

RA No.161/93 in OA No.547/93

NEW DELHI THIS THE 13th DAY OF DECEMBER, 1993.

SHRI JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
SHRI B.N.DHOUNDIYAL, MEMBER(A)

Shri Chandan Lal Malik
Acctt. Assistant(Retd.)
Northern Railway
Divisional Railway Manager's Office
New Delhi

... Applicant

BY ADVOCATE SHRI M.L.SHARMA

vs.

Union of India through

1. The General Manager
Northern Railway, Head Quarters Office,
Baroda House, New Delhi
2. Financial Advisor and Chief Accounts Officer
Northern Railway, Hd.Qrs.Office,
New Delhi.
3. The Divisional Railway Manager
Northern Railway,
New Delhi

.... Respondents

ORDER

SHRI JUSTICE S.K.DHAON:

This is an application seeking the review of the judgement given in OA No.547/93 on 15.4.1993 by the Division Bench consisting of one of us (Justice S.K.Dhaon) and Hon'ble Sh.I.K.Rasgotra, Member(A).

2. In the OA, the reliefs, as material, sought were as under:

- (1) the impugned order of suspension dated 27.1.92 and the memorandum of chargesheet be quashed.
- (2) annual increment due to the applicant on 1.1.93 raising pay from Rs.2250/- to Rs.2300/- may be granted and arrears along with current market rate of interest thereon till the actual date of payment may also be directed to be paid.
- (3) suspension period may be directed to be treated as duty for all purposes and to pay the retiral benefits on the basis of increased pay of Rs.2300/-.

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This Tribunal took note of the fact that the reliefs (2) & (3) as mentioned above could not be granted so long as the order of suspension subsisted. Therefore, it confined itself to the prayers

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relating to the quashing of the charge memo and the order of suspension. In the body of the OA, it was emphasised that there was inordinate delay in furnishing the charge memo to the applicant. The Tribunal rebutted this plea by taking note of the fact that the charge related to an incident dated 7.1.1992 and the charge memo was given on 18.2.1993.

4. The Tribunal refused to examine the merits of the order of suspension as it held that the applicant had not exhausted the statutory remedy of filing an appeal against the said order. It, however, gave a direction to the appellate authority that in case the applicant prefers an appeal within a period of four weeks from the date of the judgement (15.4.1993), the appellate authority shall treat the appeal as having been filed within the time and, therefore, disposed of the OA on merits. In this review application, it has been urged by the counsel appearing for the applicant that this Tribunal overlooked the fact that the applicant had, in fact, preferred an appeal. The order of suspension dated 27.1.1992 (Annexure A-1 to the OA) was passed by the Senior Divisional Accounts Officer. In para 4.22 of the OA, it was recited that the applicant made a representation dated 30.6.92 duly delivered on the same date to the disciplinary authority under its clear acknowledgement (copy annexed and marked as Annexure A-4), but no reply thereto had been given nor his suspension order had been revoked and a period of more than six months had lapsed.

5. A perusal of Annexure A-4 of the OA indicates that the representation referred to in the said paragraph was addressed to the Senior Divisional Accounts Officer and the prayer made

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therein was that the order of suspension may be revoked. (X)

Rule 18 of the Railway Servants (Discipline & Appeal)

Rules, 1968(hereinafter referred to as the Rules) provides that an order of suspension is appealable. Rule 19, inter alia, provides that an appeal may be preferred against all or any of the orders specified in Rule 18 to the authorities specified in this behalf in the Schedules.

Schedule III is relevant. Under item No.3 of the Schedule, an appeal lies to the General Manager against the orders of suspension. Thus it will be seen that firstly the alleged appeal was not preferred to the General Manager and secondly, it was, in fact, a representation for the revocation of the suspension order. The prayer was confined to the authority which passed the order of suspension. The Tribunal, therefore, took the view that the applicant had failed to prefer an appeal as provided for under Rule 18.

6. The other contention urged in support of this review application is that the charge memo given to the applicant was incomplete one in so far as it was alleged that the copies of certain documents referred to in the body of the charges were not supplied to the applicant. The Tribunal ignored this shortcoming, if any, in the charge memo as it felt that such a defect, if at all, was not fatal to the furnishing of the chargememo.

7. The Tribunal did not go into the question of giving of salary on an enhanced rate as it felt that such a direction could ^{not} be given during the pendency of the disciplinary proceedings against the applicant.

8. We have considered this review application with due care and we find that in the

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circumstances of the case, the Tribunal did not commit any error much less an error on the face of the record.

9. We may note that the applicant remained unrepresented on 15.4.1993 and the explanation offered in the review application is that the counsel suddenly became ill. It is alleged that though the applicant was present there was no space in the Court Room for him to stand and inform the Court that his counsel was not available on account of illness. This allegation is not acceptable on the very face of it.

10. This application is rejected summarily.

B.N.Dhundiyal
(B.N.DHUNDIYAL)
MEMBER(A)

S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)

SNS