

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.110/2013

Date of Decision: 21st November, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

D.M. Desai, aged about 68 years
Retired Chief Booking Supervisor
Under Divisional Railway Manager,
Mumbai Division, Mumbai Central,
Mumbai – 400 008.

Residing at : SNEHHAL VILLA,
Shanti Niketan Marg
Tithal, VALSAD – 390 001
GUJARAT.

Mob.09099927283

... *Applicant*

(By Advocate Shri R.G. Walia)

Versus

1. Union of India
Through General Manager,
Western Railway, HQ Office,
Churchgate, Mumbai – 400 020.
2. Divisional Railway Manager
Mumbai Division, Western Railway,
Mumbai Central, Mumbai – 400 008.
3. Senior Divisional Commercial Manager,
Mumbai Division, Western Railway,
Mumbai Central,
Mumbai – 400 008.

... *Respondents*

(By Advocate Shri V.S. Masurkar)

ORDER (ORAL)

Per : Shri R. Vijaykumar, Member (A)

This Original Application has been
filed on 15.02.2013 under Section 19 of the

Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) this Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the continuation of the departmental inquiry in respect of the charge sheet dated 28-07-2000 and after considering this validity and propriety and legality quash and set aside the same.

b. This Hon'ble Tribunal will be pleased to hold and declare that the departmental action against the applicant is not required to be continued in view of the circumstances and facts submitted and narrated as aforesaid.

c. This Hon'ble Tribunal will pleased to order and direct the respondents not to continue with the action/inquiry and/or impose any punishment upon the applicant pursuant to the chargesheet dated.

d. This Hon. Tribunal will be pleased to order and direct the respondents to make payment to the applicant of rupees 1,25,296=00 is in the course and in the /only as withheld by them from the retirement dues of the applicant with an interest of Rs.18 percent per annum till the payment is actually made.

e. And any other or further order or direction may be given to the respondents as this Hon. Tribunal may deem fit and necessary in the circumstances of the case;

f. Cost of this Application may be provided for."

2. The applicant was serving as Chief Booking Supervisor with the respondents when he was served a chargesheet dated 28.07.2000 for certain alleged delinquencies in the performance of his duties alongwith other officials and inquiry was conducted. In the meanwhile, the applicant superannuated on

31.12.2005 and the inquiry report alongwith the views of the General Manager of the Western Railway (Respondent No.1) on the case including on the penalty proposed were referred to the Railway Board for obtaining orders of the President. The applicant had filed an OA No.45/2006 seeking the relief of quashing this chargesheet and seeking certain pensionary benefits, during the hearing of which, the applicant did not press the aspect of his challenge to the chargesheet and on the basis of his confining himself to arguments in relation to the 2nd clause of claiming certain pensionary benefits, orders were passed on 15.09.2006 with directions to the respondents. We note that this OA was thereafter filed when no inquiries had been concluded on the disciplinary inquiry by the respondents and applicant has now revived and reiterated his plea for quashing of the chargesheet, on the grounds that there is a grave delay in completing the inquiry proceedings. Further, as a result of non-completion of the inquiry proceedings and absence of orders, there are certain

payments due to the applicant that have been withheld which are of the order of Rs.1.25 lakhs which have caused considerable loss to the applicant. The respondents have filed their reply through an affidavit of the Chief Personnel Officer of the Western Railway of the respondents on 11.03.2013 stating that they had been asked by the Railway Board, who have not been impleaded in the present OA, in their letter dated 27.08.2012 ((Annexure R-1)) to furnish certain materials and parawise remarks etc. for obtaining the views of the UPSC and this was sent to them in the required details as stated in the affidavit above. The respondents have also filed a detailed reply to the main OA and no rejoinder has been filed thereafter.

3. During the hearing held on 26.08.2019, learned counsel had been directed to obtain fresh instructions on whether final orders had been passed in the matter by the respondents and this was reiterated during the hearing held on 18.11.2019 for which time had been given for reporting the status of the matter. However, learned counsel for

the respondents reports that he has not received any further instructions on the matter and no final orders are available with the local respondents that could be communicated to the applicant.

4. The matter was heard today and during arguments, learned counsel for the applicant refers to the rulings of the Hon'ble Apex Court in Civil Appeal No.958/2010 (Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr.) in which the Hon'ble Apex Court had held that all the principles of natural justice had been observed while conducting the inquiry and even noted that the punishment imposed on the said appellant also appeared to be just and proper but on the aspect of unduly long suspension period and departmental proceedings which had taken more than 9 years to conclude, no justification was forthcoming from the respondents to explain the undue delay except to blame the applicant's conduct which the Hon'ble Apex Court did not accept as justifiable. The Court then expressed the following views on this aspect:-

"33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."

5. These views of the Hon'ble Apex Court were contained in a circular No.02/01/2016 dated 18.01.2016 of the Central Vigilance Commission on the subject of '*timely completion of disciplinary proceedings and departmental inquiry proceedings*'. In its order, it has adopted the views of the Hon'ble Apex Court for the purpose of advising that in the departmental inquiry, the Disciplinary Authority has the duty to ensure that the work of the Inquiry Officer and the process of the inquiry is expedited and they also suggested the schedule for this purpose. In respect of further action of the Disciplinary Authority, the provisions of the statutes would, of course apply.

6. We have carefully considered the case law cited by the learned counsel for the applicant and the pleadings on record and heard learned counsel for the respondents.

7. The plain fact in this matter is that the local office of respondents have replied to the Railway Board even before March 2013 with all necessary documents and remarks that were summoned and it is now more than 6^{1/2} years that no orders have emanated from the Railway Board. Although the Railway Board have not been impleaded as respondents in this matter, there is an obligation on the impleaded local respondents to obtain orders of the President and serve it on the applicant within a reasonable time. In this case, the period of time that has elapsed from the date of chargesheet of 2000, the 1st OA filed in 2006, and even from the year 2012 is considerable. There is, therefore, a grave delay in passing orders in this matter which directly invites the adverse implications of the directions of the Hon'ble Apex Court in Prem Nath Bali (supra).

8. In the peculiar facts and circumstances of the case as discussed above, the disciplinary proceedings pending against the applicant are quashed and set aside on the ground of delay and the chargesheet issued to him is also set aside. All consequential benefits and pending payments which are stated to be a security deposit shall be paid to the applicant with 6% simple interest within a period of eight weeks from the date of receipt of a certified copy of this order.

9. In view of the above terms, the Original Application is allowed. There shall be no order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

ma.

JD
25/11/19