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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 720 of 1995

New Delhi, dated this the 23rd Sept., 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Bhagirath,
S/o Shri Ram Das,
R/o House No. 158-E,
Punjab Lane,
Ghaziabad,
U.P. APPLICANT

(By Advocate: Shri S.S.Tiwari)

VERSUS

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. A.E.N., Northern Railway,
Ghaziabad,
U.P.
3. P.W.I(II), Northern Railway,
Ghaziabad,
U.P. RESPONDENTS

(None appeared on the
date of order)

ORDER (Oral)

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns Respondents' order
dated 14.11.94 (Annexure A) removing him from
service and order dated 16.11.94 (Annexure A)
directing him to vacate the Railway Quarter
in his occupation.

(Signature)

2. We note that initially Respondents had passed orders dated 11.5.94 (Annexure-B Only) imposing a penalty of reduction into lower stage on the basis of enquiry dated 8.5.94 and applicant was given the prescribed 45 days' time to appeal against the said order. Applicant did appeal against the order imposing the penalty of reduction to lower stage which was dismissed by the Appellate Authority vide order dated 8.8.94 (Annexure-B) and applicant's counsel Shri Tiwari informs us that the said penalty order and disciplinary order have separately been impugned in another DA No. 2293/94, which is still pending before the Tribunal.

3. Meanwhile Respondents by the impugned order dated 14.11.94 and 16.11.94 have removed the applicant from service and have directed him to vacate the Railway premises in his occupation.

4. We had heard Shri S. S. Tiwari for applicant on 22.9.97. None appeared for the Respondents even on the second call. However, as we were in the process of dictating the judgment on the basis of Shri Tiwari's submissions and the short reply filed by respondents (which itself was filed with great delay and had been kept in part 'C' of the record) respondents' counsel Shri Dhawan appeared and sought a short adjournment to study the case and make submissions. With considerable reluctance we allowed the prayer and adjourned the case for today, but none appeared for respondents even on second call.

5. On a perusal of the short reply filed by the respondents we find that the only ground

taken by them is that the applicant has not exhausted the departmental remedy of filing an appeal against the impugned order of removal.

6. In this connection Shri Tiwari has invited our attention to Para 7 of the CAT, Patna Bench's decision dated 30.10.86 in Umesh Rai Vs. UOI 1986 ATC 774 wherein it had been held that as that OA already stood admitted, it would not be hit by Section 20(1) AT Act merely because those applicants had not taken advantage of representing to the higher Postal Authorities for suitable reliefs. Nothing has been shown to us to lead us to believe that the aforesaid judgment has been stayed, or modified or set aside and must therefore be treated to have become final. It squarely applies to the facts and circumstances of the present case. Furthermore Shri Tiwari contends that as no enquiry was conducted ~~in~~ ~~in~~ ~~in~~ ~~in~~ ~~in~~ ~~in~~ and no enquiry report was furnished to applicant, he was not in a position to file an appeal against the impugned dismissal order.

7. In the absence of any material on record explaining the basis on which the impugned order dated 14.11.94 was passed, and in view of the inability of Respondents to explain the rationale for passing the aforesaid impugned order, we have no option but to intervene in this matter.

8. Under the circumstances, the OA succeeds and is allowed to this extent that the impugned order dated 14.11.94 and 16.11.94 are quashed and set aside. Respondents are directed to reinstate

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applicant in service forthwith, with all consequential benefits including restoration of allotment of Railway accommodation to him. In case there are any materials available with the Respondents, which justify disciplinary proceeding against the applicant it will be open to them to proceed departmentally against him in accordance with law. No costs.

A Vedavalli

(DR. A. VEDAVALLI)
Member (J)
/GK/

S.R. Adige
(S.R. ADIGE)
Vice Chairman (A)