

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1032 of 1990

DATE OF JUDGMENT:

30-3-1991



BETWEEN:

Mr. B.Venkatswamy

..

Applicant

AND

The General Manager,
South Central Railway,
Secunderabad.

..

Respondents

COUNSEL FOR THE APPLICANT: Mr. P.V.Krishnaiah for
Mr. G.Vedantha Rao

COUNSEL FOR THE RESPONDENT: Mr. D.Gopal Rao, SC for Railways

CORAM:

Hon'ble Shri B.N.Jayasimha, Vice Chairman

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

While the applicant was working as Assistant Accounts Officer in-charge of P.F. Section of FA&CAO's Office at Secunderabad during the period December 1986 to September 1987, he committed serious irregularities in withdrawing the amounts from the provident fund accumulations. He committed similar irregularities/offences on several occasions, as it is evident from the charge sheet, and the charge is, that "he pressurised the staff under his control in getting his application for withdrawal passed for payment even without any balance in his P.F.account." A case was registered and reported to the Central Vigilance Commission for the offences on the part of the applicant. Disciplinary proceedings were initiated under the Railway Servants (Discipline & Appeal) Rules, 1968. The General Manager acting as disciplinary authority issued a charge memo to the applicant on 15.7.1988. As the explanation of the applicant was not satisfactory, an Inquiry Officer was appointed under Rule 9 of the Railway Servants (D&A) Rules, by the disciplinary authority to enquire into the charges framed against the applicant. The Inquiry Officer conducted the inquiry and submitted his report on 11.1.1990.

6. While the disciplinary proceedings are pending, vacancies arose in the posts of Senior Accounts Officer and they were filled by promoting the Assistant Accounts Officer on adhoc basis. As the applicant was issued a charge memo and the matter is being enquired into, he was not considered for promotion. The applicant would be considered for promotion only after completion of the proceedings against him. The DPC did not consider the case of the applicant in view of the pendency of the disciplinary proceedings against him. The posts of Senior Accounts Officer could not be kept vacant for long time and five of his juniors were promoted on adhoc basis to the post of

exonerating the applicant from all the charges, but no final order is passed and his promotion continues to be withheld, which is arbitrary and illegal. The respondent issued a notice to the applicant enclosing the enquiry report and calling upon the applicant to submit his explanation stating that the disciplinary authority will take suitable decision after considering the report. The applicant submitted his explanation on 3.9.1990.

4. Under Clause 15 of the Central Civil Service Appeal Rules, the disciplinary authority can agree with the report of the enquiry officer or differ with the report and in the latter case he should give reasons and issue a notice. In this case, it is obvious that the disciplinary authority concurred with the report of the enquiry officer, as ~~was~~ is evident from the notice issued to the applicant that suitable action would be taken on the basis of the enquiry report. Since the enquiry officer exonerated the applicant of all the charges, the further disciplinary proceedings should be dropped. Now the matter is kept pending without taking any action and a great damage is being done as already six juniors were promoted. The applicant states that there are some more vacancies and without considering the applicant the respondent is likely to promote some more juniors on the ground that the disciplinary proceedings are pending against him. The applicant is to retire shortly within two years and therefore the injury that is now causing to the applicant is of a grave nature. Hence, the applicant filed the present application for the above said relief.

5. The respondent filed a counter. The contents of the counter are briefly as follows:-

against him. Under the Railway Servants (D&A) Rules, the disciplinary authority may or may not concur with the findings of the Enquiry report. The Enquiry Officer can only give his findings and it is for the consideration of the disciplinary authority to exonerate the charges in respect of the proposed penalty or otherwise as per the rules. The advice of the Central Vigilance Commission has been received and the case is under consideration by the disciplinary authority. The applicant is not entitled for promotion with retrospective effect from 27.1.1989 pending the DPC considering him fit for promotion. Hence, there are no merits in the application and the application is liable to be dismissed.

7. Shri P.V.Krishnaiah for Shri G.Vedantha Rao, learned counsel for the applicant and Shri D.Gopal Rao, learned Standing counsel for the Respondent/Railways, argued the matter. It is a fact that the disciplinary proceedings were started against the applicant and a charge sheet was issued on 15.7.1988 and an Inquiry Officer was appointed. The enquiry was conducted in November 1989 and the Inquiry Officer submitted his report to the administration in January 1990 which is still under review. The applicant filed an extract of the Inquiry report dated 11.1.1990. According to the findings of the Inquiry Officer, no charge was proved against the applicant. The Inquiry report was sent to the disciplinary authority on 11.1.1990 and the disciplinary authority called for the explanation of the applicant and the applicant submitted his explanation on 3.9.1990. Already 8 months are over but the disciplinary authority did not take any action against the applicant. The Inquiry Officer who enquired into the matter, took nearly 1½ years to complete the enquiry. There is an inordi-

