

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

6  
Date of Decision 25.11.88

1. Regn. No.1469/88  
Shri A.A. Khan .... Applicant.
2. Regn. No.1476/88  
Shri S.P. Misra .... Applicant.
3. Regn.1487/88  
Shri Bankey Lal .... Applicant.
4. Regn. No.1488/88  
Shri D.N. Tanon .... Applicant.
5. Regn. No.1496/88  
Shri Jit Singh Tunka .... Applicant.

Versus

Union of India and Others	....	Respondents.
For the applicants	....	Shri V.Sekhar, Advocate.
For the respondents	....	Shri K.N.R. Pillai, Advocate.

Coram: Hon'ble Shri P.K. Kartha, Vice Chairman (Judl.)  
Hon'ble Shri P. Srinivasan, Administrative-  
Member.

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? to be referred

JUDGMENT

(Judgment of the Bench delivered by  
Hon'ble Shri P. Srinivasan,  
Administrative Member).

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The five applicants before us were employees of the North Eastern Railway before they were removed from service by way of punishment by orders passed by the disciplinary authority under the Railway Servants (Discipline and Appeal) Rules, 1969 ("the Rules" for short) on different dates in February 1981. The disciplinary authority did not hold any inquiry before inflicting the punishment on the ground that, in the circumstances prevailing at the time, it was not reasonably practicable to do so. Departmental appeals filed by the applicants against these orders were dismissed by the appellate authority by orders passed on various dates in August 1981. The applicants thereupon challenged their punishment in Writ Petitions filed before the Allahabad High Court. These petitions, along with other writ petitions filed in different High Courts raising similar issues were transferred to the Supreme Court and rejected by that Court by a common judgment pronounced on 11.7.1985 and reported under the main cause title of Union of India vs. Tulsiram Patel in 1985 (3) SCC 398. As seen from the majority judgment in that case delivered by Madon J, the orders of punishment were challenged before the court on purely legal grounds to which we will have occasion to revert later in this order.

2. After the aforesaid judgment in Tulsiram Patel's case, the applicants filed fresh departmental appeals challenging the orders of punishment passed against them. Since these appeals remained unattended for long, the applicants filed applications before the Allahabad Bench

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of this Tribunal (OA 300 to 309 of 1987) seeking a direction to the appellate authority to dispose of the said appeals early after holding an inquiry. These applications were disposed of by a common judgment delivered on 12.5.1987. The Allahabad Bench held that there was no provision in the Rules to enable the applicants to file repetitive appeals and since appeals filed earlier against the same orders had already been disposed of in August 1981, the Hon'ble Members of the Bench declined to issue any direction to the appellate authority as prayed for by the applicants. A Special Leave Petition against this judgment was rejected by the Supreme Court on 18.1.1988.

3. Undaunted by repeated failures, the applicants approached the railway authorities once again, this time through what they termed "revision petitions" addressed to the General Manager (Operations), North Eastern Railway, Gorakhpur on various dates from February to May 1988. In these petitions, they requested that a proper inquiry now held against them after framing charges, since the conditions preventing the conduct of an inquiry which prevailed in 1981 when the disciplinary and appellate authorities passed orders were no longer in existence. Since no action was taken on these petitions for a period of six months and more, the applicants have filed the present applications which have come before us today for admission.

*P. S. B.*

order and manner laid down in the relevant statute.

4. All these applications contain the following main prayers:

1) That the orders of the disciplinary authority passed on

various dates in February 1981

and those of the appellate authority passed in August 1981 conforming the

penalty be quashed, and the

order of the disciplinary authority be quashed and

2) that the revisional authority be directed to consider and dispose of the revision petitions filed by the applicants early in the light of the judgments of the Supreme Court in the cases of Tulsiram Patel's case, Satya Vir Singh's case and Hari Singh Choudhary's case.

Mr. Shri K.N.R. Pillai, learned Counsel for the Railways, always raised a preliminary objection that the applications, insofar as they challenge the orders of the disciplinary and appellate authorities, is badly delayed and should not be entertained by this Tribunal. Shri V. Sekhar, learned Counsel for the applicants confined his arguments to the second prayer in the application as set out above. This, in our opinion, is as it should be. Firstly, the two

Prayers are inconsistent with each other. If the orders of the disciplinary and appellate authorities were to be quashed, the revision petitions filed by the applicants, would no longer survive for consideration. Moreover there

is an even more serious objection to our entertaining the

application in the manner in which it is filed.

Secondly, the revision petitions filed by the applicants

first prayer. The orders of the disciplinary and appellate authorities were already there before the Supreme Court in Tulsiram Patel's case. They were challenged before the court on legal grounds which were rejected by the Lordships. Thus these orders have become final, having been upheld by the Supreme Court. It would be sheer impertinence on our part to entertain any challenge against these orders on any ground whatsoever. We need not therefore go into the objection of Shri Patel that the application is belated with reference to these orders. We straightway reject the first prayer set out above as not being maintainable.

For the facts and no belated application.

