

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JALIPUR BENCH, JALIPUR.

O.A. No. 493/2002
T.A. No.

199

DATE OF DECISION 12/12/2003

H.S. Shekhawat

Petitioner

Mr. C.B. Sharma

Advocate for the Petitioner (s)

Versus

UOI and two others.

Respondent

Mr. R.G. Gupta

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement? yes
4. Whether it needs to be circulated to other Benches of the Tribunal? yes

✓ 4/3/03
(A.K. Bhandari)
Member (A)

J.K. Kaushik
(J.K. Kaushik)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH ; JAIPUR.

Friday, the 12th Day of December, two thousand three.

O.A. No. 493/2002.

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

H.S. Shekhawat,
S/o Shri Bane Singh Shekhawat
R/o Dishnau House,
Devdutt Nagar,
Dhola Bhata,
Ajmer : Applicant.

Mr. C.B. Sharma: Counsel for the applicant.

Versus.

1. The Union of India through its General Manager, North Western Zone North Western Railway, Jaipur. 302 006.
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
3. Senior Divisional Personnel Officer, North Western Railway, Ajmer Division, Ajmer. : Respondents.

Mr.R.G. Gupta: Counsel for the respondents.



ORDER**Per Mr. J.K. Kaushik, Judicial member.**

It is the third journey of Mr. H.S. Shekhawat, to the Tribunal and in this Original Application he has claimed the following reliefs:

"i) that respondents may be directed to allow the applicant next higher scale of Rs. 1600-2660/5500-9000 with effect from 01.03.93 and further Rs. 6500-10500 with effect from May 1998 from the date junior so allowed by quashing charge memo dated 18.06.94 (Annex. A.11) with all consequential benefits including arrears of pay and allowances taking into consideration representation dated 21.01.2002 (Annex. A/1).

ii) that the respondents be further directed not to force the applicant to appear in selection for the scale Rs. 5500-9000, as applicant already passed selection process of lower scale by deleting name of the applicant in the order dated 04.12.2001 (Annex. A.14) and to assign correct seniority in the respective higher scales taking into consideration of seniority of lower grade."

2. The material facts necessary for adjudication of the controversy involved in this case are that the applicant was initially appointed as Commercial Clerk in the year 1972 and enjoyed his next promotion to the post of Head Booking Clerk with effect from 17.05.86, in the scale of pay of Rs. 1400-2300 (subsequently revised to Rs. 5000-8000). He became due for promotion in the pay scale of Rs. 1600-2660 and his juniors like Shri O.P. Sharma, C.G. Carolias and M.P. Jain, were allowed the benefits under the up-gradation scheme with effect from 01.03.93. At the relevant time the applicant was faced with major penalty charge sheet, which was issued to him on 30.03.87. The further facts are that the applicant



was transferred to Bhuj when the disciplinary proceedings were pending against him. By order dated 22.07.88 he was inflicted the penalty of removal from service. On appeal the same was modified to reduction to next lower grade for five years. The penalty was enhanced by higher authorities to removal again, after serving a show cause notice. The same was challenged before a coordinating Bench at Ahmedabad in O.A. No. 124/90. The same was partly allowed and the penalty order was quashed. The review application filed by the respondents was also dismissed vide order dated 04.10.93.

3. After the dismissal of the review application, the applicant was taken back on duty and the intervening period, from 31.07.88 to 31.01.94 i.e. from the date of removal to the date of reinstatement was treated as period spent on duty vide order dated 13.05.94 (A/4) as corrected by order dated 10.06.94 (A/5). The payment for the period from 31.07.88 to 21.03.90 has not been made so far, in spite of the representation made by the applicant in this regard. The charge sheet dated 30.03.87 was also dropped by the respondents themselves vide order dated 16.05.94. Subsequently another charge sheet for major penalty has been issued on 18.06.94 on the same allegations, in contravention to the order passed by the Ahmedabad Bench of the Tribunal. A notice for demand of justice was also sent by him through his counsel on 08.07.94 appraising that subsequent charge sheet cannot be issued.

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4. The applicant made another attempt by filing O.A. No. 239/96 before the Ahmedabad Bench of this Tribunal, but the same was not entertained for want of jurisdiction and came to be disposed of vide order dated 06.06.2001. The applicant submitted his objection to the Inquiry Officer on 14.12.96 and thereafter no inquiry proceedings were conducted. The applicant did not get any promotion since 1986. He was due for next promotion in the year 1993, but the same was not allowed due to existence of removal order. The removal order was quashed by the Ahmedabad Bench of this Tribunal and the respondents were directed to take a decision in the matter according to law within a period of two months. But nothing was done within the said period even though the respondents themselves dropped charges vide order dated 16.05.94.

