

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 360/97

Date of Decision: 25.09.2001

Shri G.D. Bhandari.

Applicant(s)

Shri Ramesh R.

Advocate for Applicant

Versus

Union of India & others

... Respondents

Shri R. Suresh Kumar.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. ... MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. ... MEMBER (A)

- (1) To be referred to the Reporter or not? |,
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

Shanta S.
(SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 360/97

THIS THE 25 TH DAY OF SEPTEMBER, 2001

CORAM: SHRI S.L. JAIN. : MEMBER (J)
SMT. SHANTA SHAstry : MEMBER (A)

G.D. Bhandari
employed as Assistant Parcel
Clerk, Central Railway,
C.S.T.M., Mumbai-400 001. . . Applicant

By Advocate Shri Ramesh R.

Versus

1. Union of India
through the General Manager,
Central Railway,
C.S.T.M., Mumbai-400 001.
2. Divisional Commercial Superintendent (I),
Central Railway, C.S.T.M.,
Mumbai-400 001.
3. Senior Divisional Commercial
Superintendent, Central Railway,
C.S.T.M., Mumbai-400 001.
4. Additional Divisional Railway
Manager, Central Railway,
Mumbai Division, C.S.T.M.,
Mumbai-400 001.
5. General Manager,
Central Railway, C.S.T.M.,
Mumbai-400 001. . . Respondents

By Advocate Shri R. Suresh Kumar.

O R D E R

Smt. Shanta Shastry, Member (A)

The applicant has approached this Tribunal challenging the order dated 9.10.1985 imposing penalty of reduction to the next lower grade permanently fixing the pay of the applicant at the minimum in the next lower grade i.e. Rs.260 in the scale of Rs.260-430 as well as the order dated 25.7.1989 rejecting his revision

petition and confirming the earlier penalty. The applicant has claimed the following reliefs: (1) to quash and set aside the order dated 9.10.85 and 25.7.89 and to issue direction to respondents to grant promotion due to the applicant from the due dates and consequent fixation of pay from the due dates notionally and actual promotion to be granted and arrears to be paid prospectively from the date of filing of this OA or such earlier date as the Tribunal may deem fit; (2) to quash the order dated 14.8.94 removing the applicant from service to restore the applicant to the grade of ECRC or to higher grade to which he would have been promoted in the normal course, but for the illegal penalty and to grant all the annual increments right from 9.10.1985 in the scale of Rs.260-430 with consequential arrears and other consequential benefits etc.

2. The applicant, who was at the relevant time working as Enquiry cum Reservation Clerk (ECRC for short) at Mumbai, VT was issued with a charge sheet on 25.6.1982 on the charges that he had committed serious misconduct in refusing to produce private cash for check. He caused obstruction in the performance of duties by Vigilance Inspector by refusing check of Railway cash on the plea that Vigilance Inspector has no authority to check unless accompanied by Auditor and checks should be conducted only at close of the shifts. He passed uncalled for and derogatory remarks against the Vigilance Organisation and made false allegations

about the integrity of Vigilance Inspector. He left the counter unmanned and without securing the railway cash. He instigated the other ECRCs to stop the work resulting in disruption of work in the reservation office which caused inconvenience to the passengers standing in the queues at different windows.

3. An enquiry was conducted and an order was passed on 5.5.84 by the Disciplinary Authority accepting the findings of the enquiry officer and imposing upon him the penalty of reduction by four stages in the time scale for a period of two years with cumulative effect. His pay was reduced by four stages from Rs. 428/- to Rs. 380/- in the scale of Rs.330-560. The applicant, thereafter appealed against the aforesaid order on or about 22.6.1984. Thereafter, the applicant received a show cause notice from the Senior DCS, Mumbai VT to the effect that he proposed to enhance the penalty of reduction of four stages to that of removal from service. The show cause notice was dated 17.7.1984. The applicant filed his reply to the same on 24.7.84. Thereafter, the penalty of removal from service was imposed by the order dated 14.8.84. He preferred an appeal on 6.9.84 against the same and he was called for personal interview by the Additional Divisional Railway Manager (G) vide letter dated 19.9.84. Thereafter, the appellate authority reduced the penalty of removal from service imposed earlier and converted into reduction to the next lower grade permanently, fixing the applicant's

pay at the minimum of the next lower grade i.e. at Rs.260/- in the grade of Rs.260-430. The applicant preferred a revision petition dated 7.5.87 against the same, which was rejected. He filed a further petition on 16.11.87 addressed to the Chief Commercial Superintendent. Thereafter the order dated 25.7.89 was passed. According to the applicant, it was not served on him, a xerox copy of the same was given to him under letter dated 2.4.92. According to the applicant, under the Railway Servants (Discipline & Appeal) Rules, 1968 the penalty is impermissible. There is no penalty under the rules permanently reducing a person to a lower grade. It is also prescribed under Railway Board orders dated 22.2.74 and 22.1.60 referred to in the letter dated 24.1.92. The applicant submits that this view has been taken by the Jabalpur Bench of the Tribunal in another case.