6. So far as the second prayer set out above is concerned, the bar of limitation does not apply to it. The revision petitions were filed by the applicants to the General Manager in 1988 and they remained unattended for six months and more thereafter. The period of limitation for filing an application in such a case commences on the completion of six months from the date of filing the petition and expires at the end of one year thereafter.

Reckoned in this manner, limitation in these cases would expire only in 1989, the exact date in each case depending on the dates on which each of the applicants presented his revision petition. Therefore the application is in time so far as it relates to the second prayer and we hold accordingly. Our libelatories, *etc.* *etc.*

7. The next objection of Shri Pillai on behalf of the respondents was that the revision petitions filed by the applicants in respect of which a direction is sought in the second prayer being themselves barred by limitation

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they could not be entertained by the revisional authority and so this Tribunal should not issue any direction for early disposal of these petitions as prayed for. Counter-arguing this, Shri Sekhar presented three alternative arguments to show that the revisional authority was not precluded from entertaining the petitions on the ground of limitation: (1) relying on a judgment of the Patna Bench of this Tribunal, he submitted that there was no time limit for filing revision petitions under the Rules, (2) even if there was such a time limit, the Rules themselves provided for condonation of delay in appropriate cases by the revisional authority and (3) the applicants in their revision petitions, were, merely asking for their right to be heard, based on the audi alteram partem rule of natural justice which was embedded in Article 14 as well as in Article 311(2) of the Constitution and no limitation would apply for enforcing a Fundamental Right.

7. Before we consider Shri Pillai's objection and the reply of Shri Sekhar thereto set out above, we have to examine a more fundamental question, viz., whether after the decision in Tulsiram Patel's case, a revision petition by the applicants to the departmental authorities in respect of the punishment imposed upon ~~will~~ at all lie. For this purpose it is necessary to understand the scope of the controversy raised before their Lordships in that case and the decision of the court thereon.

8. As already indicated above, in Tulsiram Patel's case, the orders imposing penalty on the applicants were challenged on purely legal grounds (see para 147 of the judgement). By their common judgment, their Lordships

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disposed of several writ petitions and writ appeals concerning officials of different departments of the Government. So far as officials of the railways are concerned—the applicants being among them—the court observed that "in each of these cases—Clause (ii) Rule 14 of the Railway Servants Rules or clause (b) of the Second proviso to Article 311(2) or both, as the case may be, were properly applied. All these matters therefore require to be dismissed". The Supreme Court accordingly dismissed the writ petitions. The effect of the decision was that the orders of the disciplinary and appellate authorities stood confirmed by the court, the only ground of challenge against them having been rejected. The question to which have to address ourselves is whether the judgment in Tulsiram Patel's case bars the applicants from seeking further departmental remedies available to them under the Rules beyond the stage of appeal: revision is one such remedy. We think not. What the Supreme Court decided was that the disciplinary and appellate authorities rightly dispensed with an inquiry in terms of Clause (b) of the second proviso to Article 311(2) and the corresponding service rule. In this given situation an inquiry not being possible, their Lordships held that on the facts available with the disciplinary and appellate authorities the penalty imposed by them was justified. But if the petitioners before the Court had not exhausted all the departmental remedies available to them before coming to court they could still go to the departmental authorities and re-

quest that an inquiry be held on the ground that the situation had so changed as to make it possible to do so. This is what their Lordships said on the subject:

"In the case of those government servants in this particular group of matters who have not filed any appeal in view of the fact that they were relying upon the decision of this Court in Chellappan's case, we give them time till September 30, 1985, to file a departmental appeal, if so advised, and we direct the concerned appellate authority to condone in the exercise of its power under the relevant service rule of the delay in filing the appeal and subject to what is stated in this judgment under the headings "service rules and the second Proviso-Chellappan case" and "The Second Proviso-Clause (B), "to hear the appeal on merits". The expression, "this particular group of matters" (para 177(3)) is referable, inter alia, to Civil Appeals No.13231 of 1981 and 4067 of 1983 (see the beginning of sub para (3) of para 177) and all connected matters relating to railway employees dealt with in paras 166 to 174 of the majority judgment which include the cases of the applicants. Under the heading "service Rules and the second Proviso-Chellappan case", the court noticed (in para 123) that in the case of railway employees, rule 25(1) of the Rules provides that where a major penalty has been imposed without holding an inquiry, the revising authority shall itself hold such inquiry or direct such inquiry to be held", subject to the provisions of Rule 14 and

para 16(1) of the Rules. In para 177(3) of the judgment

directed that a similar provision should be "read and construed in accordance with the meaning and intent and imported into the provision relating to appeals".

A government servant, the judgment says in para 137, -

"can claim in a departmental appeal or revision that

"an inquiry be held with respect to the charges on

"which the penalty of dismissal, removal or reduction

"in rank has been imposed upon him unless the same

"a like or similar situation prevails at the time of hearing

"or the date of the appeal or revision petition" (emphasis supplied).

