

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1468/98
~~TAX No.~~

199

DATE OF DECISION _____

YATINDRA NATH RAI	Petitioner APPLICANT
NONE	Advocate for the Petitioner(s)
Versus	
UNION OF INDIA & OTHERS	Respondents
NONE	Advocate for the Respondent(s)

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The Hon'ble Mr. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

The Hon'ble Mr. I.P. GUPTA, ADMINISTRATIVE MEMBER

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

JUDGEMENT

(Delivered by Hon'ble Mr. I.P.
 Gupta, Administrative Member)

In this application, filed under section 19 of the Administrative Tribunals Act, 1985, the applicant was appointed as Apprentice and thereafter posted as Electrical Chargeman "B" w.e.f. 8-5-1978. He was charge-sheeted under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, by Order dated 26-12-83. The charge related to unauthorised absence since 8-5-83 and contravention of Rule 3(1)(ii) of the Railway Service Conduct Rules, 1966. An inquiry was conducted and the Inquiry Report shows that the chargesheet despatched to the applicant ~~was~~ undelivered with the remarks that the employee was not available at home despite frequent visits by the postal authorities. During one of his visits to DRM Office, he was asked to receive the chargesheet but

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he refused to do so and did not accept it. The applicant was asked to report to the Inquiry Officer and furnish a list of defence witnesses but this notice was also received back undelivered. He was later warned that if he failed to appear before Inquiry Officer, ex-parte decision would be taken. This notice again came back as undelivered.

2. From the records, the Inquiry Officer came to the conclusion that the applicant intentionally absconded from duty unauthorisedly so as not to carry out orders for training. The Inquiry Officer found that the charge of unauthorised absence was proved.

3. An order of penalty dated 21-12-84 was passed to the effect that the increment of the applicant raising his pay to Rs.515/- from Rs.500/- would be withheld for a period of two years.

4. The applicant alleges several irregularities in the Inquiry and denial of reasonable opportunity within the meaning of Article 311 of the Constitution. The applicant also alleges that he made an appeal dated 5-1-88 to which there was no response.

5. The applicant has sought the relief that the Order dated 21-12-84 imposing on him the penalty of stoppage of increment be quashed and ~~be~~ also the chargesheet and the inquiry finding and also that the applicant be given consequential benefits including the promotion to next higher grade w.e.f. the date his juniors have been promoted.

6. The learned counsel for the respondents pointed out that the application was barred by limitation. Further, plural remedies, namely, quashing of punishment order and allowing promotion to different grades have been sought. The respondents have further pointed out that the application is barred by the principle of res-judicata. The applicant had sought the relief of promotion in Application No. DA 1318/87, which

was dismissed by this Tribunal on 17-8-88.

7. In DA 1316/87, decided on 17-8-88 (Annexure R-6), it was mentioned that the reliefs claimed by the applicant were as follows :

- "(i) that the impugned order dated 2.4.1986 along with transfer order dated 11.6.85 be set aside.
- (ii) that the period from 10.5.1983 to 24.11.1985 be treated as leave on medical certificate.
- (iii) that the period from 25.11.83 till date be treated as on duty.
- (iv) the applicant be paid for leave period from 3.7.83 to 24.11.83 and the duty period from 25.11.83 till date with all the consequential financial benefits, and
- (v) the applicant be given his promotion from due date with all consequential benefits. "


8. The Tribunal had observed therein that the applicant has two distinct causes of action - (i) regarding order of transfer issued on 11-6-85 and (ii) regarding non-payment of leave salary. The Tribunal considered the application in respect of the impugned order of transfer and rejected the application, with liberty to the applicant to move appropriate legal forum in accordance with law in regard to other reliefs.

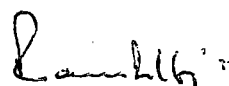
9. It is clear that in the present application the quashing of the impugned order of penalty dated 21-10-84, the chargesheet and the Inquiry Officer's report ~~has~~ been requested. The application was filed on 4-8-1988, i.e., after a lapse of nearly four years. The respondents have brought out that the applicant did not file any appeal to the appellate authority though in the order of penalty, it was clearly mentioned that any appeal might be submitted within 45 days from the date of receipt of the orders. The applicant's claim that he made an appeal dated 5-1-88 is not supported by any document. We find on the records a legal notice dated 27-5-88 (Annexure A-29) for withdrawing

the chargesheet and ^{the} penalty-imposing-Order dated 21.12.84.

10. The legal notice issued after nearly four years would not protect the applicant from limitation clause (Section 21 of the Administrative Tribunals Act, 1985). Further, if the applicant did not seek the relief available to him for submitting an appeal to the appellate authority, he cannot expect the Tribunal to give him relief after expiry of four years.

11. In the above view of the matter in this case, the application is barred by limitation and is rejected. **MP 573/89 is also accordingly disposed of.**
There is no order as to costs.


(I.P. GUPTA) 7/11/91
MEMBER (A)


(RAM PAL SINGH) 7.11.91
VICE CHAIRMAN

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