

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1279/93

Transfer Application No.

Date of Decision 19.8.92

Shri Madhukar Laxman Kulkarni Petitioner/s

Shri M.S. Ramamurthy Advocate for
the Petitioners

Versus

Union of India and others. Respondent/s


Shri N.K. Srinivasan. Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S. Hegde, Member (J)

Hon'ble Shri. P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 1279/93

19th the Tuesday day of August 1997.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri P.P. Srivastava, Member (A)

Madhukar Laxman Kulkarni
retired Chief Draftsman
Western Railway, residing
at Plot No.48, Road No.3
Srikrishna Nagar, Borivli
(East), Bombay.

... Applicant.

By Advocate Shri M.S. Ramamurthy.

V/s.

Union of India through
The General Manager,
Western Railway,
Churchgate.
Bombay.

The Chief Electrical
Services Engineer,
Western Railway,
Churchgate.
Bombay.

... Respondents.

By Advocate Shri N.K. Srinivastan.

ORDER

¶ Per Shri B.S. Hegde, Member (J) ¶

In this O.A. the applicant has challenged the impugned order charge sheets dated 27.12.1991 and prayed for quashing and setting aside the same. He has also prayed for release of DCRG and commutation value of pension with interest.

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2. The applicant was in the employment of Western Railway as Chief Draftsman . He has retired from service with effect from 31.12.1991. Four days prior to his retirement from service, the applicant was served with charge memo alleging that while checking the technical suitability, the applicant recommended for acceptance, the rate of Rs. 5,006/- for each HPSV lamp of 220 Watts and Rs. 3,755/- for each of HPSV lamp of 110 Watts, quoted by M/s.Cyprus Metal Mfg. Co;. Bombay, which offer of the Company was received in response to limited tender enquiries and without considering/comparing the rates received from different firms in response to the Bulletin Tender enquiries dated 7.3.1989.

3. Heard Shri M.S. Ramamurthy, counsel for the applicant and Shri N.K. Srinivasan, counsel for the respondents. Perused the pleadings and heard the arguments of both the counsel. The O.A. was admitted on 21.3.94. The departmental proceedings as against the applicant is stayed pending decision of the criminal proceedings initiated against the applicant as the defence of the applicant in both the cases going to be common and there is likelihood of the applicant being prejudice in defending himself at the criminal trial, if he is obliged to make a statement in the departmental proceedings. The applicant has filed an M.P. 966/94 for release of commuted value of pension and DCRG. The department

[Signature]

have filed an M.P. 1087/94 for vacation of the interim relief passed on 21.3.94, stating that the CBI who were conducting the enquiry submitted a final report under Section 173 of criminal procedure in the Court for closure of the case and no criminal proceedings have been launched or contemplated against the applicant. Accordingly the interim relief passed on 21.3.94 stands vacated on 7.4.95. The applicant has filed another M.P. 876/95 seeking cancellation of both the charge sheets filed by the respondents and desires that the departmental enquiry be stayed and early hearing of the O.A. After hearing the parties the M.P. was dismissed and the O.A. was listed for hearing.

4. The contention of the applicant is that the charge sheet was issued as back as 1991 and till 1994 no progress was made in the inquiry. The Enquiry Officer was not given any findings so far. The respondents are not pursuing the enquiry. The applicant further states that he was a subordinate Class III employee and was not the final recommending or purchasing authority who are Class I (Group A) officers. Therefore the charges levelled against the applicant are totally misconceived. The applicant correctly certified according to the papers that were placed before him, regarding technical suitability of the stores to be purchased. The respondents are put to strict proof to show that the applicant was responsible for also certifying the reasonableness or otherwise of the rates as part of the duties enjoined upon him generally or on the

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occasions in question, any specific duty was assigned to him to certify the reasonableness of the rates also and that necessary data or papers relating to past offers by the same or other firms were sent to him for comparing rates, by the stores department. The applicant was a technical hand and was not concerned with purchase of stores. Therefore the action taken by the respondents are malafide.

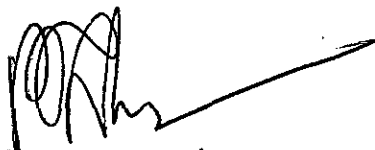
5. The respondents in their reply urged that the application is premature as the departmental proceedings have not yet been finalised. During the course of hearing the learned counsel for the respondents, Shri Srinivasan pointed out that there is some delay in completion of the enquiry. The Enquiry Officer had completed the enquiry within one day despite the voluminous list of witnesses and the documents furnished along with the charge memo. Therefore he contends that pending completion of enquiry his dues of DCRG and commuted value of pension cannot be released. Since the enquiry has already been completed no useful purpose will serve in quashing the charge memo.


6. The learned counsel for the applicant has relied upon the Apex Court decision in the case of **Dy. Inspector General of Police vs. K.S. Swaminathan** 1997(1) SC SLJ 259. Wherein The Supreme Court held that When the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the Tribunal/Court would not be justified

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to interfere in the matter at that state and it would be a matter on production of evidence for consideration at the enquiry by the enquiry officer. Therefore, quashing of chargememo by the Tribunalⁿ wrong.

7. During the course of hearing we have been told that the Enquiry Officer ~~has~~ already completed the enquiry. In the facts and circumstances of the case we, hereby direct the respondents that the Disciplinary Authority to pass a speaking order within a period of three months from the date of receipt of this order. Accordingly the O.A. is disposed of.
No order as to costs.


(P.P. Srivastava)
Member(A)


(B.S. Hegde)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.9/99
In
Original Application No.1279/93

Dated this Monday the 17th Day of January, 2000

Coram : Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Shri M.I. Kulkarni

.. Applicant.

Vs.

1. Shri V.D. Gupta,
General Manager, Western Railway,
Churchgate, Mumbai.
2. Shri Bhatnagar,
Chief Electric Service Engineer,
Western Railway, Churchgate,
Mumbai.

.. Respondents/
Contemners.

(By Advocate Shri V.S. Masurkar).

Tribunal's Order:

Learned Counsel for Respondents appears and places the facts before us. Written statement of the Respondents has already been seen. One point made before us is that orders have to ^{be} obtained in this case from the Railway Board, since the penalty proposed is one of reduction of pension. However, the fact is that the proposal was sent to the Railway Board in April, 1998 and no orders are yet available. This delay is serious.

2. Even considering that ^{above} consultations are necessary, it is difficult to imagine that no final decision can be reached in spite of a period of 1 year and 9 months having elapsed. This delay is not something that can be taken lightly. We are however inclined to wait and see what efforts can be made further.

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3. We do hope that there will be no reason for the Railway Authorities to come and report that the orders of the Tribunal have not been complied with till next date.
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4. We must also record here that it seems that no request for extension of time was made by the Railway Administration. It is does not show ~~that~~ a proper attitude.

5. Case posted to 15.3.2000, when the latest developments should be made known to us.

6. A copy of this order may be provided to the Counsel for Respondents.

S.L. Jain
(S.L. Jain)

Member (J)

B.N. Bahadur
(B.N. Bahadur)

Member (A).

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