

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:776/98
AND 786/1998
DATED THE 23RD DAY OF FEB,2001

CORAM:HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Madan Mohan Agarwal, working as
Enquiry-cum-Reservation Clerk-I,
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Mumbai and residing at 4, Kharade
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Station, Neral (East)

... Applicant

By Advocate Shri G.K.Masand

V/s.

1. Union of India, through the
General Manager, Central Railway,
CST, Mumbai.
2. Divisional Railway Manager,
Bombay Division, Central Railway,
CST, Mumbai.
3. Divisional Commercial Manager,
Bombay Division, Central Railway,
CST, Mumbai.

... Respondents

By Advocate Shri V.D.Vadhavkar

(ORAL) (ORDER)

Per Shri B.N.Bahadur, Member(A)

We are considering here two OAs bearing number 776/98 and 786/98 filed by the same applicant. As the events/issues in the OAs are interrelated, they are considered together, and are being disposed of through by this common order.

2. The facts in the case have been detailed out in the two applications and can be brought out succinctly in the chronology, as given below:-

22/3/96	-	Applicant suspended.
19/3/96	-	Date of incident and date of arrest of applicant.

19/3/96 to 22/3/96	-	In police custody.
22/3/96	-	Released on Bail
19/12/96	-	Panel order issued.
26/11/97	-	Closure Report filed by CBI; Applicant discharged.
19/12/97	-	Suspension Revoked
5/2/98	-	Chargesheet in disciplinary enquiry issued.

3. On the basis of above dates, and the grounds taken in the OAs, the learned Counsels Shri G.K.Masand for the Applicant and Shri V.D.Vadhavkar, for the Respondents have made out their respective cases. The case made out by the learned counsel for the applicant in the first OA is that the suspension of the applicant had come about, statedly, in view of filing of criminal case and it was not a deemed suspension in terms of the rules which envisaged suspension on account of ,an employee being in custody for 48 hours. Also that in view of the closure report and discharged by the competent Court, the subsequent action of the Departmental Enquiry taken by Respondents had to be seen as a distinct act vis a vis the action of suspension. It was thus argued that since the suspension came about only in view of the criminal action and closure report had been filed/discharged provided, the applicant becomes entitled in law to full payment of salary for the entire period of suspension. It is with this grievance and grounds that the applicant comes up in OA 776/98 with the reliefs as sought viz. for a direction to the Respondents for making payment of difference between pay and allowances admissible and payments made to him. Also for the sanction of increments during the period of suspension. Interest on payment is also claimed. The learned counsel for the

applicant also argued in detail with regard to the second OA, where the relief sought by the applicant is for a direction to the Respondents to give effect to the promotion dated 19/12/96 in the scale of 5500-9000 retrospectively w.e.f. from the date when the applicant's juniors were promoted. Consequential benefits are sought.

4. The main argument put forth by the learned counsel for the applicant also highlights the fact that the applicant had been deemed to be fit for promotion when the DPC was held on 19/12/96. It was argued that as soon as the cloud of the criminal case had lifted, applicant was due for promotion and since it can be inferred that there was no cloud throughout (because of discharge in criminal law retrospective promotion has been sought.

5. We have carefully seen the statement filed in reply by Respondents in both the OAs. The learned counsel, Shri Vadhavkar, made the point that it will be evident from the date of closure report filed that a decision for initiation of proceedings for major penalty had been taken as stated in the closure report before the discharge was provided. This contention was reiterated with the support of relevant file shown to us. We see that a decision in this regard was taken for a Departmental Enquiry before the discharge by the Court was provided in the criminal case. Thus, it was argued at no stage was the applicant free from the cloud of an enquiry. This was the main argument put forth. Learned counsel argued the case in detail pointing out the facts of the case, the procedures involved in the Railways for keeping cash, etc.

