

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1502/89 198
T.A. No.

DATE OF DECISION 17.11.1989.

Shri K.K. Kumar Applicant (s)

Shri K.N.R. Pillai Advocate for the Applicant (s)
Versus
UOI & Ors. Respondent (s)

Shri O.P. Kshetriya Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. Srinivasan, Member (A)

The Hon'ble Mr. T.S. Oberoi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT (oral)

(delivered by Shri P. Srinivasan, Member)

This application has been listed before us for admission with notice to the respondents. Shri K.N.R. Pillai, learned counsel for the applicant and Shri O.P. Kshetriya, learned counsel for the respondents, have been heard. We find that this application can be disposed of at the stage of admission itself on a short point and, we, therefore, proceed to do so.

2. The applicant was working as Confidential Assistant in the grade of Rs. 2300-3200 in the office of the Divisional Railway Manager, Delhi Division, Northern Railway, New Delhi. He was reverted to the next lower grade of Rs. 1600-2660 with immediate effect by an order dated 28.7.1989 passed by the Senior Divisional Personnel Officer-I, Northern Railway, New Delhi. The applicant is aggrieved by this order.

3. Shri Pillai submits that reversion of the applicant

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from the grade of Rs. 2000-3200 to that of Rs. 1600-2660 was a punishment which affected the applicant adversely and such an order could not have been passed without holding an enquiry and giving the applicant an opportunity of being heard. He draws our attention to the reply of the respondents in which they clearly admit that the applicant was "reverted on the basis of his negligent working in spite of being warned several times by his immediate boss previously." In view of this, the impugned order bore the character of punishment and should not have been passed without giving the applicant an opportunity of being heard and, as such, it deserved to be quashed.

4. Shri O.P. Kshetriya on behalf of the respondents submits that the applicant has not exhausted the departmental remedies open to him, before approaching this Tribunal and on this ground itself, the application should be rejected.

5. After careful consideration, we are of the view that this application should succeed. Section 20 of the Administrative Tribunals Act, 1985 states that ordinarily, an application shall not be entertained unless departmental remedies have been exhausted. Thus, there is no automatic bar against entertaining an application merely because all the departmental remedies have not been exhausted. In an appropriate case, this Tribunal can certainly entertain an application without the applicant having exhausted the departmental remedies open to him. In this case, the impugned order is patently illegal, particularly in view of the clear admission in the reply of the respondents that it was passed because of the negligent working of the applicant and was, therefore, in the nature of a punitive order. It is settled law that no order of punishment can be passed against a Government servant unless he is

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given an opportunity of being heard. The rule of audi alteram partem has to be followed in all such cases. In so far as the impugned order, which in our opinion clearly constitutes a punishment, was passed without giving the applicant an opportunity of being heard, it has to be struck down as illegal.

6. We, therefore, allow the application and quash the impugned order dated 28.7.1989. The respondents will, however, have the liberty of taking appropriate action against the applicant under the Railway Servants (Discipline & Appeal) Rules, if they so deem fit.

Parties to bear their own costs.

T.S. Oberoi
(T.S. Oberoi)
Member (J)

P. Srinivasan
(P. Srinivasan)
Member (A)