

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 422/93

Date of Decision: 29.6.1999

Shri Vishwanath Anna Mistry _____ Applicant.

Shri G.D. Samant. _____ Advocate for
Applicant.

Versus

Union of India and others. _____ Respondent(s)

Shri S.C. Dhawan _____ Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. D.S. Bawaja, Member (A).

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

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *✓*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESOT ROAD, MUMBAI:1

Original Application No. 422/93

Tuesday the 29th day of June 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A)

Vishwanath Anna Mistry
Residing at
House No. 2604
Methal Nagar,
Post- Netaji Bazar,
Ambarnath, Dist. Thane

... Applicant.

By Advocate Shri G.D.Samant.

V/s.

1. Union of India through
The General Manager,
Central Railway,
Bombay VT.
2. Divisional Signal and
Telecommunication Engineer,
Central Railway,
Byculla, Bombay.
3. Chief Workshop Manager,
Signal and Telecommunication
Workshop, Central Railway
Bombay.

... Respondents.

By Advocate Shri S.C. Dhawan.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed under Section 19
of the Administrative Tribunals Act 1985. The respondents
have filed have filed reply. We have heard the learned
counsel for both sides.

2. This is a second round of litigation.

At the relevant time the applicant was working as
Fitter Bench (skilled) in the Central Railway;

...2... *fly*

due to certain alleged mis-conduct a charge sheet was issued against the applicant. Then enquiry was conducted. After the enquiry penalty was imposed on the applicant. The applicant has challenged that order of penalty before the High Court which came to be transferred to this Tribunal and re numbered as TA 426/87. This Tribunal disposed of that Transfer application by order dated 5.7.1990 and remanded the matter to the Disciplinary Authority to proceed afresh from the stage of furnishing copy of enquiry report to the applicant. Pursuant to the order, the Disciplinary Authority furnished copy of the enquiry report to the applicant. On receiving representation from the applicant the Disciplinary Authority passed the impugned order dated 7.3.1992 by imposing the penalty of reduction to lower time scale of pay grade and post i.e. Fitter Bench Rs. 950 - 1500 to Khalashi /Helper in the grade of Rs. 800 - 1500 at the stage of Rs. 1150/- for a period four years with a direction on on-restoration to the original grade and post. Being aggrieved by the order the applicant preferred an appeal. The Appellate Authority by order dated 15.7.1992 dismissed the appeal and confirmed the order of penalty imposed by the Disciplinary Authority. The Appellate Authority modified and reduced the penalty by reducing the period of penalty of reduction in grade by two years with restoration to the original grade thereafter.

Being aggrieved by this order the applicant has approached this Tribunal and has taken number of grounds challenging the legality and validity of disciplinary enquiry and the orders of respective authorites.

3. The respondents in their reply have taken a stand that the enquiry has been done as per rules and as per prescribed procedure.

4. At the time of argument, among other things, the learned counsel for the applicant highlighted that the disciplinary enquiry is violated due to violation of rules and procedure and principles of natural justice. In particular he highlighted that the applicant was not given an opportunity to cross examine the witnesses and one witness was examined behind the back of the applicant.

After hearing both the counsel and going through the original record produced by the learned counsel for the respondents we find that some witnesses were examined on 15.1.1981. Deposition sheet shows that the applicant wants to cross examine the witness at the end and the enquiry officer did not reject his request and did not directed him to cross examine the witness. Nothing on record to show that the witnesses were later tendered for cross examination. Mere statements of witnesses, unless tested by cross examination, cannot be given any weight. Even as per rule and also under principles of natural justice witnesses should have

been re-called and offered for cross examination by the applicant. This is a serious defect which goes to the root of the matter.

5. It is also seen that one witness was examined on 9.4.1982 and there is nothing on record to show that the applicant was informed about the said hearing date or about the adjournment of the case to that date. We have perused the enquiry report.

6. In view of the above observations we feel that the orders of Competant Authority are not sustainable in law.

7. The normal course would be to remand the matter to the Disciplinary Authority and he can remand the matter to the Enquiry Officer and give an opportunity to the applicant to cross examine the witnesses and then aduce his defence evidence and on that basis fresh orders can be passed by the Disciplinary Authority. The question is whether such a procedure is warranted in the facts and circumstances of the case.

8. Now it is brought to our notice that the applicant has since retired from service on 31.3.1997 and therefore the applicant as on today is no longer in service. In the normal course no enquiry could be initiated after the retirement of an official, unless appropriate order is passed under Rule 9 of the Pension Rules. We have already seen that this is

a second round of litigation and the incident is of 1980 and now 19 years have lapsed. Even witnesses might have retired from service.

Even the learned counsel for the applicant, on taking instruction from his client, submitted that the applicant is not interested in facing any further enquiry in pursuance of any order to be passed under Rule 9 of the Pension Rules. The learned counsel for the applicant submitted that his client will not press for any backwages and arrears of pay on setting aside of impugned order but he should get the notional fixation of pay and subsequent pay fixation upto 31.3.1997 so as to enable him to get pension from 1.4.1997. In our view this request of the learned counsel for the applicant is fair and just and should be accepted.

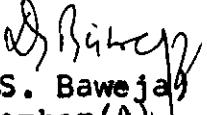
The learned counsel for the applicant also made a submission that the Competent Authority has passed order dated 7.8.1991 treating the period of suspension after reinstatement as deemed suspension and this should be set aside.

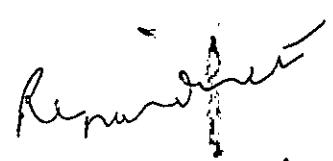
After hearing both the sides and taking into consideration that we are not setting aside the order of penalty on merits but on technical ground and further the applicant has not challenged the order dated 17.8.1998, we are not inclined to grant that relief.



9. We therefore feel that the order dated 7.3.1992 passed by the Disciplinary Authority and confirmed by the Appellate Authority by order dated 15.7.1992 should be set aside. Since the order of penalty is set aside the applicant is entitled to restoration of original pay and grade and on that basis his pay will have to be fixed from time to time notionally till 31.3.1997. After fixing notional pay as on 31.3.1997 as a result of setting aside of the penalty, the applicant will be entitled to revision of pension from 31.3.1997. As already stated the applicant will not be entitled to claim any arrears of pay till 31.3.1997. He is entitled to enhancement of pension from 1.4.1997 till today and in future. Consequently the applicant is entitled to enhanced gratuity and other terminal benefits as a result of notional fixation of pay as on 31.3.1997.

10. In the result the O.A. is allowed subject to the observations made in para 9. The respondents are directed to comply with the order of the Tribunal within three months from the date of receipt of this order. No order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman