

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1301/89
T.A. No.

199

DATE OF DECISION 23.11.1990.

Shri V. S. Tyagi

Petitioner Applicant

Applicant in person

Advocate for the Petitioner(s)

Versus

Union of India through G. M., Respondent

Northern Rly.

Shri O. N. Moolri

Advocate for the Respondent(s)

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The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(Judgement of the Bench delivered by
Hon'ble Mr. P. K. Kartha, V.C.)

The applicant, while working as Pharmacist in the Central Hospital, New Delhi, under the Northern Railway, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the impugned order dated 12.7.1988 whereby the respondents appointed Dr. N.K. Kohli, Medical Supdt. of the Central Hospital, New Delhi as the Inquiry Officer to enquire into the charges framed against him.

2. The facts of the case in brief are that the applicant had filed TA-1176/85 which was disposed of by the judgement of this Tribunal on 30.5.1986. TA-1176/85 had initially been filed in the High Court of Delhi praying for issuance of a writ of certiorari or any other writ, order or direction, for setting aside the charge sheet dated 16/17th

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August, 1982, and for issuance of any other writ, order or direction to quash the punishment awarded by the respondents vide order dated 30th April, 1983. As per this order the penalty of withholding of increments for a period of two years permanently with cumulative effect was imposed on the petitioner after holding a departmental inquiry on the basis of the charge sheet dated 16th/17th August, 1982. According to the petitioner he was not afforded a reasonable opportunity of being heard. In fact, the inquiry was held ex parte.

3. The Tribunal rejected the Transferred Application but gave liberty to the applicant to approach the Tribunal after he had exhausted the remedy of filing a review petition in respect of the inquiry. In fact, he filed a review petition against the appellate order but the same was rejected vide order dated December 13, 1984. The applicant filed RA-15/86 in TA-1176/85 which was disposed of by the same Bench of the Tribunal by judgement dated 20.3.1987. The review petition was accepted to the extent that the judgement dated May 30, 1986 whereby TA-1176/85 had been rejected, was set aside and the same was reviewed and substituted by the following order:-

"The prayer of the petitioner seeking quashing of the charge sheet dated August 16/17-1982 is rejected. The order dated April 30, 1983 of imposition of penalty of withholding of increment for a period of two years with cumulative effect is hereby set aside so also the appellate order. This order will not preclude the competent authorities from holding a fresh inquiry in accordance with law on the basis of the charge sheet dated 16th/17th August, 1982 and from making a fresh order in accordance with law."

4. The applicant has contended in the present petition that under the law, the respondents have no power/authority to hold a second inquiry on the same remote charges, that he is a protected workman and General Secretary of the Northern

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Railway Labour Union in one industrial dispute ~~dispute~~ between the Union and the Management and the inquiry being conducted by the respondents was not as per law and was void ab initio as he is a protected workman under the Industrial Disputes Act and there was contravention of the I.D. Act.

5. The applicant has annexed to the application, a copy of the letter dated 17.4.1989 from the Assistant Labour Commissioner addressed to the General Manager, Northern Railway and the Medical Supdt. of the Railway Hospital which reads as under:-

"Sub.:-- I.D. between the management of and/or and Dear Workman represented by N.R.L.U. over strike notice dated 24.3.1989.

Dear Sir,

This is to inform you that I shall hold conciliation proceedings under section 12 of the I.D. Act, 1947 in the above mentioned dispute on 28.4.1989 at 3 P.M. in my office with a view to bring about an amicable settlement of the dispute. You are requested to attend the conciliation proceedings in person or through a duly authorised representative with all relevant records and evidence, oral and documentary.

In this connection your attention is invited to the obligation imposed by Section 22(1)(d) (for workers) and Section 22(2) (a) (d) for employer and Section 33 (for employer) of the I.D. Act." (Vide Annexure A-8, page 30 of the Paperwork) Q

6. The respondents have not filed their counter-affidavit. Shri D.N. Moolri, who appeared before us, stated that the applicant has since been dismissed from Government service by order dated 12.6.1989 and that the appeal preferred by him against the order of dismissal was also dismissed on 2.11.1989. He has, therefore, contended that the present application has become infructuous as he has not challenged the order of dismissal in

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the present proceedings. He also referred to the fact that the industrial dispute raised by the Union under the I.D. Act is still pending. He has also made available to us the relevant files concerning the disciplinary proceedings and other proceedings relating to the applicant.

7. We have gone through the records of the case carefully and have considered the rival contentions. It is seen from File No.7303/876-SF/P-31 that after holding the inquiry ex parte, the respondents have imposed on the applicant the penalty of dismissal from service by order dated 12.6.1989. The appeal preferred by the applicant on 17.7.1989, was also rejected by the Appellate Authority by order dated 2.11.1989.

8. The fact that the authorities under the I.D. Act are seized of the matter, is clear from file No.30-MED/VST/CONF/CH.II/ENQ. On 12.1.1988, the Assistant Labour Commissioner informed the Medical Supdt., Northern Railway Hospital, New Delhi, about the holding of conciliation proceedings in the industrial dispute between the Management of the Northern Railway and their workmen represented by the Northern Railway Labour Union. The Annexure to the said letter refers to the inquiry initiated against the applicant before us. The applicant has filed affidavits before the Inquiry Officer on 2.7.88, 19.12.1988 and 29.12.1988, wherein he has contended that he is a workman in terms of Section 2(s) of the I.D. Act, 1947 and that the judgement of this Tribunal dated 20.3.1987 has been submitted in the Labour Court under I.D. Act, 1947. On

9. The Full Bench consisting of five Members of this Tribunal has held in its judgement dated 30.10.1990 in a batch of applications (DA-576/86 - A. Padmavallay Vs. C.P.W.D. & Ors.) that an applicant seeking relief under the provisions of the I.D. Act must ordinarily exhaust the remedies available under that Act before filing an application in the Tribunal. In view of the judgement of the Full Bench, which is binding on us, we are of the opinion that the present application filed by the applicant is not maintainable as he has not exhausted the remedies available to him under the I.D. Act.

10. In view of the above, the application is dismissed at the admission stage itself. There will be no order as to costs.

D.K.Chakravorty
(D.K. Chakravorty)
Administrative Member

28/11/1990

P.K.Kartha
23/11/90
(P.K. Kartha)
Vice-Chairman (Judl.)