

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1132 of 1993.

Dated this Friday the 25th day of August, 2000.

Mr. S. I. Mehta, _____ Applicant.

Shri G. S. Walia, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri P.M.A. Nair, _____ Advocate for
the respondents.

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

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

- (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. No

B. N. BAHADUR
(B. N. BAHADUR)
MEMBER (A).

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

S. I. Mehta,
Sr. Electrical Engineer (Const),
Churchgate, Western Railway,
Bombay - 400 020.

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Applicant.

(By Advocate Shri G. S. Walia)

VERSUS

1. Union of India through
The Secretary,
Railway Board,
Rail Bhavan,
New Delhi - 110 001.

2. General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

3. The Chief Electrical Engineer,
Western Railway,
Churchgate,
Bombay - 400 020.

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Respondents.

(By Advocate Shri Ravi Shetty for
Shri R. K. Shetty.)

ORDER

PER : Shri B. N. Bahadur, Member (A).

The applicant in this case, Shri S. I. Mehta, comes up to the Tribunal seeking the relief, in substance, for the quashing and setting aside of the orders, (i) imposing a penalty on him and (ii) appeal order rejecting his appeal. These orders are at pages 17 and 19 respectively, of the Paper Book. An

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Alternative prayer has been made seeking the quashing and setting aside of order (letter) dated 02.09.1993 (exhibit 'G') and further for a declaration that applicant's pay be fixed and stepped up viz-a-viz his junior, Shri Upadhyay, after the expiry of the penalty, i.e. 18.06.1993.

2. The facts of the case as brought out by the Applicant, are that he, while working as Assistant Electrical Engineer, was issued a charge-sheet levelling certain charges regarding overpayment to a private party in a work executed by that party (contractor). A Departmental Enquiry was conducted and, on basis of the charges proved, the order of punishment came to be issued. His Appeal thereon has been rejected. The applicant avers in detail as to why the conclusion reached in the Enquiry was wrong and goes on to analyse the evidence in the enquiry. He also questions the legal competence of the Respondent No. 3 as detailed in para 4.5 of the O.A.

3. The other grievance of the applicant relates to protection of pay. He states that on 24.08.1993 he requested Respondents to fix his pay as Sr. Electrical Engineer, vis-a-vis his junior who had been working in the Senior Scale from 31.10.1990 (exhibit 'F'). This request was rejected; Respondents took the stand that applicant's pay could not be fixed with reference to his junior, who had been promoted with effect from 31.10.1990. Also, stagnation increment could not be granted due to the fact of imposition of the penalty on the applicant.

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4. The Respondents have filed a written statement, in reply, where all allegations are denied. It is averred that the Inquiry Officer's conclusion are clear, and no one part of the Report should be quoted out of context, as is being attempted. It is also stated that the Inquiry Officer's right to scan through the correspondence file cited cannot be objected to, specially as the same file was quoted by the applicant in defence. The respondents deny that there has been any violation of Rule 10 of Discipline & Appeal Rules. In the further part of the reply statement the Respondents have sought to meet the averments made in the application parawise in detail.

5. The Learned Counsel for the applicant, Shri G.S. Walia, argued the case in detail, taking us over the facts of the case, the relevant instructions/orders and the case law cited by him in support of his case. He first argued that the second charge was not proved at all, and that the fact that the applicant's junior has been promoted during pendency of enquiry without protection to applicant also implies that the punishment has permanent effect. He sought to draw support by quoting relevant portion of Conduct Rule 3 and made the point that para 2.2 of the Statement of Imputation was wrong since there was no clause like 3.5/3.7 in the document and that when the contract was prepared, the tender conditions regarding payment were changed. He then went on to describe the details relating to the charge and argued that it would not sustain. The Learned Counsel stated that the only point that was proved was that the delivery of articles was taken directly at Badhwar Park, and that the punishment for this technical infringement was not warranted. Number of cases were cited in support of applicant's case by his Learned Counsel and these would be taken up for discussion later in this order.



6. The second major point argued by Counsel for applicant was that the applicant had to be protected viz-a-viz his junior who had got promoted on 31.10.1990. It was argued that the lack of protection viz-a-viz the junior in the matter of salary would have an adverse effect on the pensionary benefits of the applicant. It was argued that it was only because of the penalty that his promotion had been affected. Case Law was cited on this aspect also. In conclusion, the Learned Counsel stated that in any case, notional fixation would need to be granted so that there is no loss in regard to pensionary benefits.

