

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:431.95

DATE OF DECISION: 5th MAY 2000

Shri R.M. Bhagat Applicant.

Shri G.S. Walia. Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri V.S. Masurkar Advocate for
Respondents

CORAM

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

Hon'ble Shri S.L. Jain Member(J)

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

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

(3) Library. yes

S.L.Jain
(S.L.Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 431.95

the 5th day of MAY 2000

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

Hon'ble Shri S.L. Jain, Member (J)

R.M. Bhagat
Ass. Coaching Clerk
Vasai Road, Western Railway,
Vasai Road.Applicant.

By Advocate Shri G.S.Walia.

V/s

1. Union of India through
General Manager,
Western Railway,
Head Quarters Office
Churchgate, Bombay.
2. Divisional Railway Manager
Bombay Division,
Western Railway,
Bombay Central, Bombay.Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the
Administrative Tribunals Act 1985 seeking the reliefs as under:

- a) This Hon'ble Tribunal will be pleased to hold and declare that the punishment imposed on the applicant was for a period of one year from the date of Charge-sheet and after the applicant had undergone the punishment he is entitled to the post of Sr. Clerk without any effect on his seniority and also entitled for the promotion on that basis.

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b) This Hon'ble Tribunal will be pleased to hold and declare that the Applicant is entitled to the increment and arrears thereof from 1989 to 1991 and for the consequential benefits of fixation of his pay in the scale of Rs. 1200-2050 (RPS) and Rs. 1600 -2660 (RPS) with proper fixation of his seniority and other benefits such as arrears, with 18% interest thereupon.

c) Any other or further order as to this Hon'ble Tribunal may deem necessary in the circumstances of the case may be passed.

d) Cost of this Application may be provided for.

2. The applicant was served with a charge sheet dated 15.1.1990 for unauthorised absence and vide order dated 8.7.1991 the penalty was awarded in the said respect.

3. The applicant claims that vide order dated 8.7.1991 the following penalty was awarded:

EO has found the employee guilty of charges. it is provided that employee left place of duty unauthorisedly. He should be reverted to next lower scale for the year, with future effect.

However on the front page of the said order the order written is as under:

Reduction to next lower grade in the scale of Rs. 975 - 1540 (RP) on rate of pay Rs. 975/- for the period of 2 years with effect of postponing future increment.

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4. The applicant claims that the intention of the Disciplinary Authority was to revert the applicant to a lower post for a period of one year with future effect. After the said penalty he was posted at Vasai in the scale of Rs. 975 1540, while before the said penalty he was posted as Senior Clerk in the scale of Rs. 1200/- - 2000/-and his basic pay was Rs. 1600/- in March 1991. Even after undergoing the punishment he is drawing the pay of Rs. 975/- and representation dated 25.6.1994 did not serve any purpose. Hence this OA for the above said reliefs.

5. The respondents have resisted the claim of the applicant and alleged that the penalty awarded was as under:

Reduction to next lower grade in the scale of Rs. 975 -1540 (RP) on the rate of pay Rs. 975/- for the period of 2 years with effect of postponing future increment.

The challenge to penalty order is barred by time as OA is filed on 22.3.1995. No Statutory appeal was filed against the penalty order dated 8.7.1991. The applicant submitted his grievance as stated by him, after almost expiry of 3 years from the date of passing the penalty order. The error as stated above in para 3 and reproduced above..crept due to clerical error. The applicant has been restored to his original seniority,also promoted to the scale of Rs. 1400/- - 2300/- and Rs.1600/- - 2660 with reference to the date of promotion of his immediate junior and proforma fixation has also been made vide order dated 3.7.1995 No.E/C/III/577(D). Hence no cause of action survives.

6. During the course of arguments, the learned counsel for the applicant did not challenge the punishment order but challenged only - what is the punishment awarded, hence question of limitation does not arise.

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7. On perusal of the representation dated 25th June 1994 Exhibit 'B' and the order of penalty on the front page of Exhibit 'A' we are of the considered view that the following punishment is awarded.

Reduction to next lower grade in the scale of Rs. 975 - 1540 (RP) on rate of pay Rs. 975/- for the period of 2 years with effect of postponing future increment.

We accept the plea of the respondents that on the reverse of Exhibit 'A' in the order of penalty typing error crept.

8. After undergoing the punishment, the applicant is entitled to the same seniority as held in 1995 SCC (L&S) 777 Mohd Habibal Haque V/s Union of India and others and even the respondents did not dispute the said position in view of their written statement.

9. The learned counsel for the applicant relied on the order passed by this Tribunal dated 12th November 1996 in OA No. 359/96 S.K. Dholay V/s Union of India and others and argued that applicant is entitled to be placed at the same scale and at the same pay which he was drawing at the time of imposition of punishment. We agree with the learned counsel for the applicant to this extent.

10. Regarding entitlement of increments during the period under going the punishment, the applicant is not entitled to earn the increments for the reason that punishment order states "with effect of postponing future increment"

11. The OA which was admitted on 3.7.1995, Annexure R/I order dated 3.7.1995 No. E/C/III/577(L) was passed. Later on order dated 26.3.1996 was passed which is placed before the Bench

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during the course of hearing. The learned counsel for the applicant relied on Section 19(4) of the Administrative Tribunals Act 1985 which is as under:

Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

12. The learned counsel for the applicant argued that in view of the above provision, the respondents are not competent to deal with the matter after the OA is admitted. As the OA was admitted on 3.7.1995 after notice to the respondents and the order is also passed on the same day, it is not possible to arrive to a finding when there are no datas available to record a finding that the order dated 3.7.1995 is passed after the OA was admitted, that order Annexure R I is passed after the OA is admitted.

13. Relief claimed in para 8(b) cannot be awarded in favour of the applicant as no case for increment from 1989 is made out in pleadings, the charge sheet was served on 15.1.1990. Penalty was inflicted on 8.7.1991 which was operative for two years, hence relief upto 8.7.1993 cannot be awarded. His case for placing him at the same pay was considered and ordered vide RI hence he cannot have any grievance in this respect.

14. Regarding letter dated 26.3.1996 which states as under:

Since he is joined on promotion in 1.8.1995 he will draw Rs. 1850/- from 1.8.1995. No arrears for the period 1.8.1993 to 31.7.1995. Please note.

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It is suffice to state that this letter was never the subject matter of this OA. It is placed for perusal during the course of hearing, no pleadings of either side on record, the respondents cannot be taken to surprise, hence it is ordered that if the applicant has any grievance in this respect, he may agitate the same in accordance with law.

15. As the applicant was in the scale of Rs. 1200 - 2000, his pay was Rs. 1600/- on the date of penalty, he can only get the same and he has been placed in the said pay scale and said pay was allowed vide RI. Hence no grievance can be made now as it does not subsist.

16. In the result OA deserves to be dismissed and is dismissed accordingly keeping in view order No. E/C/III/577(D) dated 3.7.1995 and admission in written statement regarding seniority by which grievance of the applicant has been met out partly and for the remaining part, punishment imposed on the applicant was for a period of one year from the date of charge sheet and relief sought at 8(b), the applicant is not entitled. No order as to costs.

S.L.Jain
(S.L.Jain)
Member(J)

B.N.Bahadur

(B.N.Bahadur)
Member(A)

NS