

Central Administrative Tribunal
Principal Bench, New Delhi.

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OA-150/94
MA-162/94

New Delhi this the 18th Day of August, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Acting Chairman
Hon'ble Mr. B.N. Dheundiyal, Member(A)

Shri Prithi Raj,
S/o Shri Rishi Pal,
Ex. Substitute Loco Cleaner,
Railway Station,
Lakshar.

Applicant

(By advocate Shri B.S. Mainee)

versus

1. Union of India,
through the General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divl. Railway Manager,
Northern Railway,
Moradabad.

Respondents

(By advocate Shri H.K. Gangwani)

ORDER(ORAL)
delivered by Hon'ble Mr. Justice S.K. Dhaon, Acting Chairman

The applicant was subjected to disciplinary proceedings. A memorandum alongwith charges was served upon him. To the charges, a list of documents, sought to be relied upon by the department was also supplied to the applicant. An Enquiry Committee was appointed. It submitted its report to the Disciplinary Authority, who, in turn passed an order punishing the applicant by removing him from service. We are informed that the appeal preferred by the applicant too has been dismissed.

In this O.A., the applicant came out with a specific case that against the order of the Disciplinary

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Authority he preferred an appeal and the same was pending. Having waited for six months, he preferred a revision application on which too, no decision was taken. He, therefore, came to this Tribunal by means of O.A. on 19.1.1994. Obviously, in the O.A., the applicant has merely challenged the order of the Disciplinary Authority.

This O.A. is accompanied by an application seeking the condonation of delay. A reply has been filed on behalf of the respondents. We shall deal with the question of limitation a little later.

The order of the enquiry committee speaks for itself. It proceeds on the assumption that since the applicant failed to appear in the enquiry proceedings despite due opportunities; he by necessary implication accepted the correctness of the charges levelled against him. Under the head 'findings' the Enquiry Committee finds "All this goes to prove that he is avoiding to participate in the enquiry as no grounds of his defence are available with him. The Board of enquiry therefore hold him responsible of the charges mentioned in the above referred SF-5 exparte. He is accordingly responsible for securing employment by fraudulent means on production of fake and tampered school Certificate and being not eligible having rendered only 104 days service lesser than the required days of 120 days." We may now read the order of the Disciplinary Authority. It has been passed on a printed proforma. The Authority gave the following reasons:-

" Non participation in enquiry proves that you secured employment by fraudulent means

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producing false School Certificate and having rendered 104 days service lesser than 120 days."

The enquiry committee and the disciplinary authority acted illegally, if not perversely, and recorded the finding of guilt of the applicant on the ground that he failed to participate in the disciplinary proceedings. The order of the Disciplinary Authority is, therefore, not sustainable.

In paragraphs 4.18, 4.20 and 4.24 of the O.A., the averments, as material, are these; the applicant preferred an appeal to the Sr. Divisional Mechanical Engineer on 25.10.1991. Having waited for more than six months, he submitted a revision application to the General Manager, Northern Railway, Baroda House, New Delhi on 17.7.1992. His revision application having not been decided, he sent a reminder to the General Manager, Northern Railway on 20.01.1993.

In the counter-affidavit filed on behalf of the respondents, the replies to the afore-mentioned averments are these. The appeal has no date on it. The appeal was duly considered by the Appellate Authority and he passed a speaking order on 13.2.1992. There is no denial of the averment of the applicant that he preferred a revision application and thereafter he also sent a reminder. There is no whisper of the revision application of the applicant in the reply filed on behalf of the respondents.

In the application seeking the condonation of delay, the averments made in the O.A. as referred to above have been substantially reproduced.

A reply has been filed to the contents of the miscellaneous application seeking the condonation of delay. Therein, the material averments are these. The

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application for condonation of delay deserves to be dismissed inasmuch as there is not a word as to why the delay has occurred on day today basis as per the law laid down by the Supreme Court. In order to get the delay condoned, the applicant should have explained each day's delay satisfactorily. Since there is no explanation for the delay caused in filing the O.A., the M.A. deserves to be dismissed in limine and consequently the O.A. also deserves to be dismissed on the ground of limitation.

It is to be noted that in the counter-affidavit filed on behalf of the respondents and even in the reply filed to the miscellaneous application of the applicant, there is no mention as to whether in fact the order of the Appellate Authority was ever communicated to the applicant and if so on what date. As already stated that the fact that the applicant preferred a revision application has not been adverted to either in the reply filed or in the counter-affidavit. The learned counsel for the respondents points out that the averment of the applicant that he preferred a revision application has been denied. This, in our opinion, is not a satisfactory reply. The learned counsel pleaded that we should grant him time to produce the relevant record which may indicate the fact as to whether the Appellate order was communicated to the applicant and if so on what date.

We have considered the matter with anxiety and we are of the opinion that this is a fit case where such indulgence should be granted to the respondents. If the learned counsel for the respondents felt the necessity of the record, he should have been armed with

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the record today. In any view of the matter, we consider that this is a fit case where delay should be condoned.

This application succeeds and allowed. The impugned orders passed by the Disciplinary Authority and the Appellate Authority are quashed. We, however, make it clear that it will be open to the respondents to proceed with the disciplinary proceedings in accordance with law. Though this is a fit case where the applicant should be reinstated in service and also be paid his back wages, we direct that the respondents may deal with the case of back wages in accordance with law. Since we have quashed the orders of the Disciplinary Authority and the Appellate Authority on a mere technical ground, we are not awarding back wages to the applicant. However, the applicant shall be reinstated in service on the footing that the order of removal was not passed at all. It will be open to the appropriate Authority to consider the question as to what emoluments should be paid and in what manner to the applicant from the date of the passing of the order removing him from service and till reinstatement.

With these directions, this O.A. is disposed of finally.

No costs.

B. N. Dhoundiyal
(B. N. DHOUNDIYAL)
MEMBER (A)

/vv/

S. K. Dharon
(S. K. DHAON)
ACTING CHAIRMAN