

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A.No.1653/94

New Delhi, this the 24 day of September, 1994.

HON'BLE SHRI J.P.SHARMA MEMBER (J)

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER (A)

Shri Gian Singh
s/o Shri Ram Singh
r/o Qr.No.124/3,
Railway Colony, KishanGanj
Delhi.

..Applicant

(By Shri GD Bhandari Advocate)

Vs.

1. Union of India, through:
the General Manager,
Northern Railway,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road, New Delhi.
3. The Divisional Traffic Supdt.,
Northern Railway,
State Entry Road, New Delhi.

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

This is an application filed on 17-8-94 under section 19 of the A.T.Act 1985 filed by Shri Gian Singh former Booking Clerk, Railway station, New Delhi praying for quashing of the order of removal from service dated 1-8-1994 (An.A6 to the OA) and for consequential benefits. At the outset we pointed out that the O.A. is not maintainable as being premature since the applicant has not invoked the statutory provision of appeal available in the relevant Discipline & Appeal Rules and as per section 20 of the AT Act 1985, the application cannot be entertained.

2. The 1d. counsel for the applicant explained the background to this case. The applicant had been imposed the penalty of removal from service vide order dated 12-1-90 (An.A1) on the same charges

and an appeal dated 1-2-90 was submitted against that order. The same was rejected by order dated 12-6-90 (An.A3) of the respondents. The applicant filed a revision petition dated 16-8-90 which was disposed of by the respondents on 18-3-92 whereby the penalty of removal from service imposed vide orders dated 12-1-90 was set aside and the case was remitted to the disciplinary authority for taking ~~de novo~~ action from the stage of sending inquiry report to the applicant calling for his comments thereon before finalising the case by the disciplinary authority. The revision order also stated that the applicant would be deemed to have been placed under suspension from the date of removal from service until further orders. The applicant filed O.A.No.1108/92 in the Bench of this Tribunal and an order was passed in this O.A. on 7-4-93. At this stage the follow up of the orders of the revisionary authority had not culminated and accordingly the operative portion of the order passed in OA 1108/92 read as under:-

"As final orders in the disciplinary proceedings have still to be passed, and as the applicant will get full opportunity for his defence during the course of the departmental proceedings, no interference in the impugned orders is warranted at this stage. The application is accordingly dismissed and the interim orders passed on 24-4-92 staying the operation of order dated 18-3-92 (Annexure A-5) are hereby vacated. The respondents are directed to dispose of the departmental proceedings expeditiously, preferably within six months from the date of receipt of a copy of this order."

Finally the disciplinary authority had passed the

orders of removal once again on 1-8-94 (An.A6). It is the case of the applicant that having already gone through the stage of appeal and revision earlier, there is no point in submitting another appeal since the disposal would be the same as before. The applicant does not expect any different treatment and hence the ld. counsel for the applicant insisted on this O.A. being admitted.

3. In support of his plea for admission, the ld. counsel also referred to the case of one Shri Vir Singh Vs. UOI (OA No.1376/94) wherein similar facts and circumstances of the O.A. have been admitted.

4. We have gone through the application and particularly the punishment order which has been served on the applicant on 1-8-94 (An.A6). This order itself states that an appeal against the order lies with the authority which has been specified and the appeal has to be submitted within 45 days of the receipt of the punishment order. Hence we feel that the correct course for the applicant is to utilise this statutory provision. The earlier punishment order dated 12-1-90 has already been set aside by the revisionary authority and this accordingly non-existed. We note that there is a Full Bench decision in O.A.27/90 in the case of B.Parmesharam Rat Vs. Divisional Engineer Telecommunication and another decided on 12-4-90 to the effect that an application under section 19 of the A.T. Act cannot be filed without exhausting the remedy of appeal/representation under service rules. The Full Bench had also noted that the Tribunals have discretionary power but such discretion can be exercised only in rare and exceptional cases.

We do not find that the facts and circumstances in this O.A. are such to warrant the exercise of the discretionary powers of doing away with the

remedy of appeal. We do not find it necessary to go into the details of some other C.A. which is said to have been admitted as we are bound by the law laid down by the Full Bench. In the circumstances, the C.A. is dismissed at the admission stage itself. No costs.

P.T. TIRUVENGADAM

(P.T. THIRUVENGADAM)
Member (A)

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J. P. SHARMA

(J.P. SHARMA)
Member (J)