

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.No.210/00126/2017

Dated this Thursday the 9th day of February, 2017

**Coram: Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Ms.B. Bhamathi, Member (A).**

P.R. Ranpise,
Working as Head Booking Clerk,
Karjat,
R/at Quarter No.MS/RB/II/8/6,
Railway Colony, GTP Nagar,
Mumbai. .. Applicant.

(By Advocate Shri V.A. Nagrani).

Versus

1. Union of India, through
the General Manager,
Central Railway,
Headquarters Office,
C.S.T., Mumbai.400 001.
2. Divisional Railway Manager,
Mumbai Division, Central Railway,
C.S.T., Mumbai - 400 001.
3. Sr. Division Commercial Manager,
Mumbai Division, Central Railway,
C.S.T. Mumbai - 400 001. .. Respondents.

Order reserved on : 07.02.2017

Order delivered on : 09.02.2017.

O R D E R

Per : Arvind J. Rohee, Member (J)

The applicant who is presently working as Head Booking Clerk at Karjat in Raigad District under the Respondent No.2 and 3 approached this Tribunal under Section 19 of the Administrative Tribunals Act,

1985 seeking for the following reliefs:-

"a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned order dated 14.12.2016 with all consequential benefits.

b. This Hon'ble Tribunal may further be pleased to direct the Respondents to treat the period from 2001 to 2006 as on duty and the Applicant be paid full pay and allowance for the intervening period.

c. Costs of the application be provided for.

d. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The applicant was initially served with a Memorandum dated 14.02.2000 (Annexure A-2) raising certain charges against him. He was found guilty and was removed from service by the Disciplinary Authority vide order dated 19.03.2001 (Annexure A-3). He has challenged the said order before the Appellate Authority who has converted the punishment to that of compulsory retirement vide order dated 14.06.2001. Dissatisfied with it the applicant knocked on the doors of the Revising Authority, who by its order dated 17.09.2001 (Annexure A-4) dismissed the Revision Petition and confirmed the order passed by the

Appellate Authority. The said order was then challenged before this Tribunal by the applicant in the previous O.A.729/2001. By the order dated 03.09.2004 (Annexure A-5) this Tribunal quashed the orders and directed reinstatement of applicant with a direction to hold denovo inquiry.

3. The respondents challenged the above order of this Tribunal before the Hon'ble High Court in Writ Petition No.10789/2004. Vide order dated 23.12.2005 (Annexure A-6) the said Writ Petition was disposed off with a direction to the respondents that it will be open for them to hold denovo inquiry in terms of the directions contained in the order dated 03.09.2004 passed by this Tribunal.

4. It is the grievance of the applicant that in spite of the order passed by this Tribunal in the previous O.A. to hold denovo inquiry, which was confirmed by the Hon'ble High Court, no steps were taken by the Disciplinary Authority to hold the denovo inquiry. The applicant was however reinstated vide office order dated 01.02.2006 (Annexure A-7).

5. The applicant then submitted a representation dated 25.03.2008 (Annexure A-8) to the respondent No.2 with a request to set aside the impugned charge-sheet dated 14.02.2000 as the same was in violation of

Railway Servants (Discipline & Appeal) Rules, 1968. A reference to C.A.T., Hyderabad Bench judgment dated 14.10.2003 is also made. However, since nothing was heard the applicant submitted another representation dated 21.11.2016 (Annexure A-9). Thereafter, the respondent No.3 the Disciplinary Authority passed the impugned order dated 14.12.2016 (Annexure A-1) imposing the penalty of reduction by two stages in the same time scale of pay for a period of two years with postponement of future increment. The applicant has, therefore, challenged, the said order in this O.A.

6. On 07.02.2017 when the matter was called out for admission, we have heard the submissions of Shri V.A. Nagrani, learned Advocate for the applicant. We have carefully perused the case record.

7. It was submitted by learned Advocate that there was delay of about 11 years in passing the impugned order after decision of the Hon'ble High Court. It is also stated that the Disciplinary Authority has not followed the direction issued by the Hon'ble High Court to hold denovo inquiry and hence entire charge-sheet is vitiated being illegal. He, therefore, approached this Tribunal without challenging the impugned order passed by the Disciplinary Authority before the Appellate Authority,

since the said order is clearly in violation of the provisions of law.

8. It is obvious from record that the Disciplinary Authority does not appear to have held denovo inquiry and straight away issued the impugned order imposing lesser punishment on the applicant, but after carefully perusing the entire record of the inquiry. Under the Railway Servants (Discipline & Appeal) Rules, 1968 statutory remedy of the appeal against the order of Disciplinary Authority is provided. Obviously the applicant has not exhausted the said remedy. He also kept mum for 8 years after submitting first representation and has thus contributed to the delay in passing impugned order. In view of this and as per the provisions of Section 20(1) of the Administrative Tribunals Act, 1985 since the applicant has not exhausted statutory remedy of appeal, the O.A. cannot be admitted for consideration on merit. The present O.A., therefore, cannot be entertained since it is premature for failing to exhaust statutory remedy of appeal.

9. During the course of arguments, learned Advocate for the applicant was called upon if he is prepared to withdraw the present O.A. with liberty to approach the appropriate appellate authority with a

time frame. However, he did not concede to it and left it to the discretion of this Tribunal to pass the appropriate order.

10. From the above discussion it is obvious that the O.A. is premature since the statutory remedy of appeal against the order passed by the Disciplinary Authority is not exhausted by the applicant. The O.A. is, therefore, dismissed in limine at admission stage as not maintainable.

(Ms.B. Bhamathi)
Member (A)

(Arvind J. Rohee)
Member (J) .

H.