CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 372 of 1994.

Dated this _____, the 2nd day of NOV, 1999.

R. G. Dohare, _____ Applicant.

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

VERSUS

Union of India & Another, _____ Respondents.

Shri S. Ravi for Shri P.M.A. Nair, _____ Advocate for Respondents.

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

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

(i) To be referred to the Reporter or not ? } NO

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? }

(iii) Library. -NO

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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

R. G. Dohare,
P-47, Badhwar Park,
Wode House Road, Colaba,
Bombay - 400 005.
Employed as -
Enquiry Officer (H.Q.),
2nd. Floor, Old Building,
Western Railway, HQ Office,
Churchgate, Bombay - 400020. ... Applicant.

(By Advocate Shri G. S. Walia)

VERSUS

1. Union of India through
its Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

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

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

O R D E R

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard Shri G.S. Walia, the Learned Counsel for the applicant and Shri S. Ravi on behalf of Shri P.M.A. Nair, the Learned Counsel for the respondents.

2. The applicant was working as a Senior Electrical Foreman under the Chief Project Manager, Railway Electrification at Baroda during the relevant time. Since there were no permanent Group 'D' staff posted in that project, the work had to be managed by engaging casual labourers. Due to exigencies of work, the competent authority used to engage casual labourers as per the prevailing policy during 1981-83. Now, after ten years the second respondent has issued charge-sheet to the applicant in 1991 alleging that he had engaged casual labourers contrary to the ban on the engagement of casual labourers as per Railway Board's Circular. The applicant was not aware of any such circular. There is undue and unexplained delay in issuing the charge-sheet after ten years. The applicant sought for furnishing number of documents but only few documents were given. Then the Disciplinary Authority has passed the impugned order by imposing penalty of stopage of increment for two years without cumulative effect as per his order dated 16.12.1992. Similar officers who had engaged casual labourers were also charge-sheeted but they were let off taking a lenient view by simply warning them or censuring them. The applicant preferred an appeal to the Appellate Authority but the appeal was dismissed. The applicant is now entitled to be promoted to the post of Group 'A' Service of I.R.S.E.E. cadre but he is not promoted and on the other hand, his juniors have been promoted. Though the impugned order is dated 16.12.1992, the penalty comes into effect only from 01.05.1993, the date when the next

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increment falls due. It is, therefore, stated that there were no penalty operating against the applicant between 16.12.1992 till 01.05.1993 and, therefore, he should have been considered for promotion to Group 'A' Services. It appears, the appeal was disposed of during the pendency of the application and therefore, the applicant has amended the O.A. for challenging the order of the Appellate Authority. The applicant is attacking the impugned orders on many grounds. The applicant, therefore, has filed this O.A. for quashing the impugned orders of the Disciplinary Authority and the Appellate Authority and also for a direction to the respondents to promote the applicant to Group 'A' Service of I.R.S.E.E. from the date his juniors were promoted with all consequential benefits.

3. The respondents in their reply have justified the impugned disciplinary action taken against the applicant. It is stated that during the relevant period, namely - 1982 to 1984, the applicant had committed misconduct by engaging 65 persons as casual labourers without obtaining the approval of the competent authority and in contravention of the Railway Board's circular that no fresh casual labourer should be appointed or or after 01.01.1981. It is stated that the applicant has already been promoted to Junior scale of I.R.S.E.E. with effect from 24.05.1994. That the applicant's turn for promotion came in 1992 but he could not be promoted since there were many seniors with a higher or equal gradation available. In the later part of 1992

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the applicant's turn came for promotion but he could not be promoted, since the recommendations of D.P.C. was kept in a sealed cover due to pendency of disciplinary enquiry against the applicant. Since the disciplinary enquiry ended in imposing a penalty, the sealed cover could not be opened and recommendations of D.P.C. could not be given effect to. But however, in 1994 the applicant's case was considered and as per the D.P.C. recommendations, he has now been promoted as per order dated 24.05.1994. All necessary documents called for by the applicant were furnished to him. That the applicant is not entitled to any of the reliefs prayed for.

