

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1321/93

Transfar Application No:

DATE OF DECISION: 10.6.1996

Shri R.M.Kesarkar

Petitioner

Shri C.Nathan

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri M.R.Kolhatkar, Member (A)

1. To be referred to the Reporter or not ? No
2. Whether it needs to be circulated to other Benches of the Tribunal ? No

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde
(B.S.HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

O.A.NO.1321/93.

Shri Rameshchandra Madhukar Kesarkar ... Applicant.
 V/s.

Union of India and Ors. ... Respondents.

Coram: Hon'ble Member(J), Shri B.S.Hegde,
 Hon'ble Member(H), Shri M.R.Kolhatkar.

Appearance

Shri C.Nathan, Advocate
 for the Applicant.

Shri P.M.Pradhan, Advocate
 for the Respondents.

JUDGEMENT

Dated: 10.6.1994

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

In this O.A. the applicant has challenged the appellate order dated 27-4-1993 and prayed for quashing of the same.

2. As against the order of the disciplinary authority the appellate authority vide his order dated 27-4-1993 on going through the proceedings of the enquiry and various other documents had come to the conclusion that non-action on the part of the enquiry officer and disciplinary authority has resulted in denial of reasonable opportunity to the accused official to defend himself and held that the enquiry is defective. Accordingly, the appellate authority set aside the punishment order and remitted the case for *de novo* trial from the stage after the enquiry officer was appointed. The main grievance of the applicant is that he has been denied promotion for the last 30 years. The respondents on one pretext or the other are postponing his promotion without any valid reasons.

3. During the course of hearing, the learned counsel

for the applicant Shri C.Nathan urged that the order of the appellate authority is bad on the ground that after setting aside the order of the disciplinary authority he cannot direct the respondents to hold a denovo enquiry in view of the Rule 27 of CCS(CCA) Rules, 1965. On a perusal of the relevant rule, we are of the view, that such a contention is not tenable in law and the appellate authority is empowered either to confirm or set aside the order of the disciplinary authority and in the circumstances, it is open to him to direct the retrial. In the instant case, having not been satisfied with the procedure adopted by the enquiry officer/disciplinary authority Appellate authority quashed the findings of the disciplinary authority and remitted the case for denovo trial which according to us is in accordance with the relevant provisions of law.

4. On a query made to the learned counsel for the respondents, we were, told that consequent upon the appellate authority's direction for further enquiry, it is understood that the enquiry officer has furnished the report to the disciplinary authority/competent authority again which is pending consideration. That being the position, we are of the view, that the O.A. filed by the applicant is undoubtedly a pre-mature one and does not call for our interference at this stage. Since he has already participated in the denovo enquiry, the question of his challenging the order at this stage does not arise.

In the circumstances, we declare that the O.A. is pre-mature and the same is accordingly dismissed but with no order as to costs.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A).

B.S.Hegde
(B.S.HEGDE)
MEMBER(J).

mrj.