5. During the pendency of the disciplinary proceedings and the correspondences with the respondents, some juniors to the applicant have been promoted to the next grade in the scale of pay of Rs. 5500-9000 and Rs. 6500-10500 with effect from 01.03.93 and 04.05.98 respectively, whereas the applicant is still working in the scale of pay of Rs. 5000-8000. His representation for giving him due promotion is still pending. He is similarly situated to that Shri Bhanwari Lal Meena and he has passed the selection of the lower grade and there is no need to pass the selection of the higher grade.



He is not even allowed the promotion on adhoc basis. He had earlier approached this Tribunal vide O.A. No. 391/02, but the same was allowed to be withdrawn with liberty to file fresh O.A.

6. The salient grounds on which the applicant has filed this O.A. have been enunciated in para 5 and its sub paras. We shall deal with the same in the later part of this order.

7. The respondents have resisted the claim of the applicant and have filed exhaustive reply to the O.A. They have taken the preliminary objection of limitation in filing the O.A. and have averred that the O.A is barred by limitation as per Sec. 21 of the Administrative Tribunals Act, 1985 and the O.A is liable to be dismissed on this ground alone. He is not entitled to the promotion in the higher grade with effect from 01.03.93. He was entitled for promotion only subject to qualifying in the written examination held on 04.12.2001 (Annex. A.14), result of the same is still pending. The next ground of defence of the respondents is that the applicant is also not entitled to get promotion in the scale of pay of P.s. 5500-9000 with effect from 01.03.93 and the benefit of upgradation is not applicable to him at this stage. There is no dispute that the applicant was issued with the charge sheet and he was removed from service, the penalty was modified and again the penalty of removal from service was imposed. He has also filed another O.A before the Ahmedabad Bench of this Tribunal and the

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period from 31.07.88 to 26.02.89 has been treated as spent on duty and a fresh charge sheet has been issued on 18.06.94, since the respondents were given liberty to proceed further with the inquiry but due to the stay order of the Ahmedabad Bench of this Tribunal, the departmental inquiry in terms of the fresh charge sheet was withheld. The same is now started after the disposal of the said O.A. Further when the applicant has not been granted promotion in the scale of Rs. 5500-9000, the question of granting further promotion does not arise. He has also failed in the selection held in the year 1985, but Shri Banwari Lal Meena had passed the selection. The next ground of defence of the respondents is that their action is quite legal and as per law, i.e where departmental enquiry is pending against an employee, the employee is not entitled to get promotion. The grounds raised in the O.A. are generally denied.

8. A short rejoinder has been filed on behalf of the applicant, wherein it has been submitted that the O.A is not hit by limitation and has reiterated the grounds raised in the O.A. It has been refuted in para 4.7 of the rejoinder that the applicant did not pass the selection for higher grade since he was not successful in viva voce. But Shri Banwarilal Meena also did not pass the said selection and this position is evident from Annex. A.15 and then also he has been allowed higher grade. Annex. R. 3 was never brought to his notice.

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9. We have heard the learned counsel for the parties at a great length and have anxiously considered the pleadings and records of this case.

10. The learned counsel for the applicant has submitted that the applicant has been consistently struggling for justice and the fresh charge sheet issued on 18.04.94, by which fresh disciplinary proceedings had been initiated is still alive. The learned counsel for the applicant has also contended that once the Court grant certain time for completion of the disciplinary proceedings and if the same is not completed within the stipulated or extended time fixed by the tribunal, any action taken beyond such period shall be nullity. In support of this contention he has placed reliance on **Praban Kumar Dutta vs. Union of India and others** [2001 (1) ATJ 404] which has also been followed by this Bench of the Tribunal in O.A No. 443/2001 **{S.K. Sharma vs. Union of India and others}**. He has next contended that once the earlier charge sheet has been dropped and subsequent charge sheet becomes nullity, there would remain nothing against the applicant so as to obstruct any of his benefits and he ought to have brought to the position as if nothing adverse remains against him. There was upgradation with effect from 01.03.93 and promotions were made on the basis of perusal of service records, which could have been aptly called as modified selection method. Three juniors to the



