

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.915/88

Date of decision: 24.9.1990.

D.N. PAUL

....APPLICANT

VERSUS

UNION OF INDIA & OTHERS

....RESPONDENTS

SHRI UMESH MISHRA

..COUNSEL FOR THE APPLICANT

SHRI S.N. SIKKA

..COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE SHRI T.S. OBEROI, JUDICIAL MEMBER

HON'BLE SH.I.K.RASGOTRA, ADMINISTRATIVE MEMBER

JUDGEMENT

JUDGEMENT

(DELIVERED BY HON'BLE SHRI I.K. RASGOTRA, MEMBER(A))

Shri D.N. Paul has filed this application against the Order No.M/SS/IZM/101(G)-13 dated 5-2-1981 removing him from service from the post of Diesel Driver with immediate effect, passed by the Senior Divisional Mechanical Engineer, Northern Railway, Izat Nagar (U.P.).

By way of relief he has prayed that the impugned order dated 5-2-1981 regarding removal from service be quashed and that the respondents be directed to consider revision/review application filed by the applicant in the light of judgement of Hon'ble Supreme Court in Tulsi Ram Patel's case. He has also prayed for grant of all service benefits including back wages promotion etc.

*[Signature]*  
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2. The relevant facts of the case are that on 3-2-1981, the applicant was called upon to furnish explanation for absence from duty on 1-2-1981 at 7.00 hours <sup>fit</sup> as amounted to wilful interference in the smooth running of trains and supplies essential to the life of community, latest by 4-2-1981 failing which it would be understood that he had no explanation to offer. The show cause notice was not received by the applicant and so he had no occasion to offer any explanation. The applicant was removed from service on 5-2-1981 vide orders of the DRM stating that:-

"..... I, the undersigned, having the powers to dismiss or remove you from service, am fully satisfied that for the reasons which have been recorded in writing, it is not reasonably practicable to hold an enquiry in the manner provided under rule 9 of the Discipline and Appeal Rules, 1968, and in exercise of powers vested in me under Rule 14 (ii) of these Rules read with proviso (b) to Article 311(2) of the Indian Constitution and considering the circumstances of your case, I have decided to remove you from service from the post of Diesel Driver in scale Rs.330-560 (RS) with immediate effect.....

...ii) the appeal does not contain improper or disrespectful language...."

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The applicant has submitted that even the termination order was not communicated to him within a reasonable period to enable him to take appropriate steps, to seek redressal of his grievance. Thereafter the applicant addressed two letters dated 14-3-1981 and 13-4-1981 to the respondents seeking to know the reasons for removing him from service without due process of law. These letters were taken as his appeal by the respondents, and an order rejecting the appeal was passed on 20-8-1981 by the Appellate Authority. Thereafter the applicant filed a writ petition in the Allahabad High Court, challenging inter-alia his termination order as also the appellate order and more particularly the validity of proceeding against him under Rule 14(ii) of the Railway servants Discipline & Appeal Rules, 1968. As there were large number of similar cases in the various High Courts, all the writ petitions were transferred to the Hon'ble Supreme Court, at the request of the respondents to cut short the litigation and for determining the vires of Rule 14(ii) of the Railway Servants Discipline and Appeal Rules, 1968 in the light of article 14 and 21 of the Constitution of India.

The Hon'ble Supreme Court vide its judgement U.O.I. Vs. Tulsi Ram Patel & Others - 1985 (3) SCC-398, ~~THE SUPREME COURT OF INDIA~~ held that the delinquent officials who had not had the benefit of enquiry before the passing of the order of penalty in the nature of dismissal/removal/reduction in rank can claim it at any stage

following the order of dismissal/removal. The applicant therefore filed an appeal to the Divisional Railway Manager on 13-9-1985 and followed it up by reminders dated 24-7-1986 and 5-2-1987. As he did not get any response from the respondents, he approached the Central Administrative Tribunal, Allahabad Bench, praying for a direction to the respondents to dispose of his appeal dated 13-9-1985. in the light of the judgement of the Hon'ble Supreme Court in the case of Tulsi Ram Patel <sup>(supra)</sup>. The OA 300-2 309/87 filed by the applicant was however dismissed on the ground that the second appeal is not maintainable by the Tribunal, Allahabad Bench. Aggrieved by this, he filed a special leave petition in the Hon'ble Supreme Court praying that his appeal dated 13-9-1985 be considered in the light of the judgement of Tulsi Ram Patel. The said SLP was dismissed by the Hon'ble Supreme Court. At this stage, the applicant filed the revision/review petition in terms of Rule 29 Railway servants Discipline and Appeal Rules on 10/12-2-1988 and failing to get a decision, the applicant has filed the present application under Section 19 of the Central Administrative Tribunal Act, 1985.

