

Central Administrative Tribunal, Principal Bench

O.A.No.49/96

Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri S.L.Jain, Member(J)

New Delhi this the 19th day of March, 1999

Shri Patras
s/o Shri Heera Lal
resident of 85 Civil Lines
Mission Compound
Bareilly (UP).

... Applicant

(By Shri Mahesh Srivastava, Advocate)

Vs.

1. The Chairman
Railway Board
Govt. of India
Rail Bhawan
New Delhi.
2. The General Manager
North East Railway
Gorakhpur (UP).
3. The Divisional Railway Manager
North East Railway
Izzatnagar
Bareilly (UP).

... Respondents

(None)

O R D E R

Delivered by Hon'ble Shri S.L.Jain, Member(J)

This is an application under Section 19 of the Administrative Tribunal Act 1985 for grant of the benefits of the judgement dated 5.8.83 rendered by the Hon'ble Supreme Court of India in CA No 4681-82/92 to the applicant.

2. There is no dispute between the parties in respect of the fact that the applicant was Driver 'A' and was removed from service vide communication dated 3rd February 1981 under Rule 14(2) of the Railway servant (Discipline and Appeal Rules) 1968 without holding enquiry alleging that no departmental enquiry was possible. Applicant filed petition against the order of removal and the same was decided by the Hon'ble Supreme

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Court of India while deciding the case, i.e., Union of India Vs. Tulsiram Patel. Thereafter the applicant filed an application under Section 19 of the Administrative Tribunal Act 1985 before the Allahabad Bench of the Central Administrative Tribunal which was decided vide a common judgement rendered by the Tribunal in Ashok Kumar Vs. Union of India in OA No 309/81, the applicant filed Review Application under Rule 25 of the Railway servant (Discipline and Appeal) Rules 1968 on 18.4.88 and thereafter filed another application before the Administrative Tribunal vide OA No. 2631/88, the same OA was dismissed, the applicant filed another OA before the Principal Bench which was also dismissed. The applicant represented the matter vide representation dated 22.6.1995 but no orders have been passed on the same.

3. The applicant's grievance is that the Apex court of
land in CA No. 4681-82 of 1992 in Union of India Vs. R.Reddappa
and others has directed as under :

(i) Employees who were dismissed under rule 14(2) for having participated in the Loco staff strike of 1981 shall be restored to their respective post within a period of three months from today.

(ii) (a) Since more than three years have elapsed from the date of the orders were found to be bad on merits by one of the Tribunals, it is just and fair to direct the appellant to pay the employees compensation equivalent to three years salary inclusive of dearness allowance calculated on the scale of pay prevalent in the year and judgement was delivered, i.e. in 1990.

(b) This benefit shall be available even to those employees who have retired from service. In those cases where the employees are dead the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death.

(iii) Although the employees shall not be entitled to any promotional benefit but they shall be given notional continuity from the date of termination till the date of restoration for purpose of calculation of pensionary benefits. This benefit shall be available to retired employees as well as to those who are dead by calculating the period till date of retirement or death."

4. As the applicant was removed without holding enquiry and the Apex Court of Land has directed to file revision/review petition before the Appellate Authority/Review Authority, has filed review on 30.9.85 and thereafter he filed an application before the Central Administrative Tribunal, Allahabad Bench, which was dismissed as the counsel of the applicant could not appear before the Tribunal at the time of hearing. By that time R.Reddappa's judgement was pronounced by the Supreme Court of India and it covers all the employees who were removed and action was taken under Rule 14(2) of the Railway servant (Discipline and Appeal) Rules 1968 the applicant was also removed on the alleged participation in the strike in the year.

5. The respondents stated that this Tribunal has no jurisdiction to hear and decide the matter in controversy. The claim of the applicant is barred by limitation and principles of resjudicata applies as it is 4th round of the litigation.

6. It is true that the Apex Court of the Land has laid down the principles for dealing the employees who had been dismissed under Rule 14(ii) of the Railway Servant (Discipline and Appeal) Rules 1968 which are stated above in Para No.3. Both the parties have failed to file the judgement of the case in which the applicants case was also decided by the Apex Court of the Land.

7. We have gone through the Judgment reported in (1985) 3 SCC 398, Union of India & Another Vs. Tulsiram Patel along with other Civil Appeals and Writ Petitions and find that Writ Petitions and Civil Appeals in respect of Railway employees whose services were determined due to their taking part in strike in 1981 were allowed and impugned orders against the

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petitioners are declared to be void and quashed with no order as to costs (Page 527). Hence we reach to the conclusion that after the said judgment the applicant was permitted to pursue his remedy by way of revision or review as the case may be.

8. Both the parties are in agreement with the facts that the applicant's OA before the Allahabad Bench and before the Principal Bench No.2361/88 was dismissed for the same relief. It is true that the Principal Bench has also decided the matter against the applicant and the same order is final one.

9. The defence of the respondents is that this Tribunal has no jurisdiction to decide the matter and the applicant claims the jurisdiction on the basis of the fact that he has filed representation before the Railway Board. Railway Board is situated at Delhi, passes the order at Delhi, hence part of cause of action arises at Delhi. Hence this Tribunal has jurisdiction to decide the matter.

10. The Applicant's counsel relied on Civil Appeal No. 1950-61 of 1997, Shri Wasan Charan Biswal, EIE Vs. Union of India and others decided by the Apex Court of the land and submitted that what might be the situation whether the claim is dismissed because the appeals filed had already been dismissed the judgement passed in Union of India and Others Vs. R.Reddappa comes in to play and the benefit of the same judgement was available to the persons concerned. We agree to that extent but in the present case after the pronouncement of the judgement by the Apex Court of the land in Union of India and Others Vs. R.Reddappa and another the Central Administrative Tribunal, Allahabad and the Principal Bench, Central Administrative Tribunal, New Delhi has rejected the claim of the applicant

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against which the applicant did not choose to file either a review application or to move the Apex Court of the land, in such circumstances when the judgement in person exists against the applicant it is not proper for us to reconsider the matter again on the principles of resjudicata.

11. The Apex Court of the land has delivered the judgement Union of India & Others Vs. R.Reddappa on 5th August 1993, the applicant is pursuing the matter and his last representation is dated 22.6.95 which was not decided and hence this OA is filed on 3.10.1995. It is not the successive representation which gives a cause of action in favour of the applicant. His application is also barred by limitation.

12. In the result the OA is liable to be dismissed and is dismissed accordingly. Parties shall bear their own costs.

S.L.JAIN
(S.L.JAIN)
Member(J)

/Amit/

R.K.AHOOT
(R.K.AHOOT)
Member(A)