Senior Accounts Officer during January 1989 to December 1990. Hence, the non-promotion of the applicant is not arbitrary nor illegal as alleged by the applicant. Though the Inquiry Officer completed the enquiry and submitted his report on 11.1.1990, the final decision to impose penalty lies with the disciplinary authority in consultation with the vigilance commission. The averment of the applicant that the Inquiry Officer exonerated him of all the charges, is not correct and relevant as the Inquiry Officer has only to give his findings in his report and the ultimate authority competent to take decision thereon is the disciplinary authority. The averment that certain amounts were withdrawn from the PF accumulation and the withdrawal did not cause loss to the Department, is a clear admission of irregularity and misconduct. The contention of the applicant that an Assistant Accounts Officer with 3 years of minimum service is eligible for promotion to the post of Senior Accounts Officer is only imaginary and baseless. The minimum service of 3 years is a condition precedent to the promotion of an incumbent which is subject to the recommendation of the DPC based on his past record and integrity. The allegation that one Shri Om Prakash is junior and he was promoted as Senior Accounts Officer is not correct. The fact is that the said Shri Om Prakash is directly recruited as a Group-A Railway servant whereas the applicant was initially a Group-C Railway servant who is now in Group-B and as such, the applicant cannot compare himself with a Group-A Railway servant. Though the applicant is at Rank No.10 in the panel published and the promotees ^{who} were juniors having been empanelled in subsequent panels, the applicant could not be considered for promotion in view of the disciplinary proceedings pending

enough to deal with the matter and if he comes to any conclusion, it can be presumed that he has to come to that conclusion at the instance of the Central Vigilance Commission. There is an inordinate delay in conducting the enquiry and the enquiry should be conducted within 150 days but here the Inquiry Officer took more than 500 days ~~and such a long delay~~ ~~was caused intentionally to promote juniors to the applicant~~ ~~without considering him for promotion on the pretext of~~ ~~pending the disciplinary proceedings.~~ The applicant is not responsible for the delay in conducting the enquiry and the delay in conducting the enquiry is not explained by the disciplinary authority nor by the Inquiry Officer. Meanwhile, juniors to the applicant were promoted. The ~~xx~~ rights of the applicant were very much prejudiced on account of the delay in conducting the enquiry and also for not taking any action by the disciplinary authority though 8 months time was elapsed. The disciplinary authority contends that he is consulting the Central Vigilance Commission. The material before us is enough to show that the disciplinary authority is not fair enough to deal with the matter. So, this material is enough to show ~~xx~~ that a separate disciplinary authority should deal with this matter.

8. The contention of the applicant is that on the ground of the disciplinary proceedings, his juniors were promoted though he was at 10th rank in the seniority and he got enough service to get promotion to the next grade of Senior Accounts Officer but he was not considered and his juniors were promoted and still the respondent is bent upon promoting some more

nate delay in conducting the enquiry and there is also an inordinate delay in disposing of the representation by the disciplinary authority. Though 8 months were elapsed, he did not take any decision. According to the applicant, in-between time, his juniors were promoted and he is fully qualified for promotion. On the guise of the pending enquiry, the respondents did not promote him for the higher post of Senior Accounts Officer. Though 8 months time was completed after the disciplinary authority received the report of the Inquiry Officer, he has not come to any conclusion so far and upto now and he is still stating that he is going to take decision in consultation with the Central Vigilance Commission. This sort of attitude of the disciplinary authority is not appreciable. The disciplinary authority has to sit as a Judge and consider the report and come to his own conclusion basing on the report. If he is not satisfied with the Inquiry Officer's report, he can serve a show cause notice to the applicant and invite his explanation and in the light of the explanation, if necessary, he can come to a conclusion on the explanation and pass a speaking order against the applicant. The question of consulting the Central Vigilance Commission is a sheer illegality. When he is sitting as a Judge, he should not take concurrence from the Central Vigilance Commission. This sort of attitude is highly objectionable. In these circumstances, it can be presumed in the light of the Inquiry report that no charges are proved and an inordinate delay was occurred all these months and still the disciplinary authority wants to take advice of the Central Vigilance Commission which clearly shows that the disciplinary authority is not fair

To

1) The General Manager,
South Central Railway,
Secunderabad.

2) one copy to Mr. P. V. Krishnamurthy, C.A.T. Hyd
G. Venkata Rao, Advocate

3) one copy to Mr. D. Gopala Rao, S.C. for phys cast system

4) one copy to Mr. T. Narasimha Murthy, Member (S)

~~5) one spare copy~~ C.A.T. Hyd

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Copy made ready on..... 11/6/91

Section Officer (j)

juniors to the applicant without considering the case of the applicant.

9. By way of interim directions dated 1.1.1991, the Tribunal ordered that, "if the respondent makes any promotions to the post of Senior Accounts Officer in the meanwhile, such promotions will be subject to the result of this application." Therefore, if juniors to the applicant were promoted on the ground of the pending disciplinary proceedings, those promotions are subject to the result of this application. The applicant is entitled to be considered for promotion to the post of Senior Accounts Officer subject to his suitability and if he is found suitable for promotion, he shall be promoted from the date when his juniors were promoted. He is also entitled to get the arrears of pay and seniority if he is found suitable for promotion.

10. The application is allowed accordingly. No order as to costs.

CERTIFIED TO BE TRUE COPY
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Date.....3/6/91.....
Court Officer
Central Administrative Tribunal
Hyderabad Branch
Hyderabad.