2. The respondents in their written statement have generally accepted the basic facts of the case as above and have submitted that the applicant was removed from service for participation in the illegal strike of loco running staff which took place in early 1981 by invoking the second proviso to Article 311(ii) of the Constitution of India and Rule 14(ii) of the Railway Servants Discipline & Appeal Rules, 1968. The disciplinary authority

had satisfied itself for reasons recorded by it in writing that it was not reasonably practicable to hold an enquiry in the manner prescribed in the Rules because of the atmosphere of violence. It has further been contended that there was no omnibus provision in the decision of Hon'ble Supreme Court in the U.O.I. Vs. Tulsi Ram Patel (supra) case enabling the applicant to file fresh appeal/revision for consideration of the competent authority and the orders of removal/dismissal earlier passed. The railway servants had been filing appeals and the appellate authorities had been considering and disposing of such appeals filed against penalties imposed during the railway strike. Notwithstanding, the railway administration did give an opportunity to those employees who had not filed appeals or in rare cases where appeals filed had not been disposed of, to file an appeal to seek redressal of the grievance, the case of the applicant does not come under this dispensation, as he had already filed an appeal which had been rejected after due consideration by a speaking order dated 24-8-1981. Further in Tulsi Ram Patel's case, the Hon'ble Supreme Court had upheld the orders of the disciplinary authority and appellate authority including the orders passed against the applicant and upheld by the Central Administrative Tribunal, Allahabad Bench in the judgement dated 12-5-1987 in OA 300/87. The judgement of the Hon'ble Supreme Court did not call for reconsideration of the appeals of the railway employees already disposed of nor had

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the Hon'ble Supreme Court authorised such dismissed railway employees to prefer second appeal. Further the Allahabad Bench of the Tribunal had held that second appeal was not maintainable in absence of any provision in the rules. Applicant's SLP filed in Hon'ble Supreme Court questioning the order of the Tribunal was dismissed. It was at this point of time that the applicant chose to file revision/review petition dated 12-2-1988 against the appellate order on 24-8-1981. The Revision/Review petition however has not been entertained by the respondents and hence the present O.A. The respondents have submitted that the application is barred by limitation as the penalty order was passed on 5-2-1981 and the appellate order of 24-8-1982.

3. Shri Umesh Mishra, learned counsel for the applicant submitted that there is no limitation for filing Revision/Review petition under Rule 25 of the Discipline and Appeal Rules, 1968 and as such it is incumbent on the respondents to consider the Revision/Review petition. This contention was however, controverted by Shri S.N. Sikka, learned counsel for the respondents who drew our attention to the following notes appearing below Rule 25 of railway servants Discipline and Appeal Rules, 1968 (Third Edition, 1989 Bahri Brothers).

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"The time limit for revision petition is 45 days from the date of delivery of the order sought to be revised. Where no appeal has been preferred against the order of the disciplinary authority, the time limit of 45 days will be reckoned from the date of expiry of the period of limitation for submission of appeals (E(D&A)84 RG-6-44 of WR No.185/86 dated 2-12-1986, the authority may entertain, petition after expiry of the period if it is satisfied that the petitioner has sufficient cause for delay (*ibid*)". The applicant has forfeited his right for filing the review petition."

At this stage, Shri Umesh Misra, learned counsel of the applicant cited the following case where in similar circumstances, the Tribunal had granted relief.

- a) K.N. Misra Vs. UOI & Ors. OA-88/89 dt.13-9-89
- b) O.A.2630/88 dated 15-5-1989 Teja Lal Vs. U.O.I.
- c) OA 241/86 Sudhir Ranjan Vs. U.O.I. CAT Calcutta Bench dated 3-10-1986.

The facts of these cases are distinguishable from the one before us as in those cases the applicants had preferred Appeal/Revision/review petitions soon after the decision of the Hon'ble Supreme Court in U.O.I. Vs. Tulsi Ram (Supra) case in 1985.

We have heard the learned counsel of both the parties and carefully perused the records.

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A pointed query, if the Tribunal could entertain this application in view of the fact that as on 1-11-82 when the jurisdiction of the Tribunal commenced there was no proceeding pending nor had the grievance agitated in the application arisen by reason of any order passed after 1-11-1982 from us did not elicit any reasonable information from the learned counsel of the applicant, except that similar cases have been dealt with without going into this aspect.

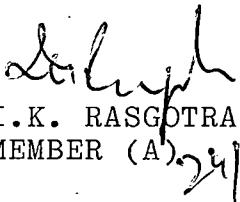
The applicant was removed from service on 5-2-1981 and his appeal was rejected on 24-8-1981. The Hon'ble Supreme Court decided the case of Tulsi Ram Patel and others (supra) vide its judgement dated 11-7-1985. Thereafter the applicant filed second departmental appeal on 30-9-1985. As there is no provision for second appeal in the Rules, the applicant did not get response to his second appeal. He therefore filed an OA 1317/87 before the Allahabad Bench of the Tribunal which was dismissed on 12-5-1987 holding that second appeal was not maintainable. The applicant, however, persisted in regard to the maintainability of the second appeal and filed SLP against the decision of the Allahabad Bench in the Hon'ble Supreme Court. This too was dismissed by the Hon'ble Supreme Court on 18-1-1988. Thereafter the applicant preferred Revision/Review petition on 10-2-1988 under Rule 25 of Railway Servants' Discipline and Appeal Rules 1968. There is however a time limit of 45 days for the revision petition which in this case would be reckoned from 24-8-1981 the date of the order of the Appellate Authority. Thus the Revision/Review petition is time barred under Rule 25 of Railway Servants' Discipline & Appeal Rules, 1968. We are

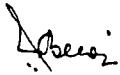
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also inclined to agree with the averment of the respondents that the Tribunal has no jurisdiction in the matter as there was no proceeding pending on 1-11-1982 against the applicant nor did his grievance arise by dint of any order passed after 1-11-1982.

In the facts and circumstances of the case, we do not find any merit in the application, which accordingly fails and is dismissed with no orders as to the costs.

  
( I.K. RASGOTRA )  
MEMBER (A)  
24/9/90

  
24/9/90  
( T.S. OBEROI )  
MEMBER (J)