4. The Learned Counsel for the applicant contended that all the documents were not furnished to him inspite of his request. That no regular enquiry was held. That the applicant had not been served with the Railway Board's circular about ban on employment of casual labourers. That similar officers who were charge-sheeted like the applicant were given lighter penalty like censure or warning but the applicant has been given higher punishment of with-holding of increment for two years. It was also argued that some others were not taken up for disciplinary action. He also pointed out that no documents are relied on in the charge-sheet. That the order of the Disciplinary Authority is not a speaking order and he has not considered all the points taken by the applicant. That there is violation of principles of

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natural justice in conducting the enquiry. It is, therefore, argued that the impugned order of penalty passed by the Disciplinary Authority and the order of the Appellate Authority be quashed. It was, therefore, argued that not withstanding the punishment, the applicant should have been given promotion from 1992 itself when his juniors got promotion to Group 'A' Service. On the other hand, the Learned Counsel for the respondents contended that there is no illegality or irregularity in conducting the enquiry and since this is a minor penalty charge-sheet, there is no necessity for a regular enquiry. As far as the applicant's claim for promotion is concerned, promotion could not be given earlier due to adoption of sealed cover procedure and subsequently, the applicant has been promoted in 1994.

5. We will now consider the applicant's contention about legality and validity of the order of penalty.

Under the rules, separate procedures are provided for major penalty charge-sheet and minor penalty charge-sheet. In the case of major penalty charge-sheet, a regular enquiry has to be held but whereas in the case of a minor penalty charge-sheet, the official has to give a reply to the charge-sheet and on that basis the disciplinary authority can pass appropriate order. The Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968

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provides for procedure for imposing major penalties. It provides for issuance of a charge-sheet, statement of imputation and list of documents to be furnished to the delinquent. Then there is procedure for examination of prosecution witness and defence witness and submission of briefs by both sides and then the Inquiring Officer has to prepare a report and submit the same to the Disciplinary Authority.

Rule 11 provides that delinquent official must be informed of the imputation of misconduct against him and give a reasonable opportunity of making such representation, as he may wish. Then on the basis of the representation, the Disciplinary Authority can proceed to pass orders. Therefore, there is no question of any detailed or regular enquiry in a case of minor penalty. Therefore, the argument of the applicant's counsel that the charge-sheet does not contain the details of documents, etc. does not hold good in the case of minor penalty charge-sheet.

The applicant is told as to what case he has to meet, namely - that he has appointed many people contrary to the Railway Board's circular and the ban on recruitment of casual labourers. The applicant's defence could be seen from his reply to the charge-sheet which is at page 26 of the Paper Book. While denying that he has not engaged any such casual labourers contrary to the Railway Board circular, he has taken the stand

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that the Railway Board circular was not circulated. In para (vi) of his representation to the charge-sheet he says that due to tight target fixed, engagement of casual labourers were done in the interest of administration and, therefore, the question of not taking the approval of the competent authority did not arise.

Therefore, the fact that some casual labourers were engaged by the applicant is not disputed at all. His stand is, that since target had been fixed and it had to be achieved, casual labourers had to be engaged and, therefore, taking prior approval of the competent authority did not arise.

The applicant himself asked for some documents and they were furnished, except one or two which were not relevant.

6. Then we find that the competent authority, namely - the General Manager, has taken into consideration the defence of the applicant and the allegations in the charge-sheet and has gone through the records and found that casual labourers were engaged by the applicant even beyond 14.07.1981 inspite of ban by the Railway Board. The Disciplinary Authority has accepted part of the applicant's explanation that casual labourers were appointed in the interest of administration and that is why he has taken a lenient view and imposed stoppage of increment for two years without cumulative effect.

