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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.20/95.

Wednesday, this the 19th day of April, 2000.

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

Bhaurao Dashrath,
C/o.Shri Sital Singh,
Retired Guard,
Central Railway,
Ballarsha.
(By Advocate Mr.P.G.Zare)

...Applicant.

Vs.

1. Union of India through
the General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.

2. The Senior Divisional Electrical
Engineer,
(TRD)'s Office, Central Railway,
Nagpur.
(By Advocate Mr.R.R.Shetty)

...Respondents.

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. Respondents have filed reply. We have heard Mr.P.G.Zare, the learned counsel for the applicant and Mr.R.R.Shetty, the learned counsel for the respondents.

2. The applicant was at the relevant time working as a Khalasi at Ballarsha. It appears, the applicant was on duty on the night of 22.10.1993. During a surprise visit by a concerned officer at 10.40 p.m., the applicant was found ^{absent} missing at spot. Again at 0015 hrs. on the same mid-night there is another verification and it was found the applicant was ^{absent} missing. Then on

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the same day, the applicant was kept under suspension. The suspension came to be revoked on 12.11.1993. On the same day, a minor penalty charge sheet was issued against the applicant mentioning that he was absent at 10.40 p.m. on 22.10.1993 and again during mid-night at 0015 hrs. The applicant gave a reply to the charge sheet asserting that he was not absent from duty, but he had gone to answer the call of nature. After going through the representation of the applicant, the Disciplinary Authority by order dt. 25.1.1994 held that the allegation against the applicant is true and there is no merit in the representation and then he imposed a penalty of withholding one increment for a period of three years. Being aggrieved by the penalty order, the applicant preferred an appeal which came to be rejected by the Appellate Authority by order dt. 23.6.1994.

The applicant has therefore approached this Tribunal by filing this application. He has challenged the impugned penalty order on the ground that he was very much present on the spot at night and the allegation ^{of absence} ~~imposed on him~~ is false. It is also his further grievance that he had been promoted by an order dt. 2.2.1993, but the promotion order has not been given effect to.

It is his case that minor penalty charge sheet or even imposition of minor penalty should not come in the way of giving effect to the order of promotion from 2.2.1993. He has therefore, approached this Tribunal for modifying the order of penalty, for payment of full wages during the period of suspension and for giving a direction to respondents to grant him promotion w.e.f. 2.2.1993 with all monetary benefits.

3. The respondents in their reply have asserted that the applicant has been proceeded correctly in the disciplinary

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enquiry and the punishment imposed is just and proper. As far as promotion is concerned, while admitting that order of promotion dt. 2.2.1993 was issued, respondents have taken the stand that benefit of notional promotion has been given and that actual monetary benefits have been given from 1996 after the end of the penalty period.

4. As far as the disciplinary action is concerned, it is a case of surprise visit by the competent officer who found that the applicant was not in the spot and this has been admitted by the applicant. His only explanation is that he had gone to answer the call of nature. If it was a surprise inspection at 10.40 p.m. only, then the explanation of the applicant may be justified, but the competent authority again verified at 0015 hrs. and found that the applicant was absent. At any rate, it is a question of accepting the applicant's explanation or not. The disciplinary authority has found that the representation of the applicant is not correct and he has not accepted the same. We cannot sit in appeal and take a different view, even if another view is possible. The applicant has not even sought for quashing the order of penalty, but he wants it to be modified since the penalty is dis-proportionate to the mis-conduct. Hence, after going through the materials on record, we find no material either for quashing or for modifying the order of penalty. Withholding of one increment for three years cannot be said to be so dis-proportionate as to shock the conscience of this Tribunal and to interfere with the matter.

5. As far as applicant's grievance that the order of promotion has not been given effect to from 2.2.1993 appears to be justified. The order of promotion is at page 19 of the paper

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book. It is dt. 2.2.1993. In all thirty officials have been promoted including the applicant whose name is at Sl. No.24. He has been promoted from the grade of Rs.800-1150 to the post of Fitter - III in the grade of Rs.950-1500. The order of promotion is dt. 2.2.1993, whereas the incident took place in October, 1993 and charge sheet was issued on 12.11.1993. Hence, there is no justifiable reason to withhold the promotion of the applicant from 2.2.1993 and onwards. Even if charge sheet had been issued and even if there was a minor penalty charge sheet, there was no obstacle in granting effect to the ^{order of promotion} applicant and giving effect to the penalty in the promotional post, which is permissible under the Railway Board Circular. Therefore, in the facts and circumstances of the case, we hold that the applicant is entitled to be promoted from 2.2.1993 not only notionally as has been done, but also with all monetary benefits from that day and onwards. There is some dispute at the bar whether the actual amount is paid from 2.2.1993 or thereafter. Whatever direction we give will be to give effect of the order of promotion dt. 2.2.1993 with full monetary benefits less whatever amount that has already been paid to the applicant.

5. In the result, the application is allowed partly.

While not disturbing the disciplinary action taken against the applicant and the order of penalty imposed on him, we direct the respondents to give effect to the order of promotion dt. 2.2.1993 and promote the applicant to Fitter Gr.III in the pay scale of Rs.950-1500 with full monetary benefits from that date and the penalty may be operated or given effect to in the promotional post. All arrears of monetary benefit should be paid

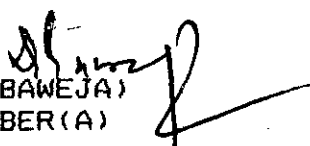
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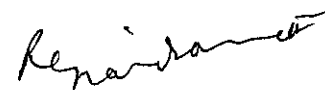


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to the applicant as a result of this order less whatever amount that has already been paid to the applicant. The respondents should comply with this order within a period of three months from the date of receipt of this order. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.