1985. The DPC meeting was held on 25.3.1983 which considered the case of the applicant and found him suitable but however, kept the findings in sealed cover in view of the pending chargesheet.

In the circumstances, the question is whether the sealed cover procedure should not have been adopted or even if it is adopted, the applicant should have been given promotion from 1984 since the applicant was awarded only a minor penalty.

..3/-



4. The learned counsel for the applicant contended that since it was a DPC which considered vacancies of 1983, applicant's case should not have been kept in sealed cover. In our view, this contention has no merit. The relevant date is not the date of vacancy but the date of DPC and date of chargesheet. If the disciplinary case or a criminal case is pending against an officer, then his case has to be kept in sealed cover. Therefore the question of date of chargesheet is held relevant for such case.

5. The main argument of the counsel for the applicant is that since it is a minor penalty chargesheet and only a minor penalty awarded, the sealed cover should not have been adopted and promotion should be given atleast after the expiry of penalty period. Though the argument is attractive, we find that it cannot be accepted in view of the relevant rules. We are not concerned with normal procedure, but sealed cover procedure rules to be adopted whenever chargesheet is pending against an officer on the date of DPC.

The DPC was held in 1983 and therefore we are governed by the rules then in existing. The instructions contained in O.M. dated 30.1.1982 prescribed the procedure as to under what circumstances sealed cover procedure can be adopted. It clearly says that if any departmental enquiry is pending, then the findings of the DPC shall be kept in sealed cover. Then the question is when the sealed cover to be opened. It clearly says that if "any penalty" is awarded, then sealed cover shall not be

opened. Therefore, the argument about minor penalty has no merit. Words used are "Any penalty imposed"; therefore whenever disciplinary proceedings end in any penalty whether minor or major, then sealed cover cannot be opened at all. Even in the earlier Rules of 1976 on which the learned counsel for the applicant placed reliance also does not help in any way. We have perused the Office Memorandum dated 30.12.1976 which also clearly provides that when chargesheet is pending the findings of the DPC should be kept in sealed cover. Then in para X (5) it clearly provides that sealed cover should be provided only when officer is completely exonerated. The question of minor or major penalty does not arise at all.

In view of the rules, the arguments urged on behalf of the applicant that in case of minor penalty the sealed cover should be opened and findings should be given effect to has no merit. Then reliance is placed on an unreported case of Supreme Court in SLP No.19472/91 dated 21.11.1995. The Supreme Court considered the case of an officer who was awarded with minor penalty on the examination of rules. The Supreme Court granted relief on the expiry of penalty period. The question of sealed cover was not involved in that case. When an officer is undergoing penalty then sealed cover need not be adopted. It is only in a case where the disciplinary proceedings are still pending, sealed cover is adopted. Therefore, the judgement of the Supreme Court is not of any help in the present case.

6. In view of above discussion, since the applicant has suffered minor penalty, we cannot give direction to the respondents to open sealed cover and give effect to it. Since on merits, the application has to fail, we need not consider the other pleas of limitation, delay and laches etc.

7. In the result, the application fails and is dismissed with no order as to costs.

B. N. Bahadur

(B.N. BAHADUR)

MEMBER (A)

R. G. Vaidyanatha

(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.