

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2260/1996

This the 19th day of July, 2004

18

HON'BLE SHRI V.K.MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Tara Chand S/O Khub Chand,
Ex-Fireman, Grade 'C',
under Loco Foreman,
Northern Railway,
Tundla.

... Applicant

(By Shri B.S.Mainee, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Allahabad (UP).
3. The Loco Foreman,
Northern Railway,
Tundla (UP).
4. Divisional Mechanical Engineer (P),
Northern Railway, DRM's Office,
Allahabad (UP).

... Respondents

(By Shri M.S.Saini for Shri R.L.Dhawan, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, V.C.(A) :

Through OA No.2260/1996 applicant had challenged the penalty of dismissal from service issued by the disciplinary authority on 26.4.1995 under rule 6 (vii) to (ix) of the Railway Servants (Discipline and Appeal) Rules, 1968 passed in disciplinary proceedings against the applicant, as also order dated 26.8.1996 passed by the appellate authority maintaining the aforesaid penalty and dismissing the appeal. For the reason that applicant had suppressed the fact of his prosecution under Section 307 IPC from his superior officers and also about his

19

unauthorised absence during the period between 1978 and 1989, the said OA was dismissed vide order dated 16.3.2000. These orders were challenged before the Hon'ble High Court of Delhi in CW No.6465/2000. Before the Hon'ble High Court, the learned counsel for the petitioner had pointed out that the petitioner along with his brother Radhey Shyam who also happened to be an employee of the Northern Railway, was prosecuted in a criminal case under Section 307 IPC. Both of them were acquitted by the Allahabad High Court in the criminal case and both were awarded punishment of dismissal from service in the departmental proceedings which had emanated from the criminal case against them. It was also pointed out by the learned counsel of the applicant that in the case of Radhey Shyam, another Bench of the Tribunal vide order dated 6.4.2000 in OA No.1329/1996 under exactly similar circumstances in which the applicant was placed, had quashed the order of dismissal from service and directed the respondents to reinstate him into service with all consequential benefits. It was prayed before the Hon'ble High Court that the case be remitted to the Tribunal for fresh consideration in the light of the decision of the coordinate Bench of the Tribunal. Shri H.K.Gangwani, learned counsel of the respondents did not have any serious objection to the prayer made. As such, vide order dated 29.9.2003 in the aforesaid Writ Petition, the Hon'ble High Court set aside the Tribunal's orders for fresh consideration on merits. We have accordingly afforded fresh hearing in the matter.

2. The learned counsel of the applicant Shri B.S.Mainee reiterated the points placed on behalf of the

10

20

applicant before the High Court. The learned counsel contended that when both applicant's brother Radhey Shyam and the applicant were prosecuted under Section 307 IPC and were ultimately acquitted in the criminal case and when applicant's brother's OA No.1329/1996 against his dismissal from service was allowed with a direction to respondents for his reinstatement into service along with consequential benefits, applicant should also be meted out the same treatment in this OA through which he had challenged the penalty of dismissal from service on similar facts and circumstances. The learned counsel of applicant further pointed out that directions of the Tribunal contained in order dated 4.4.2000 in the case of Radhey Shyam have been implemented by the respondents by taking him back into service with consequential benefits.

3. The learned counsel of the respondents stated that the applicant was initially sentenced to five years' rigorous imprisonment in the criminal proceedings on 5.5.1980 and later on released on bail. He could not be taken on duty during the pendency of his appeal and after its decision, he was taken on duty after completion of formalities. Later on D&AR proceedings were started against the applicant. He had concealed the fact of his conviction on 5.5.1980 for a period of more than nine years.

4. We have considered the rival contentions.

5. In the counter affidavit respondents have stated that as the criminal appeal was pending in the Allahabad High Court against the applicant's conviction

21

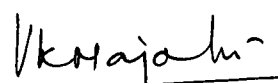
for five years RI, he could not be considered to be reinstated into service. He was taken on duty after his appeal was allowed by the High Court as well as directions of this Tribunal's interim order dated 13.12.1990 in OA No.2182/1990. Obviously, applicant was not taken on duty though he had been let out on bail in view of pendency of his appeal in the High Court. He was taken back on duty only after decision in the appeal and the Tribunal's interim orders dated 13.12.1990. In this view of the matter, absence from duty cannot be attributed to the applicant when the respondents had themselves not allowed him to resume duty in view of pendency of the appeal in the criminal case.

6. Applicant's case is fully covered by order dated 4.4.2000 of this Tribunal in OA No.1329/1996 in the case of Radhey Shyam. Accordingly, impugned orders dated 26.4.1995 and 26.8.1996 imposing penalty of dismissal from service upon the applicant are quashed and set aside and the OA is accordingly allowed. Respondents are directed to reinstate the applicant into service, if he has not retired from service, within a period of three months from the date of receipt of a copy of this order, with all consequential benefits.

7. The OA is allowed in the above terms. No costs.


(Kuldip Singh)
Member (J)

/as/


(V. K. Majotra)
Vice-Chairman (A)

19.7.04.