

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 2043/89  
T.A. No.

198

DATE OF DECISION 9.2.1990.

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or

Shri J.N. Misra \_\_\_\_\_ Applicant (s)

Shri B.S. Mainee \_\_\_\_\_ Advocate for the Applicant (s)

Union of India & Ors. \_\_\_\_\_ Respondent (s)

Shri O.N. Moolri \_\_\_\_\_ Advocate for the Respondent (s)

CORAM :

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 ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicant, while working as Chief Booking Clerk in the Northern Railways, Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned order dated 26.12.1988, whereby the penalty of reduction to the lower scale was imposed on him.

2. The case of the applicant briefly is as follows. He was appointed as a Booking Clerk on 29.11.1958 and was promoted as Senior Booking Clerk in 1972. He was further promoted as Chief Booking Clerk in 1984. A memorandum together with a statement of imputation of misconduct, was served on him in March, 1988, alleging that he resold four tickets from Ghaziabad to Dankaur

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and misappropriated the clerical charges of Rs.4/- and did not issue the tickets. He gave his written statement of defence and asked for copies of certain documents to prepare his defence. According to him, the documents demanded by him, were not made available to him. During the inquiry, there was no independent witness to support the charges except the vigilance staff themselves. The inquiry was completed and he submitted his defence note on 4.8.1988. A copy of the inquiry report was not supplied to him. The impugned order was passed on 26.12.1988, but it was sent to Ghaziabad from where he had already been transferred to Delhi in September, 1988. The impugned order has not been formally served upon him.

3. The case of the respondents is that the application is not maintainable as the applicant has not exhausted the remedies available to him by way of appeal against the impugned order. They have, however, admitted that the impugned order could not be served on him as the same was sent to Ghaziabad for service on him without knowing that he had been transferred to Delhi.

4. We have heard the learned counsel for both the parties and have gone through the records of the case. The application came up for admission and interim relief on 6.10.1989, when the Tribunal passed an interim order staying the impugned order. This interim order has been made absolute thereafter.

5. The learned counsel for the applicant contended that in exceptional cases, an application could be entertained by the Tribunal even if the applicant had

not exhausted the remedy of appeal against the order of punishment. In the instant case, the applicant has been reduced to the Grade in which he was appointed 30 years back and the Grade in which he worked upto 1972. According to him, the impugned order is not legally sustainable as the penalty has been imposed on him without supplying to him a copy of the inquiry report. In this context, he has relied upon the decision of the Full Bench of this Tribunal in Premnath K. Sharma Vs. & Ors. <sup>on</sup> Union of India SLJ 1988 (3), p.449, in which it was held that the disciplinary authority must supply a copy of the inquiry report to the delinquent Government servant before fastening the guilt upon him and imposing any penalty.

6. After having considered the rival contentions, we feel that the applicant should submit an appeal to the Appellate Authority against the impugned order and that the Appellate Authority should decide the appeal, taking into account the alleged infirmities pointed out by the applicant in the application. The Appellate Authority should also pass a speaking order on such an appeal.

7. Accordingly, we direct that the applicant shall file an appeal within two weeks from the date of receipt of this order. The Appellate Authority shall consider and dispose of the appeal in accordance with the provisions of law and pass a speaking order within six weeks after the receipt of the appeal. Till the appeal is disposed of as indicated above, the respondents are restrained from implementing the order dated 26.12.1988.

8. The application is disposed of on the above lines at the admission stage itself. The applicant will be at liberty to file a fresh application in accordance with law, if so advised, in case he feels aggrieved by the decision given by the Appellate Authority.

The parties will bear their own costs.

*D. K. Chakravorty*  
(D. K. Chakravorty)

Administrative Member

9/2/1990

*P. K. Kartha*  
(P. K. Kartha)  
Vice-Chairman (Judl.)

9/2/1990