applicant were extended the benefits of promotion under such restructuring scheme. There was absolutely nothing adverse against the applicant except the charge sheet in question and in that case, the applicant was entitled to grant of all the departmental benefits of promotion under the restructuring scheme, wherein no positive act of selection like written test, viva voce are involved. Otherwise, also once the period from the date of removal to the date of re-instatement has been considered to be the period spent on duty for all purposes, that would have been sufficient for granting him the promotion from the due date. He has also submitted that the earlier charge sheet was dropped vide Annex. A.6 and the same no doubt indicates the intention of issuing a fresh charge sheet but the same does not contain the reasons for dropping of the earlier charge sheet. As per para 2 of the Railway Board's circular No. 171/93, it is mandatory that the letter by which the earlier charge sheet is dropped, the same must contain reasons for dropping the same in addition to indicate the intention for the issuance of fresh charge sheet. But both the conditions have not been fulfilled in this case and therefore the fresh charge cannot be sustained.

11. The learned counsel for the applicant has also submitted that even though there is no fundamental right as such for grant of promotion but there is definitely a right of consideration for promotion once the junior to the applicant fell within the zone of consideration, the applicant's case also ought to have been

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considered. But this has not been done in the instant case and the applicant has been made to suffer in multiple ways even though the complete period from the date of removal to the date of reinstatement has been ordered to be treated as period spent on duty, he has not been paid the due amount for the period from 31.07.88 to 20.03.90.

12. On the contrary the learned counsel for the respondents has strenuously opposed the contentions raised on behalf of the applicant. He has submitted that the intention of the authorities for the issuance of the fresh charge sheet is very much clear from order by which the earlier charge sheet was dropped. As regards the time which was allowed by the Tribunal for conclusion of the inquiry proceedings, it cannot be understood to be mandatory and there has to be flexibility. The same can be considered only as directory and therefore there is no illegality in the action of the respondents to take further proceedings beyond the period stipulated by the Tribunal. He has countered the other arguments of the learned counsel for the applicant that for grant of promotion one need not be in service. He contended that when once the applicant was under removal orders, the question of considering him for promotion does not arise and in such cases, sealed cover procedure couldn't be adopted. There has been some delay in proceeding with the inquiry since there was an interim stay order on the disciplinary proceedings and the same could processed only after 07.08.2001,



when the O.A was returned by the Ahmedabad Bench of this Tribunal. He has also submitted that even the time fixed by the Railway Board for conclusion of disciplinary proceedings is also directory in nature and the respondents would be expected to dispose of the same. In this way he has submitted that the O.A is premature and the same cannot be entertained at this stage.

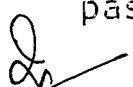
13. We have considered the rival submissions made by the learned counsel for the parties. The first and foremost question which is of seminal significance is that when once a specific time has been stipulated by the Court of law for completion of disciplinary proceedings, the department is bound to complete the same within such period or else the subsequent proceedings would be null and void. The law on this point is now well settled by a coordinate Bench of this Tribunal in **Pranab Kumar Dutta** 's case (supra) on which reliance was placed by the learned counsel for the applicant. In the said case, four months time was granted for completing the departmental proceedings. The said time was further extended by two months and a Writ Petition was also filed by the department, which came to be rejected, the departmental proceedings which were held after the expiry of the time, the order passed by the President under Rule 9 of the CCS (Pension) Rules, was held as bad in law and without jurisdiction.

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14. We also find that a similar proposition of law has been followed in the case of **K.B. Bharadwaj vs. Union of India and others** [2002 (2) ATJ477] by a coordinate Bench of this Tribunal at Lucknow, wherein the order of compulsory retirement having been passed after the time granted by the Hon'ble High Court, was held to be without jurisdiction. The relevant portion reads as under:

"12. We also find that although the Hon'ble High Court of Allahabad had directed to finalise the disciplinary proceedings within two months, the respondents took a period of 7 months in finalising the disciplinary proceedings and no application was moved before the Hon'ble High Court with a prayer to extend the period for finalising the disciplinary proceedings. The plea that the applicant took adjournment of 20 days on 10.04.2001 and his defence assistant took adjournment on 05.06.2001 on the ground of currency of summer vacations in the school cannot be accepted because the enquiry was completed on 28.06.2001 after which the respondents took about 5 months in finalising the disciplinary proceedings. The delay in finalising the disciplinary proceedings is therefore, in our opinion not explained at all and what is more important is that no application extension of time in finalising the disciplinary proceedings was ever made by the respondents before the Hon'ble High Court. The decision of the Hon'ble High Court of Allahabad (Lucknow Bench) in P.N. Srivastava(*supra*) is thus squarely applicable. Reference in this regard may also be made to the decision of the apex court in the case of M.L. Sachdeva vs. Union of India (1991) 1 SCC page 605 and the decision of the Apex Court in the case of State Bihar and others vs. Subhash Singh (1997) 4 SCC 430 in which the Apex Court came to the conclusion that where direction could not be complied with within the period allowed by the court, an application for extension of time for with the directions was necessary."