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7. It is well settled and there cannot be any dispute that the scope of judicial review is very limited. We are not sitting in appeal over the orders of the Disciplinary Authority. The Disciplinary Authority has applied his mind and on the basis of record has come to the conclusion that applicant had engaged casual labourers inspite of ban on recruitment of casual labourers and, therefore, he has found him guilty. We cannot be expected to re-appreciate the evidence and take another view. We cannot go into the question of whether the circular regarding ban on recruitment was served on the applicant or it was sent to his office, since it amounts to re-appreciating the evidence. We cannot go into the question of facts. The latest authority on this point is reported in AIR 1999 SC 625 (Apparel Export Promotion Committee V/s. A. K. Chopra) where the Apex Court has surveyed the Case Law and has held that the Court or Tribunal cannot sit as an Appellate Authority and cannot re-appreciate the evidence. After going through the materials on record, we are satisfied that the order of the Disciplinary Authority is based on materials on record and it is not a case of "no evidence" and, therefore, the question of interferring with the impugned order does not arise.

8. It was argued that some of the officers who were also taken up for disciplinary action were let of with censure or warning. As far as the punishment is concerned, it is purely a question of fact, depending upon the facts and circumstances of

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each case. For instance, we have at page 22, names of fourteen officers including the applicant, who had engaged casual labourers contrary to the recruitment ban. The applicant is said to have employed or engaged 55 casual labourers. Some of them have engaged just 3 or 4 casual labourers. It is quite likely that since other officers were involved in engaging 3 or 4 casual labourers, they might have been given penalty of either censure or warning. Since the applicant was concerned with engagement of 55 casual labourers, he has been given minor penalty of stoppage of increment for two years.

9. As far as the order of the Appellate Authority is concerned, we find that the Appellate Authority has written a very lengthy speaking order considering all the contentions of the applicant and the materials on record and then held that there is no case for interference. Hence, we find that no case is made out for interferring with the order of the Appellate Authority.

10. The only other grievance of the applicant is that he was not given promotion in 1992. We have already seen and it is also not disputed that applicant has since been promoted in 1994 but applicant's grievance is that he should have been promoted in 1992. This could not be done obviously since charge-sheet was pending against the applicant in 1992 when his juniors came to be promoted. That is why sealed cover procedure was adopted. It

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may be subsequently that disciplinary enquiry ended by awarding a minor penalty. Even then, when sealed cover procedure is adopted, even if a minor penalty is given, then the sealed cover cannot be opened and the finding of the D.P.C. cannot be given effect to, as pointed out by the Apex Court in a recent judgement reported in 1999 (1) SC SLJ 165 (State of M. P. & Another V/s. I.A. Qureshi).

11. But the Learned Counsel for the applicant submits that as per the Railway Board's Circular, in case of minor penalty, sealed cover should be opened and given effect to. In particular, the learned counsel for the applicant placed reliance on Railway Board's circular dated 12.02.1993 which is at page 41 of the Paper Book. It says that in case an officer has been imposed a minor penalty of with-holding of increment, then he can still be promoted as per the original panel position and the penalty can be imposed in the promotional grade. This circular, nodoubt, supports the case of the applicant. But this circular is dated 12.02.1993 but the punishment order issued against the applicant was in December, 1992. Therefore, the applicant is governed by the previous Sealed Cover Procedure Rules, which was in force when the order of penalty was passed. There is nothing to show that the circular dated 12.02.1993 applies to the cases of penalty orders passed previously.

The respondents have also produced the previous Railway Board's circular dated 02.07.1990 which was in force when the

impugned penalty order was passed. It clearly says thaer in the case of penalty of with-holding of increment, the official cannot be promoted before the expiry of the penalty. Though ofcourse, in 1993 there is an amendment that in such a case, the officer can be promoted and the penalty of with-holding of increment can be given effect to in the promotional post, but since the impugned order is prior to the 1993 circular and as per the previous circular, promotion cannot be given before the expiry of the penalty period, we cannot consider the request of the applicant for retrospective promotion from 1992.

Therefore, we find that the applicant is not entitled to any of the reliefs prayed for in the O.A.

12. In the result, the application fails and is hereby dismissed. No order as to costs.

(B. N. BAHADUR) 2/11/99
MEMBER (A).

2-11-99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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