One more passage in the "majority" judgment at para 123

elaborates the same idea further. Where it is a case

of "falling under clause (b) of the second proviso or a

*M. analogous*

provision in the service rules thereto, the dispensing

the right with the inquiry by the disciplinary authority was

based on the result of the situation prevailing at the time.

more so if the situation has changed when the appeal or

revision is heard, the government servant can claim

to have an inquiry held in which he can establish

that he is not guilty of the charges on which he has

been dismissed, removed or reduced in rank" (emphasis

supplied). At para 123, the majority judgment also

referred to the following case of *Tulsiram Patel*.

9. In other words, what has become final with

the judgment in *Tulsiram Patel's* case is the punish-

ment imposed without holding an inquiry. But the

right to file an appeal remains intact. The applicants

can agitate through such departmental

and other legal avenues as are still available to them under the

service rules, with a hope of getting the

Rules to have an inquiry held on the ground that the

situation has so improved as to make it possible to

do so. The Supreme Court specifically permitted

the filing of appeals in cases where no appeal had

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been filed. The applicants having filed appeals to the High Court and the same having been disposed of before the matter reached the Supreme Court, they no longer have that remedy open to them. But they still do have the remedy of revision-the judgment refers to revision in the passages extracted above which we have underlined-provided the revisional authority condones the delay in filing the revision petitions in exercise of the power vested in him by Rule 27 of the Rules. If he condones the delay, the revisional authority cannot straightway interfere with the finding of guilt or with the penalty imposed as they stand confirmed by the Supreme Court but he can certainly hold an inquiry himself or direct such inquiry to be held if he feels that it is reasonably practicable to do so now and in the light of the findings in the inquiry, set aside, vary or confirm the orders of the disciplinary and appellate authorities as the case may be.

10. In the light of the above, we hold that a revision petition under the Rules can be filed by the applicants against the orders of the disciplinary and appellate authorities, even after the judgment in Tulsiram Patel's case, for the purpose already indicated.

11. We now turn to the contention of Shri Pillai that the revisional authority cannot entertain the revision petition of the applicant as they are barred by time. We have noticed Shri

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Sekhar's contention that there is no limitation of time for filing revision petitions under the Rules.

But this does not appear to be correct. But even if such an answer is not available we may say that otherwise a sufficient answer to Shri Pillai's contention is provided by Rule 27 of the Rules.

The Rule 27 reads as follows: "The departmental authority may make such order as it deems fit for the purpose of the revision petition and may, in particular, make an order under the said Rules which includes the authority

and power given to it by the said Rules to extend the time limit specified in those Rules

for anything required to be done and to condone

any delay. Therefore it is not as if the revi-

sional authority cannot entertain the revision

petitions at all: he can do so if he feels it is

a fit case to condone the delay. Shri Sekhar

submitted that this is a fit case for condoning

the delay as the applicants were pursuing other

remedies in the meanwhile. We have no comments

to offer on this now.

12. We are unable to accept the contention of

Shri Sekhar that the revision petitions should be

treated as representations by the applicants claiming

a fundamental right to which they are entitled under

the Constitution and that therefore no limitation of

time is applicable to them. The departmental auth-

orities imposed punishment on the applicants under the

relevant disciplinary rules and any approach to be

made by the applicants departmentally has also to be

in accordance with those rules. The departmental

authorities can only deal with such matters under

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the said rules: they are not directly concerned with

and with the enforcement of any article of the Constitution

though they are bound by pronouncements of the courts  
regarding the constitutionality of a particular rule

or its proper interpretation with reference to the

provisions of the Constitution. Therefore there can

be no representation to the authorities apart from

what is provided for in the Rules. We therefore hold

that the revision petitions have to be considered

only as revision petitions under the Rules and the

revisional authority has to deal with them in accord-

ance with the Rules. The limitation prescribed in

the Rules for filing such petitions has to be taken

into account and the case for condonation of delay

has to be considered also under the Rules.

With these observations and the foregoing said

hereinabove, in the light of the above we pass the  
following orders:

1. The revisional authority will consider the revision petitions filed by the applicants;
2. If the petitions are delayed, he will decide in the light of Rule 27 of the Rules whether the delay should be condoned;
3. If he decides to condone the delay or if he holds that there is no delay and entertains the petitions, he will consider the cases of the applicants on merits in the light of the decision of the Supreme Court in Tulsiram Patel's case and our observations in paras 8 and 9 above;

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Mr. Venkateswaran, who is the son of the deceased and

an addiditonal cont 45. Since this is a matter relating to  
events that occurred in 1981 and the  
applicants have been out of service  
for seven years, the revisional autho-  
rity is further directed to give his  
final decision on the revision peti-  
tions as expeditiously as possible,  
preferably within six months from  
the date of receipt of this order;

referred to below. Till the revisional authority passes  
his final order on the revision peti-  
tions, the applicants should not be  
deprived of their right to occupy the railway  
quarters and buildings necessary now being occupied by them.

After so far, the court ruled that

1 14. The applications are disposed of on the  
above terms. at the admission stage itself. But in  
the circumstances of the case parties to bear their  
own costs. Copies of this judgment should be handed  
over to the learned counsel for both parties within  
one week of its being signed by us.

(P.Srinivasan)

Member(A)

(P.K.Kartha)

Vice Chairman(J)

and to the learned counsel for both parties

and to the learned counsel for the parties