The Original Application came to be allowed and the penalty order passed beyond the extended time was quashed.



15. Applying the aforesaid proposition of law, we find that the Ahmedabad Bench of the Tribunal granted two months time from the date of receipt of a copy of the order passed in O.A. No. 124/90(Annex. A.2). The copy of the said order was served on the respondents on 11.11.92 and therefore the time granted by the Tribunal expired on 11.01.93 and no further proceedings were held in the matter. Thus the entire action after the said date i.e. 11.01.93, shall have to be treated as nullity. Therefore, the subsequent disciplinary proceedings deserve to be quashed on this ground alone.

16. Before advertiring to other grounds, we feel it expedient to dispose of the peripheral issue regarding the preliminary objection of limitation. The subject matter of this case primarily relates to disciplinary proceedings which even now continuing i.e. long after the period prescribed by the Ahmedabad Bench of this Tribunal. Otherwise also the other main relief which the applicant has claimed is regarding grant of benefits under upgradation as per restructuring scheme. It has been consistently held by various courts including the Supreme Court that upgradation is not a promotion and one gets higher scale of pay while performing the same duty. As regards the grant of higher scale of pay, such matters give rise to continuing cause of action and cannot be considered as hit by limitation. The relief however, can be restricted and this is so held by the Apex Court in the case of M.R.



Gupta vs Union of India [AIR: 1996 SC 669]. As per Article 104 of Limitation Act claim for arrears on account of wages would be allowable for last three years. Therefore the preliminary objection of the respondents cannot be sustained. Even the respondents themselves have submitted in the reply that the case of the applicant for promotion could not be considered due to pendency of the disciplinary proceedings and therefore, it does not sound well from the side of the respondents that the O.A is hit by law of limitation.

17. The respondents in para 4.7 of their reply have averred that the applicant appeared for the selection to the promotion in scale of Rs. 425-700 in 1995 and passed in written test but failed in viva and thus did not clear the said selection test and his name was not placed on the panel. Therefore, his case is different from that of Shri Banwari Lal Meena. This position has been refuted in the rejoinder wherein it has been categorically indicated that Shri Banwari Lal Meena also did not pass the said selection. We were curious to ascertain the factual aspect and perused the very panel dated 21.10.85 (R.2). We find that the name of Shri Banwari Lal Meena was also not placed on the select panel and the contention of applicant is correct. However, in the instant case, the applicant's stress is for consideration of benefits under restructuring scheme dated 27.01.93, primarily on the ground that his number of juniors were so considered and granted the due benefits. Thus failing of

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the applicant in the selection conducted in the year 1985 has lost its significance and the same neither has any bearing on the issue involved in the instant case nor influence the claim in any manner.

18. Now advertiring to another important ground in this case with regard to dropping of charge sheet vide letter dated 16.05.94, Annex. A/6, it would be expedient to extract the relevant portion from the Railway Board's circular No. PBE No. 171/93, which reads as under:

"2. The matter has been examined and it is clarified that once the proceedings initiated under rule 9 of rule 11 of RS (D&A) Rules, 1968 are dropped, the disciplinary authority would be debarred from initiating fresh proceedings against delinquent employee unless the reasons for cancellation of the Original charge memorandum or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without any prejudice to further action which may be considered in the circumstances of the case. It is, therefore, necessary that when intention is to issue a fresh charge sheet subsequently, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action indicating the intention of issuing charge sheet a fresh appropriate to the nature of the charges."

The contents of the aforesaid Railway Board circular are self-explanatory and applying the same to the instant case, there remains hardly anything to counter the contention of the learned counsel for the applicant in as much as the order dropping the charge sheet contains only the following:

" The office memo of even no. dated 30.03.87 on SF is dropped without prejudice to take further action.

Please acknowledge the receipt.

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Therefore, no reasons are indicated therein as per the mandate of the Railway Board's orders. Therefore, the twin principal conditions for issuance of fresh charge sheet have not been fulfilled and on this ground also fresh charge sheet issued vide Annex. A.11 does not stand to the scrutiny of law and shall have to be declared as invalid on this ground alone. We are not impressed with the contention of the learned counsel for the respondents that the respondents have indicated their intention to issue fresh charge sheet as per the very order itself.

