

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

(39)

Regn.No. CCP- 61/89 In  
OA-331/87

Date of decision: 11.12.1991

Shri Guru Dial Joshi .... Petitioner

Versus

General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

.... Respondents

For the Petitioner

.... Shri Umesh Misra, Counsel

For the Respondents

.... Shri O.N. Moolri, Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed  
to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,  
Vice Chairman(J))

The petitioner in this C.C.P. is one of the original  
applicant in OA-331/87 which was disposed of by judge-  
ment dated 10.5.1988. The petitioner, who was a railway  
employee, had been removed from service under Rule 14(ii)  
of the Railway Servants (Discipline & Appeal) Rules, 1968  
without holding any enquiry vide order dated 6.2.1981.  
He filed a writ petition in the Delhi High Court which  
was ultimately transferred to the Supreme Court and the

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same was decided along with Union of India Vs. Tulsi Ram Patel, 1985 (3) S.C.C. 398.

2. The petitioner filed a review petition before the respondents and demanded full and complete enquiry. As the same was not acceded to, he filed OA-331/87 in the Tribunal, seeking the same relief. By judgement dated 10.5.1988, the Tribunal directed the petitioner to send a copy of the review petition to the respondents within a week and the respondents were directed to dispose of the same in accordance with law within a period of three months from the date of receipt of the review application. The petitioner was also given the liberty to approach the appropriate legal forum in accordance with law, in case he was still aggrieved by the orders of the respondents. The petitioner was also allowed to remain in the possession of the railway quarter till the disposal of the review application by the respondents subject to his payment of rent, as per relevant rules.

3. The petitioner has stated that he has waited for sufficiently long time and that the respondents have not complied with the directions given by the Tribunal. He has alleged that the respondents have no material against him and that is why they are reluctant to hold a regular enquiry against him. He has stated that he is on the

verge of starvation and that his children are denied the necessities of life. He has undertaken to maintain peace during the enquiry and not to delay the enquiry in any manner.

4. The respondents have stated in their reply to the C.C.P, that the General Manager, Northern Railway, has since disposed of the representations of the petitioner by order dated 28.2.1990, copy of which has been annexed to the reply. The decision of the General Manager has also been communicated to him and the matter thus stands finally disposed of.

5. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The revision petition filed by the petitioner has been disposed of by the General Manager, stating that the case had arisen under circumstances of disturbed industrial peace when normal inquiry was not practicable and hence, action was taken under the provisions of Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules. He has stated that he had considered whether a regular enquiry be ordered now or at a later date. After a careful assessment, he had stated that he considered holding of an enquiry even at this stage "would disturb the delicate balance of industrial peace" and, therefore,

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he did not consider holding of a regular enquiry to be "in general interest". He also did not feel that a postponement of the enquiry to later date would help.

Accordingly, he rejected the review application.

6. Strictly speaking, the present C.C.P. will not be maintainable as the respondents cannot be said to have wilfully disobeyed the directions given by the Tribunal in its judgement dated 10.5.1988. The learned counsel for the petitioner submitted that the petitioner had been out of employment for about 11 years and that the present C.C.P. filed by him may be treated as a Miscellaneous Petition and appropriate directions be given to the respondents to hold the enquiry in the light of the recent judicial pronouncements.

7. In our opinion, the case of the petitioner is one of ~~the~~ genuine hardship. The effect of removal from service is that the petitioner will be deprived of his pension and his family will suffer for loss of pension. There is thus a human element involved which has not been considered by the competent authority, having regard to the service already put in by the petitioner in the Railways.

8. In O.N. Singh and Others Vs. Union of India & Others decided on 14.12.1987, a Full Bench of this Tribunal allowed a batch of applications where similar issues have been

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involved (OA Nos. 13-19/87). After reviewing the entire case law on the subject, the Full Bench allowed the application before it and quashed the orders of the Appellate Authority. The Tribunal directed the competent authority to hold a regular enquiry against the employees concerned and pass appropriate orders. The applicants had asserted before the competent authority that it was reasonably practicable to hold an enquiry and the respondents had not controverted the assertion. In view of this, the Tribunal observed that it must be presumed that it was now reasonably practicable to hold an enquiry.

9. In a case which was decided by the Principal Bench on 19.9.1991 (OA-2175/90 - R.T. Katiyar & Others Vs. Chairman, Railway Board, New Delhi & Others), the applicants were similarly situated. The applicants had alleged that the review petitions were arbitrarily rejected by the respondents. The review petitions had been rejected on the ground that it was not possible to hold an enquiry since about 10 years had elapsed after the alleged misconduct and that it may not be possible to produce the evidence required consequent on transfer/normal attrition of the staff who was witness to the entire episode. The Tribunal was of the view that no purpose would be served in remitting



the matter to the revision authority once again as ex-facie it could not be expected that the peculiar conditions that prevailed in the year 1991 which was on account of a strike by the railway employees at that time, on account of which the disciplinary authority dispensed with the enquiry, continued even at this stage so as to arrive at a reasonable conclusion that it was not reasonably practicable even now to hold an enquiry. In view of the above, the Tribunal quashed the orders passed by the respondents and remit the matter to them for holding an enquiry in accordance with law.

10. In the light of the above, it can be observed that the petitioner has not made out a good case for initiating contempt proceedings against the respondents under the Contempt of Courts Act. At the same time, we feel that in case we dispose of the petition without passing any orders giving liberty to him to file a fresh application, it may cause undue hardship to him. Keeping in view the interest of justice, we feel that the present petition should be treated as a Miscellaneous Petition and dealt with as such.

11. The petitioner has undertaken in the present petition that he will fully cooperate in the conduct of the enquiry and that he will not resort to any dilatory tactics. Taking

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into account the fact that more than a decade has passed from the date of removal of the petitioner from service during which period he had remained unemployed and the fact that he and his family have been deprived of pensionary and other retirement benefits, we remit the case to the respondents with a direction to hold a regular enquiry in accordance with the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant shall cooperate with the conduct of the enquiry in all stages. The enquiry shall be held as expeditiously as possible, but in no event later than six months from the date of communication of this order. The C.C.P. is disposed of accordingly, treating it as a Miscellaneous Petition.

12. There will be no order as to costs.

*B.N. Dhondiyal*  
(B.N. Dhondiyal)  
Administrative Member

*Onward 10/12/91*  
(P.K. Kartha)  
Vice-Chairman (Judl.)