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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1186 of 1986
T.A. No. 1116

DATE OF DECISION 2.6.1989

Shri Pearey Lal

Petitioner

Shri Umesh Misra

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

None for the respondents.

Advocate for the Respondent(s)

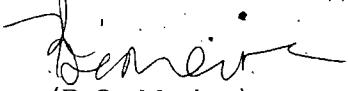
CORAM

The Hon'ble Mr. Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement? NO
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. Whether it needs to be circulated to other Benches of the Tribunal? NO

MGIPRRND-12 CAT/86-3-12-86-15,000


(B.C. Mathur)

Vice-Chairman


(Amitav Banerji)

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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 116/86

Date of decision: 2.6.1989

Shri Pearey Lal

Applicant

VS.

Union of India

Respondents

PRESENT

Shri Umesh Misra, counsel for the applicant.

None for the respondents.

CORAM

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman.

(Judgment of the Bench delivered by Hon'ble Mr. B.C. Mathur, Vice-Chairman)

Judgment

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Pearey Lal, Shunter Driver at Meerut Loco Shed, Northern Railway, Meerut City, being aggrieved by the General Manager, Northern Railway not complying with the order passed by the Tribunal in O.A. 46/86 wherein the respondents were directed to decide the Revision Petition filed by the applicant on 15.4.86 and orders in O.A. 769/86 when the Tribunal had ordered that revision petition against the removal of the applicant be decided within six months from 15.4.89. In this case the respondents have not filed any written statement or affidavit. On 10.4.87 Shri Satish Seth, advocate, appeared for respondents No. 1, 2 and 3 stating that the applicant had not furnished the present place of posting and consequently his record could not be traced. The information that the applicant was employed as Shunter in Meerut Loco shed was supplied by the applicant to the learned counsel for the respondents on 13.4.87 but no reply has been filed by the respondents. On 7.12.87 Shri Ajay Goel, advocate, appeared for Shri S.P. Kalra, counsel for the respondents, undertook

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to file counter-affidavit within 15 days but this was also not done. It, therefore, became necessary to proceed with the case ex-parte.

2. The brief facts, as stated in the application, are that the applicant was working as Driver (Shunter) at Meerut and was due to retire in October, 1983. The applicant was transferred to Tughlakabad in June, 1982. He challenged the transfer order before the Delhi High Court and the said transfer order was quashed by the High Court in Civil Writ No. 2511/82 on 29.10.82. Applicant fell ill on 5.6.82 and obtained sick memo from Loco Shed Meerut and on the same day he reported for treatment to the Railway Doctor and received treatment upto 2.7.82. The applicant did not find improvement in his condition and received treatment from Dr. Nigam of Government Labour Dispensary from 3.7.82 to 11.8.82 and reported for duty on 12.8.82, but he was not taken back on duty upto 29.8.82. The applicant was placed under suspension on 25.12.82 on the charge that he was on unauthorised absence from 3.7.82 to 11.8.82. A departmental enquiry was initiated against the applicant and 20.3.83 was fixed for enquiry proceedings but according to the applicant the Enquiry Officer did not appear on that date and no further date was given to him for further proceedings. He was, however, removed from service by orders dated 3.7.83. This order was challenged by the applicant claiming that he was victimised because he had got a favourable order in the High Court in Civil Writ No. 2511 of 82. The Delhi High Court granted leave to challenge the appellate order dated 30.7.84.

3. As the respondents were not passing any order on his representation, the applicant filed OA 46/86 in which the Tribunal ordered that the respondents should decide the revision petition of the applicant with liberty to the applicant to file a review petition within 45 days. The applicant filed the revision petition on 15.4.86 but the same has been kept pending and not even acknowledged. The applicant filed another O.A. 769/86 where the Tribunal directed the respondents that the revision petition should be decided within six months from 15.4.88.

4. The case of the applicant is that the order of punishment i.e. removal of the applicant from service was arbitrary and against the principles of natural justice. He was not absent from duty except for the period he was sick and for which he had filed the medical certificates. The applicant is being denied pension, gratuity, provident fund, insurance and other benefits and he has been denied the benefits of long service period which is against the service jurisprudence. He has prayed the Tribunal for setting aside the orders of removal from service.

5. We have noticed the non-filing of any counter-affidavit or reply by the respondents in this case. We have also noticed that no action has been taken by the respondents on the Revision Application filed by the applicant in pursuance of the order issued by the Tribunal in OA 46/86 and OA 769/86. In the absence of any reply from the respondents, we have no alternative but to consider the matter as it stands on the record before us.

6. The applicant claims that he has not been given any opportunity to state his case before the Enquiry Officer. In the absence of any controversy in any counter affidavit, and in the absence of relevant record from the department concerned, we will have to accept the claim. Similarly, the claim that the order of removal from service has been issued in an arbitrary manner and without hearing him, also will have to be accepted, in the absence of any material to the contrary. We have not been able to appreciate why the applicant was suspended when he had already worked between 29.8.82 to 24.12.82, after joining duty. From the material on the record, it is evident that he was under treatment of the Railway doctor from 5.6.82 to 2.7.82. The charge sheet shows that he was absent from duty from 3.7.82. The applicant's case is that he was under treatment of Dr. Nigam from 3.7.82 to 11.8.82. He was taken back on duty only on 29.8.82. The suspension order was passed on 25.12.1982 and the removal order (for unauthorised absence) on 3.7.83.

7. We are satisfied from the material on the record that the order was passed without affording any opportunity to the applicant. It is well settled that when an adverse order is passed against a party, and more so in a case of removal from service, the employee must be afforded reasonable opportunity, before such an order is passed. This is imperative under the rules of natural justice. The doctrine of audi alterum partem is applicable. We do not find anything in the record before us to hold that the applicant was afforded an opportunity of hearing before the impugned order was passed. We are, therefore, of the view that the impugned order cannot stand and must be quashed.

8. We do not express any view on the question of quantum of punishment meted out to the applicant, as interference on a question of punishment and imposing a lesser or other punishment is not within the jurisdiction of the Tribunal. In the recent decision of the Sup. Ct, of Union of India vs Parmanand, 1989 (2) Judgments Today 132, their Lordships have clearly enunciated the law on the point.

9. We have, however, noticed that the applicant has been deprived of all pensionary benefits at the fag end of the service by passing the impugned order. This could be done where the order of removal is passed after complying with the rules, procedures and after following the rules of natural justice... Since there is a breach in following the rules of natural justice in this case, we have no option but to quash the order dated 30.7.1984 removing him from service.

10. In the result, therefore, we quash the order of the applicant's removal from service, dated 30.7.84, and direct that he may be paid his full salary till the date of his superannuation and allow all consequential benefits, including pension, gratuity, provident fund and insurance benefits etc. and any other benefit under the Rules. These may be computed and paid to the appli-

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cant within a period of six months from the date of the receipt of a copy of this order. The application is accordingly allowed. There will be no order as to costs.

B. C. Mathur

(B.C. Mathur)
Vice-Chairman

Amitav

(Amitav Banerji)
Chairman