19. Now the question regarding the grant of due benefits in case one is exonerated in disciplinary case, the contention of the learned counsel for the applicant is that he should be treated as if nothing adverse stood against him seems to be quite reasonable and we subscribe to his views. On the other hand the contention of the learned counsel for the respondents that during the period of removal from service, the applicant's case could not have been considered for promotion, though true, but his case ought to have been considered after dropping of the charge sheet and in this way, the case of applicant shall have to be considered for various promotions at par with his juniors. We find support to this proposition of law as per the verdict of the Apex Court in the case of **Union of India and others vs. K.V. Jankiraman and others** [AIP 1990 SC 2010] and also from the Railway Board's circular No. 13/93 RBE.

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20. Now looking the matter from yet another angle, the charge sheet against the applicant came to be dropped on 16.05.94 and the fresh charge sheet was issued only on 18.06.94 and during the period up to 18.06.94 there was nothing against him and if at all the charge sheet can be said to be pending it was only from 18.06.94 and thus the applicant's case ought to have been considered for promotion no sooner the charge sheet was dropped. It is also well settled by the Apex Court in one of the celebrity judgements in the case of **Bank of India vs. Degala Suryanarayana** [1999 SCC (L&S) 1036], wherein their Lordships have held that subsequent events would not affect the benefits which have already become due to an employee and in the instant case, the controversy involved is covered on all fours by the same. Thus the applicant's case ought to have been considered for promotion under the modified selection scheme with effect from 01.03.93 in the year 1994 itself, by convening a review DPC.

21. There is one more facet of this case. In O.A. No. 124/90, which was filed by the applicant before the Ahmedabad Bench of this Tribunal the respondents were given liberty in the following terms:

The respondents would be at liberty to proceed further with the inquiry from the stage of giving an opportunity to the applicant to make representation against the findings of the inquiry officer and to take decision according to law. However, if the respondents so decide to proceed with the inquiry, they should do so within a period of two months from the receipt of this order, giving the

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opportunity to the applicant to make representation as stated above."

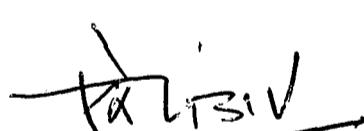
Though this ground has not been raised by the learned counsel for the applicant, we find that there was no direction to the respondents for dropping the charge sheet and initiate fresh proceedings. The direction was only from the stage of making representation against the findings of the inquiry officer. Thus the issuance of the fresh charge sheet was not contemplated in the order of the coordinating Bench of the Tribunal. Therefore by no stretch of imagination, the action of the respondents in the issuance of the fresh charge sheet could be said to be in order; rather the same can be aptly termed as in flagrant violation of the order of this Tribunal and thus the charge sheet and subsequent disciplinary proceedings cannot stand scrutiny of the law and the same would be without jurisdiction.

22. Before parting with the case, it would be pertinent to notice that while we have no hesitation in following the verdicts of the coordinate Benches in the cases of Pranab Kumar Dutta (supra) K.B. Bharadwaj (supra) regarding the action of the respondents beyond the time limit fixed by the court, the action of the respondents should be regarded as nullity. We hasten to add that in case the respondents are allowed to have free hand to pass any order beyond the time limit prescribed by the Court such acts are likely to shake the confidence of the public in judicial system and there would be no sanctity to the orders passed by the Court of law. Not only that even filing of applications requesting extension

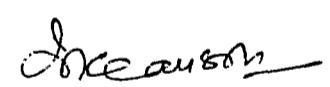
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of time to implement the orders passed by the Courts would also loose its significance and this may lead to uncertainties. Thus the significance of adhering to the time schedule specified in the judgement by the parties can hardly be overemphasised.

23. In view of what has been stated and discussed above, the O.A has ample merit and substance and the same is allowed. The impugned charge sheet, dated 18.06.94 (Annex. A.11) and all subsequent proceedings thereof are hereby quashed. The applicant shall be entitled to all consequential benefits, including consideration for promotion, etc. at par with his juniors as if no impugned charge sheet and subsequent proceedings thereof were in existence and in case found fit for promotion the actual arrears of difference shall be restricted to three years prior to the date of filing of this Original Application. In the facts and circumstances of this case, the parties are directed to bear their own costs.


(A.K. BHANDARI)

Administrative Member


(J.V. KAUSHIK)

Judicial Member

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