3. According to the applicant such illegal penalty has been imposed to appease the vigilance organisation. The authorities have not even cared to grant normal increments in the grade of Rs.260-430 for many years. The revisional authority could not invoke the revisional powers as done by him. Therefore, the applicant is entitled to be restored to the grade of ECRC and to the higher grade on setting aside of the impugned orders. Further the first appellate authority's order dated 14.8.84 enhancing the penalty to removal from service is a non speaking order and no reasons have been given by

the Disciplinary Authority to enhance the punishment. The Appellate Authority did not also deal with the points raised in the appeal by the applicant against the initial punishment. Thus, it deserves to be quashed and set aside. The Tribunal has set aside similar orders in the case of Mr.G.N. Golani vide judgment dated 23.4.91 in OA No.603/87. According to the applicant it amounts to double penalty.

4. The respondents submit that the applicant has been rightly punished. The senior DCM is the Head of the Department of Commercial Branch in the division. In reply to the show cause notice issued to the applicant, he did not challenge the authority of the senior DCM to issue such a show cause notice. The applicant had also filed a writ petition in the Mumbai High Court against the show cause notice dated 17.7.1984, but when it came up for hearing on 21.8.84 he withdrew the same. The applicant has also not annexed the order dated 14.8.84 removing him from service, therefore, it cannot be quashed.

5. The respondents have taken serious objection to the OA on the ground of it being barred by limitation as cause of action arose way back in 1989.

6. The respondents have also stated that the applicant has been paid all the increments due to him with effect from 12.10.1985, but the applicant cannot be

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given any promotion etc., as claimed by him unless the punishment order is set aside. He is not entitled to any further promotion in the cadre because he has been reduced permanently the minimum to the next lower grade i.e. Rs. 260/-. According to the respondents the applicant's case deserves to be dismissed both on the ground of limitation as well as on merits.

7. We have heard the learned counsel for both the parties and have given careful consideration to the pleadings. We find that the impugned order dated 9.10.85 is not as per rules and is technically wrong order. No employee can be reduced permanently to a lower grade as per the rules. The order is, therefore, void and deserves to be quashed to the extent that it has been imposed permanently. According to the rules, the period for which the penalty is imposed needs to be specified in the order. In the absence of which the order becomes void. We, therefore, hold that the impugned order of 9.10.95 is void.

8. There is no doubt that the application is barred by limitation. The respondents have relied on several judgment in the case of suryanarayana Vs. CSIR (1995 (2) SC 485), Ratan Chand & another Vs. Union of India & Others (JT 1993 (3) SC 418), Boopsis Vs. Union of India (1992 (21) ATC 675), S.S. Rathore Vs. State of Madhya Pradesh (1990 SCC (L&S) 50) to support that limitation applies in this case. Though the applicant

was informed again on 2.4.92 that his revision application has been rejected on 25.7.89 which had already been conveyed to him after 11.years of passing of the order, he has approached this Tribunal now. Even six months from the date of the revision petition expired long ago. Therefore, the application is not maintainable. Again, even if the order is void ab initio, the limitation period applies.

9. The learned counsel for the applicant has also relied on the judgment of this Tribunal in the case of Gopichand Golani in OA No.603/97. In that case also the applicant was Enquiry cum Reservation Clerk in the Central Railway at Bombay. He had approached the Tribunal against the penalty or reduction of his pay by four stages in the same time scale of pay for a period of three years without cumulative effect ultimately imposed upon him. The charges were similar to the charges in the present case. The Tribunal held that the Appellate Order was arbitrary and non speaking order and therefore being vitiated, it cannot be allowed to stand. The Appellate order was therefore, quashed and other subsequent orders also were quashed. In that case, the applicant had approached the Tribunal immediately in the year 1987 itself after the revision petition was dismissed in 1987. In the present case, the applicant has come after a long lapse of period. Further, even though the application may be hit by limitation in the present case, it would not apply. The applicant has

filed MP for condonation of delay. According to him, since his case is strong on merits, the limitation needs to be ignored.

10. In our considered view, the impugned order reducing the applicant to a lower grade permanently, cannot stand. This is against the rules and needs to be quashed and set aside as the order is void. Even though limitation applies in the present case, we are inclined to over look the objection on limitation. We, therefore, quash and set aside the impugned order of penalty remanding the same to the Revisional Authority for reconsidering the penalty in accordance with law. This may be done within a period of two months from the date of receipt of copy of this order. The OA is disposed of accordingly. In the circumstances, we do not order any costs.

Shanta J-

(SMT. SHANTA SHAstry)
MEMBER (A)

(S.L. JAIN)
MEMBER (J)

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