7. The Learned Counsel cited all the following cases in support of the points of his arguments relating to pay fixation/seniority :

- (i) Habibul Haque V/s. Union of India
AISLJ 1994 (3) page 142.
- (ii) Order dated 21.11.1995 in Civil Appeal No.
11237 of 1995 ... S.N. Parwal V/s. Union of
India & Others.
- (iii) Prem Singh Verma V/s. Union of India
(1993) 24 ATC 222.
- (iv) Pratapsingh Chaudhary V/s. Union of India &
Others in O.A. No. 262/88 decided on
29.03.1994.

8. The case was argued on behalf of the respondents by Shri S. Ravi for Shri P.M.A. Nair. The Learned Counsel started by making the point that the applicant had purposely provided wrong information to the Tribunal, since the document of Contract agreement produced by him was only the cover and details were missing. He produced the full Contract Agreement and made the point that para 3.5 is very much there and stands violated by

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the applicant, as has been proved. He then took us over the charge-sheet in this regard and stated that para 2.2 and 2.6 are relevant and a clear allegation has been made against the applicant. The Learned Counsel for the Respondents also took us over the enquiry report, and specially drew our attention to sub-para (i) at page 35 (para 5.10 of the enquiry report). Hence, argued that this finding of the Inquiry Officer regarding the letters must be taken into consideration. He also took us over some of the other points in evidence, namely - the point relating to Octroi Exemption, etc. and stated that the Inquiry Officer had considered all evidence carefully. Similarly, he contended that the Appeal was carefully considered by the Railway Board and decided on merits.

9. Arguing on the second aspect relating to the seniority and pay fixation as claimed by the applicant, Shri S. Ravi depended on Case Laws to counteract the point and arguments made by the applicant's Learned Counsel. He cited the following three cases in support of the action taken by the respondents regarding seniority and pay fixation in respect of the applicant :-

- (i) The Collector of Thanjavur District V/s. S. Rajagopalan & others.
JT 2000 (3) SC 376.
- (ii) Union of India V/s. K.V. Jankiraman
1991 SC 2010.
- (iii) Sanchalakshri & Anr. V/s. Vijayakumar
Raghuvirprasad Mehta & Another.
- (iv) State of Andhra Pradesh V/s. K.V.L. Narasimha
Rao & Others .. AIR 1999 SC 2255.

10. In the first instance, we shall examine the issue relating to the first grievance of the applicant where he seeks the relief for quashing and setting aside of the penalty itself.



We must reiterate that we will examine this aspect within the settled law, which envisages that Tribunals will not attempt to reassess the evidence in Departmental Enquiries. We restrict ourselves to examining whether there has been any breach in procedure leading to violation of Principles of Natural Justice, or whether there is arbitrariness or perversity in the decision in imposing penalty, etc. We find that the charge-sheet has been served as per rules, and a regular Departmental Enquiry has been conducted. All procedures having been followed, the allegations made in para 4.5 regarding the legal competence of Respondent No. 3 and alleging that Respondent No. 3 did not record any opinion and violated Rule 10 of the Discipline & Appeal Rules, 1968 is not clear. No substantial point has been made and hence, this argument cannot hold water.

11. The Learned Counsel for applicant referred to the Conduct Rules with reference to the allegations and stated that para 2.2 in the Statement of Imputation was wrong and had no basis since clauses 3.5 and 3.7 did not exist. We have in this connection noted the argument of the Learned Counsel for Respondents alleging that the correct copies of contract papers have not been provided and in fact alleging that this was done by design to mislead the Tribunal. We have seen the original papers in the file produced and indeed find these clauses exist at page no. 9 of the Contract Document in that file. The contract document copy produced before us by the Applicant is something which does not tally and while we will for the moment not deal with the allegations, we must straightaway state that we will not rely on the document copy produced before us by applicant. We will rely, in full justification, on the document available in main file of the office that was produced before us at the time of arguments

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by Learned Counsel for Respondents. Thus, we cannot arrive at a conclusion that the charge has not been properly made or that it has no reference with the Contract Documents' conditions, etc. This argument made on behalf of the applicant would not therefore hold. We have gone through the Enquiry Report and find that the Enquiry Officer has made detailed study of the case and has arrived at his conclusion after a detailed analysis of the evidence. We have seen the report and do not find any arbitrariness or perversity, as has been alleged. For example, the point made about the doubts raised regarding authenticity of letters produced by charged officer (para 1.53 of the report) do not strike us as anything which will create any infirmity in the report.

