

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 532/94

Date of Decision: 25.11.98.

Shri S.A.Nikam _____ Applicant.

Shri G.S. Walia. _____ 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. Bawej, Member (A)

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

(2) Whether it needs to be circulated to NO
other Benches of the Tribunal?

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

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

Original Application No. 532/94.

Wednesday the 25th day November 1998.

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

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

S.A. Nikam
Head Clerk
Chief Commercial Manager's
Office, Central Railway
Bombay V.T.
Bombay.

... Applicant.

By Advocate Shri G.S.Walia,

V/s.

Union of India through
General Manager,
Central Railway,
Bombay V.T., Bombay.

Chief Claims Manager/
Chief Claims Officer,
Central Railway
Bombay V.T. Bombay.

Sr. Commercial Manager (G)
CCM's office
Central Railway,
Bombay VT, Bombay.

Chief Claims Manager (G)
Central Railway,
Bombay V.T., Bombay.

... Respondents.

By Advocate Shri S.C.Dhawan.

O R D E R (ORAL)

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

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

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2. The applicant was at the relevant time working as Head Clerk under the control of Chief Claims Officer. For certain irregularities and misappropriation alleged to have been done by the applicant, a charge-sheet was issued by the Railway Authorities. An enquiry was held and order was passed by the Disciplinary Authority by imposing the penalty of removal from service, by order dated 25.6.1993. Against which the applicant has approached this Tribunal by filing O.A. 615/93. The O.A. was disposed of at the admission stage by order dated 2.7.1993 with a direction to the applicant to exhaust the statutory appeal provided under the rules. Then the applicant preferred an appeal before the Appellate Authority who by order dated 7.10.1993 found that there are some procedural flaws in the proceedings of the disciplinary case. Therefore he set aside the order of penalty and remanded the matter to the competent disciplinary authority for taking de-novo action from the stage of procedural flaw craft in. Subsequently the matter was considered by the Deputy Chief Commercial Manager (General) who passed an order dated 23.3.1994 holding that the charges are proved against the applicant and therefore he imposed the penalty of removal from service. Being aggrieved by the said order the applicant has approached this Tribunal by the present application.

The applicant has taken number of grounds challenging the impugned order. One of the main grounds taken is that the initiation of the charge sheet is by an incompetant authority and the order

passed by the authority is also incompetant authority and therefore the whole proceedings are liable to be quashed.

3. The respondents have filed their reply justifying the action taken against the applicant. It is denied that the charge sheet was issued by an incompetant authority or the order of punishment was passed by an incompetant authority. Then there is reference to the merits of the case in the reply.

4. Though we have heard the learned counsel at length, we find that the application has to succeed on a short legal ground.

We have already seen that on the previous occasion the Appellate Authority by order dated 7.10.1993 has noticed that there were some flaw in the enquiry and remanded the matter to the " Competant Disciplinary Authority". Unfortunately the appellate authority did not give reasons which persuaded him to remand the matter.

However the matter has been dealt with now by the Deputy Chief Commercial Manager (General) who has acted as disciplinary authority in passing the impugned order of punishment.

5. It is seen that the applicant was working as Head Clerk under the control of Chief Claims Officer. The charge sheet and the punishment order have been issued by an authority working under Chief Commercial Manager (General). It is not and cannot be disputed that the charge sheet should be issued by either appointing authority or the

officer under whose administrative control the delinquent official is working. The applicant was promoted as Head Clerk by order dated 7.6.1983 and he was posted as Head Clerk in the claim's Section. That means he came under the administrative control of the Chief Claims Officer. But the charge sheet and the final order have been issued by the authority working under the Chief Commercial Manager (General) which cannot therefore it cannot be said that issuance of charge sheet and issuance of final order were passed by the authority under whose administrative control the applicant was working.

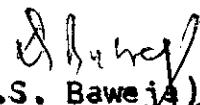
6. The applicant has placed before us two documents which clearly throw light on the issue.

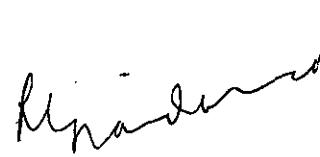
On page 26 of the paper book we have a letter dated 13.3.1991 of Senior Personnel Officer(Commercial). There is a clear indication that the SCO(G) is not an officer under whose administrative control the applicant was working. But clearly mentions that the disciplinary action has to be taken by an officer of CCO namely Chief Claims Officer under whose control the applicant was working at the relevant time. Then on page 48 of the paper book we have another letter of the Chief Personnel Officer which also shows that the applicant came to be promoted by an order signed by the Deputy CPO(C) with the approval of Additional CCS. Therefore we find that as per the material on record the applicant was working under the administrative control of the office of Chief Claims Officer. Therefore the disciplinary action has to be initiated by the competent authority under the control of Chief Claims Officer and not by an officer working under the control

of Chief Commercial Manager (General). Therefore we find that the initiation of charge sheet by an officer under the control of Chief Commercial Manager (General) and the order of punishment passed by a similar officer are not valid and therefore the disciplinary proceedings are vitiated. Since there are serious charges against the applicant, liberty should be given to the respondents from issue of fresh charge sheet and the competent authority to take necessary action as per the rules.

7. We are not impressed with the contention of the counsel for the respondents that the applicant has not exhausted the statutory remedy, hence the application is not maintainable. What is provided under Section 20 of the Administrative Tribunals Act is an enabling provision and it does not say that an application cannot be admitted unless the statutory remedies are exhausted. Even if the statutory remedies are not exhausted still the Tribunal has a discretion in admitting the application. However the technical objection does not serve any purpose at the time of final hearing of the matter and that too after 4 years of the admission of the application. The respondents should have pressed this point at the time of admission. Once an application is admitted and pending for four years, now we cannot throw away the application on technical ground. Therefore we are not inclined to accept the submission of the learned counsel for the respondents that the application should be rejected on the ground that the applicant has not exhausted the statutory remedies.

8. In the result the application is allowed. The impugned order dated 23.3.1994 passed against the applicant is hereby quashed. Secondly the charge sheet and all the proceedings in pursuance of the impugned charge sheet are quashed. However liberty is reserved to the respondents, if they so desire, to issue a fresh charge sheet by a competent authority and then take action according to law. In the circumstances of the case there will be no order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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