6. Shri Vadhavkar made the point that it was important to note that the applicant had emerged out of the enquiry with a punishment and, not with exoneration, and in terms of both, rules

in Indian Railway Establishment Code, and the law settled by Supreme Court, he was not entitled to the benefits claimed in legal terms also. It was informed that the subsequent developement was that applicant had been imposed penalty of reversion to lower grade on 8/9/2000. The Rule No.1345 subrule 1 and 3 were specially cited to seek support to the effect that the rule provided for full payment for suspension period only when suspension was not wholly unjustified. This was a crucial test according to Shri Vadhavkar. Shri Vadhavkar further drew support from the decisions of Hon.Supreme Court in Kewal Kumar (AIR 1993 SC 1585) and R.S.Sharma (in 2000 (SCC) (L&S) 653)

7. We will first turn out attention to the matter in the OA 786/98 viz the case relating to the departmental enquiry. It is clear that the Applicant has come out of the enquiry as having been found guilty and has been imposed a major penalty. We then turn our attention to the crucial aspects highlighted by both sides, as to the time when a decision was taken regarding the starting of the departmental enquiry against the applicant. It is true as pointed out by learned Counsel Shri Masand that there could be some doubt regarding the assertion in the closure report filed by CBI as to whose decision regarding starting of departmental enquiry was being cited, whether CBI's or departmental. However, this doubt is set to rest through the communication in the file shown to us. This communication is dated 17/11/97. It has been issued from General Manager's office, CST, Mumbai. It is seen clearly from this document that a decision has been taken for initiating a Departmental enquiry against Shri M.M.Agarwal. Now crucially the date of this communication is prior to the date of the closure report/discharge i.e. 26/11/97. It therefore cannot be said, as

argued, that the applicant has become free from a cloud of enquiry or disciplinary proceedings at any stage.

8. In view of the above, the panel order through which the applicant was considered fit to be promoted could not be given effect to. Not giving effect to a selection (for promotion) when a decision regarding a departmental enquiry has already been taken is well within the law settled by the Supreme Court in AIR 1991 SC 2010 in Union of India V/s. K.V.Jankiraman. Infact, the basic principles ~~that~~ ^{As} will be that since the applicant has emerged from an Enquiry with a penalty, this order of selection (panel), even if it had properly put in Sealed cover could not have been given effect to as per the law settled in this regard by Hon.Supreme Court in the matter of State of M.P and Anr. V/s. I.A.Qureshi (1999(1)SC SLJ 165) Hence, the relief as sought in this OA (786/98) cannot be provided.

9. In regard to the relief sought in OA 776/98, we find that, in fact, the cause of action emerges from the same event/arrest. One particular instance forms the basis of the starting point of the entire cause of action. Recourse to criminal law was first sought to be taken. This is, later, decided against, as detailed in the closure report and departmental enquiry started thereafter. The argument taken by learned counsel for the Applicant was that these have to be viewed as distinct cases and suspension, which was clearly stated to be in view of criminal proceedings having started, should also be viewed distinctly. Learned counsel sought the support in the matter decided by this Bench of the Tribunal in the matter of Tapas Niyogi in OA 1361/94 dated 3/4/95. We have considered this in the background of the facts and circumstances of this particular case. The decision in Tapas Neogy's case cannot be said to lay down a clear cut ratio

or law and has infact been decided in the facts and circumstances of that particular case.

10. Thus in the facts and circumstances in this case, we are not convinced that we can judicially deterime that the period of suspension in the initial stages should be treated tobe on duty and order payment of full salary for the period. (In any case we are not aware as to what decision if any, has been taken by the Railway Administration regarding the treatment of the period of suspension.)

11. In view of the discussions above, we are not convinced that any interference is called for by this Tribunal in either of the OAs. The claim for the payment of full pay/equivalent for suspension period treating it as duty period is rejected So also we hold that the relief sought in OA 786/98 for a direction to the effect that the order dated 19/12/96 be effected by promoting applicant to the scale of 5500-9000, is also rejected. Both OAs therefore stand dismissed with no orders as to costs.

(B.N. BAHADUR)
MEMBER(A)

(ASHOK AGARWAL)
CHAIRMAN

abp.