12. Thus both in regard to procedure, as in regard to the logicality of discussion and conclusions reached, there is no infirmity in the Enquiry Officer's report/enquiry process. We do not therefore find any ground for interfering with the penalty imposed on the applicant. Hence, the first prayer of the applicant for quashing and setting aside the penalty order stands rejected.

Pamb 13. We now turn to the second prayer for a declaration that the applicant's pay has to be stepped up and fixed vis-a-vis his junior after the expiry of the penalty (18.06.1993). What has happened is that the charge-sheet was issued on 08.05.1990 and after the enquiry, the penalty order was issued by the Disciplinary Authority in June 1992. The order rejecting the Appeal made by the Railway Board is dated 11.03.1993. In the meanwhile, the junior of the Applicant has been promoted on 31.10.1990 when clearly the applicant was under the cloud of

Disciplinary Proceedings. Now the point is, whether the applicant gets entitled to protection of pay vis-a-vis his junior on the date his punishment ends. Indeed, all the case law relied upon on behalf of, both, Applicant and Respondents relate to this aspect of the case. We recapitulate that the penalty order is for reduction to a lower stage from Rs. 3,500/- to Rs. 3,200/- in the timescale of pay for a period of twelve months, where after the reduction will not have any effect in postponing the future increments. The Learned Counsel for Applicant relied on a circular dated 30.03.1974 of Railway Board which lays down that in the absence of anything to the contrary in the order of penalty, it has to be assumed that the order will not have any effect on seniority or increments. In the case of Prem Singh Verma, it is held that after expiry of penalty, the pay in the promotional post would be fixed notionally at a stage which would have been reached had the penalty not been imposed. These are cases of with-holding of increment for two years. The stand of the respondents is that the protection vis-a-vis junior cannot be granted since the applicant could not have been promoted. Now the essential difference here is, that protection can be given only on promotion. But when the promotion of the junior took place, there was a regular departmental enquiry in progress in which a charge-sheet had been served long before. Therefore, there was no infirmity in the decision of the Respondents in with-holding the promotion. Once the promotion is rightfully with-held, it is not clear how protection can be sought vis-a-vis junior who was promoted. In the case of S.N. Parwal decided by the Hon'ble Supreme Court, the essential difference is that the D.P.C. had met in that case but did not consider Parwal's case.

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In the present case, there is no reference to the constitution or otherwise of D.P.C. but this point will be discussed ahead with reference to the ratio in I.A. Qureshi's case. No where in the papers is there a mention about the D.P.C. being held. However, even assuming the best situation for Applicant that D.P.C. considered the case in sealed cover and considered him fit during the period of enquiry/penalty, the sealed cover cannot be opened as applicant emerged from the Disciplinary Enquiry with a penalty. This is the law settled by the Apex Court in the case of State of Madhya Pradesh & Another V/s. I.A. Qureshi reported in 1999 (1) SC SLJ 165. The Apex Court had settled the law that the sealed cover procedure cannot be opened if the enquiry that was in progress resulted in the most minor punishment i.e. penalty of censure. The relevant portion of the Headnote is reproduced below :

"(B) Promotion - Sealed Cover - Sealed Cover procedure can be opened only when the employee was exonerated in departmental enquiry and not otherwise.

(C) Promotion - Sealed Cover - When the promotion was withheld on account of departmental enquiry and the enquiry ended in imposition of a minor penalty - Employee can be considered for promotion on prospective basis from a date after the conclusion of the departmental enquiry."

14. It is also clear from this that not only can the sealed cover not be opened but the employee can be considered for promotion on prospective basis from the date after the conclusion of the departmental enquiry. In this background, the case decided by the Tribunal and cited in support (para 7 above) stands superseded. Similarly, as explained, the case of Parwal would not apply in these circumstances. We have also seen the case of Mohd. Habibul Haque decided by the Supreme Court but the focus

there was on the question of seniority and the case does not apply to the present case before us. Thus, no right can accrue to applicant with reference to his junior automatically in the facts and circumstances of this case and the law settled in Qureshi's case.

15. In view of the above discussions, we do not see any ground for our interference in this case. This O.A. is therefore dismissed, with no order as to costs.

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

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B.N. Bahadur
25/08/00
(B. N. BAHADUR)
MEMBER (A).