

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1299/94

Date of Decision: 2.3.1999

Shri V.M. Itkarkar

Applicant.

Shri H.A. Sawant,

Advocate for
Applicant.

Versus

The General Manager,

Western Railway, Bombay and others. Respondent(s)

Shri S.Ravi for Shri PM.A. Nair.

Advocate for
Respondent(s)

CORAM:

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

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

(1) To be referred to the Reporter or not? *u/s*

(2) Whether it needs to be circulated to *u/s*
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
PRESCOT ROAD, MUMBAI:1

Original Application No. 1299/94

Friday the 2nd day of July 1999.

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

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

V.M. Itkarkar
Senior Electrical
Engineer (P),
Lower Parel Workshop
Western Railway,
N.M. Joshi Marg.,
Bombay.

... Applicant.

By Advocate Shri H.A. Sawant.

V/s.

The General Manager
Western Railway
Headquarters Office
Churchgate
Bombay.

The Chief Workshop Manager,
Carriage Workshop,
Lower Parel,
Western Railway
Bombay.

... Respondents.

By Advocate Shri S.Ravi for Shri P.M.A. Nair.

O R D E R (ORAL)

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

The applicant has filed this O.A. seeking two reliefs namely one for retrospective promotion to the post of Dy. Chief Electrical Engineer with effect from 27.8.1993 and for a direction to the respondents to complete the inordinately delayed enquiry proceedings against the applicant within a period of three months. Respondents have filed reply opposing the application. We have heard

Shri H.A. Sawant counsel for the applicant and Shri S.Ravi for Shri P.M.A. Nair, counsel for the respondents.

2. After hearing both sides and on perusal of the materials on record and in view of the subsequent event we feel that his O.A. can be disposed of without going to the merits of the case.

3. Applicant's grievance is that his juniors came to be promoted with effect from 27.8.1993 and therefore he may also be promoted from that date. Now the learned counsel for the respondents brought to our notice that the applicant has since been promoted as Dy. Chief Electrical Engineer by order dated 26.11.1998. Now the applicant wants that his promotion should be anti-dated to 27.8.1993, when his juniors came to be promoted. This relief cannot be granted in the present O.A. for the simple reason that the applicant cannot get retrospective promotion when disciplinary enquiry is pending against him. A charge sheet has also been issued against the applicant. The Supreme Court in the case of Union of India V/s. K.V. Jankiraman AIR 1991 SC 2010 has observed that when a charge sheet is pending, the person is not entitled to promotion. In the present case it is now pointed out by the respondents that the enquiry has been completed and the Disciplinary Authority has passed an order of minor penalty of reduction of pay by one stage for a period of one month. In view of this minor penalty,

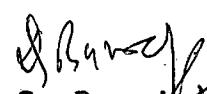
as long as it stands, the applicant cannot claim the benefit of retrospective promotion.

4. The learned counsel for the applicant contended that the charge sheet was issued subsequent to the promotion of his juniors on 27.8.1993. On this matter the pleadings are not clear. The question is whether Mr. Meena was junior to the applicant on 27.8.1993. This cannot be decided in this proceedings. Further Mr. Meena is not a party to this case. It appears that seniority list was issued in 1993 in which the applicant was senior to Mr. Meena but by that time the charge sheet was already issued. Hence in view of the disputed fact we cannot grant the claim of the applicant for retrospective promotion. In the circumstances we feel that we should give liberty to the applicant to make proper representation to the administration for retrospective promotion and seniority and then the administration may consider the same and pass a speaking order whether to accept or reject the contentions of the applicant. If the applicant is aggrieved by any such order of administration regarding retrospective promotion and seniority, he may challenge the same according to law by making all necessary parties including Mr. Meena and others.

5. As far as the contention of the learned counsel for the applicant regarding the legality and validity of charge sheet, that cannot be considered in the present O.A. In this O.A. the only prayer of the applicant is that the respondents be directed

to complete the enquiry within three months. Now it is brought to our notice that the enquiry has since been completed and order of imposing minor penalty dated 21.5.1998 has been issued against the applicant. It is open to the applicant to challenge the order of penalty on legal grounds by filing an appeal. In case the applicant is aggrieved by any order that may be passed by the Appellate Authority or any other authority, he can challenge the same by approaching this Tribunal according to law when he can take all grounds open to him regarding validity of charge sheet, defects in the enquiry proceedings etc. Hence all the questions on merits are left open.

6. In the result the O.A. is disposed of subject to above observations. No order as to costs. Since we have disposed of the O.A., M.P. 268/97 does not survive. Accordingly M.P. 268/97 is disposed of.


(D.S. Bawali)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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