IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI
.....

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).

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

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 may be 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.

4. All these applications contain the following main prayers:

1) That the orders of the disciplinary authority passed on various dates in February 1981 removing the applicants from service and those of the appellate authority passed in August 1981 conforming the penalty 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 Tulsiram Patel's case, Satya Vir Singh's case and Hari Singh Choudhary's case.

5. Shri K.N.R. Pillai, learned Counsel for the Railways raised a preliminary objection that the applications insofar as they challenge the orders of the disciplinary and appellate authorities, are 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

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 their 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.

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.

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

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. Countering 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 them 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

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 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 we 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 governmentservants 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 exerciseof its power under the relevant service rule 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 referrable, 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 thecases 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 theRules 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

directed that a similar provision should be "read 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 or similar situation prevails at the time of hearing 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 falling under clause (b) of the second proviso or a provision in the service rules analogous thereto, the dispensing with the inquiry by the disciplinary authority was the result of the situation prevailing at the time. 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).

9. In other words, what has become final with the judgment in Tulsiram Patel's case is the punishment imposed without holding an inquiry. But the applicants can agitate through such departmental avenues as are still available to them under the Rules to have an inquiry held on the ground that the situation has so improvedas to make it possible to do so. The SupremeCourt specifically permitted the filing of appeals in cases where no appeal had

been filed. The applicants having filed appeals 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 otherwise a sufficient answer to Shri Pillai's contention is provided by Rule 27 of the Rules empowering an authority competent to make an order under the said Rules-which includes the authority competent to pass an order on a revision petition-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 revisional 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 authorities 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

the said rules: they are not directly concerned 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 revisions petitions under the Rules and the revisional authority has to deal with them in accordance 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.

13. 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 petitons 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 applicantson 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 ;

4. 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 authority is further directed to give his final decision on the revision petitions as expeditiously as possible, prefereably within six months from the date of receipt of this order;

5. Till the revisional authority passes his final order on the revision petitions, the applicants should not be dispossessed of the railway quarters now being occupied by them.

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)