

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 415/87
XXXXXX.

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DATE OF DECISION 3.9.91

Jai Parkash

Petitioner

Shri Vijay Singh

Advocate for the Petitioner(s)

Versus
Union of India

Respondent

Shri O.N. Moolri

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

AB
(AMITAV BANERJI)
CHAIRMAN
3.9.91

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 415/87.

DATE OF DECISION: 3.9.1991

Jai Parkash

... Applicant.

Versus

Union of India

... Respondent.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

... Shri Vijay Singh,
Counsel.

For the Respondent.

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

(Judgement of the Bench delivered
by Hon'ble Mr. Justice Amitav Banerji,
Chairman)

The applicant has filed the present Original Application (O.A.) in the Principal Bench on 25.3.1987. He is aggrieved by an order of removal from service dated 26.3.1985. He has prayed for reinstatement in service with full back wages and consequential benefits and cost. It is stated that he was appointed as a Khalasi on 1.4.1964 in the grade of Rs.196-232, and thereafter posted under Loco Foreman, Tughlakabad (Delhi). He had met with an accident on 18.6.1971 while he was on duty, and consequently he was declared medically unfit and thereafter he was absorbed as a running room bearer under Loco Foreman, Tughlakabad. His case is further that he was the active member of the Union, and the respondents were looking for ways and means to throw him out. It is stated that a false complaint was lodged against the applicant by D.R.M.

Office, and an inquiry was conducted and ultimately the applicant was exonerated on 8.12.1983 for the charges levelled against him. Another complaint/lodged by one Shri D.C. Pahariwal, Shunter of Agra Cantt on 9.1.1984. On his complaint, the applicant was again suspended immediately from his duty on 12.1.1984 by Loco Foreman, Tughlakabad. A proper form of the suspension order was issued to the applicant on 17.2.1984. According to him, the complaint was entirely false and was as a result of Enmity. Enmity was said to exist against Shri D.C. Pahariwal, Shunter, and another member of the staff Shri Shabbar Ali. After suspension of the applicant, an appeal was filed by him to the Senior D.M.E.I., New Delhi through the Loco Foreman, Tughlakabad. It was received by the clerk of the Loco Foreman on 14.1.1984. However, instead of passing an order on the appeal filed by the applicant, he was transferred to Bhatinda on administrative ground. But he was denied his transfer pass, transfer allowance and joining time etc. The transfer letter dated 17.1.1984/issued by the Assistant Personnel Officer, D.R.M. Office, New Delhi. It is further stated by the applicant that he was a poor man and was not in a position to go to Bhatinda on his own expenses when no subsistence allowance or salary was paid to him from February, 1984 to the date of removal i.e. 26.3.1985. He was not aware of any domestic inquiry nor was he summoned there. The complaint lodged by the complainant was never proved at all and as such the removal

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of the applicant was bad in law. The applicant was given an order dated 29.2.1984 revoking the suspension order from 8.2.1984. There was no mention how the period of 20 days i.e. from 8.2.1984 to 28.2.1984 would be counted. He has already been marked absent in the Attendance Register. He made several representations to the officials of the Northern Railway, but to no avail. The applicant met with the A.D.R.M., Pahar Ganj, New Delhi on 15.10.1986, who informed him that his services have been terminated due to the complaint of Shri D.C. Pahriwal after holding domestic inquiry. The applicant sent representations to the D.R.M. and General Manager, Northern Railway. But he did not hear anything from them. Thereafter, Loco Foreman sent a copy of departmental letter to the applicant which confirmed the fact of removal from service on 10.3.1987.

The applicant states that his termination of service is illegal, unlawful and violative of principle of natural justice. Required procedure had not been followed. He had not been served with a copy of the chargesheet nor asked to appear before the Inquiry Officer. He was also not served with any papers or documents in support of the case of the Railways for his removal. He claimed that the entire inquiry started and concluded within one day only, namely, 27.12.1984, and the report of the Inquiry Officer was submitted to the Disciplinary Authority and the latter passed the removal order on 26.3.1985 without any application of mind. The

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applicant further states that he had made several representations to the department for redressal of his grievance, but there was no reply. Ultimately, he has to file the O.A. before the Principal Bench of the Tribunal.

A written statement has been filed by the respondents in following which Preliminary Objections were taken viz.,

- (i) Application is not maintainable as it has not been filed against a legal entity;
- (ii) It is hopelessly time-barred. It has been filed on 25.3.1987 and challenges the impugned order dated 26.3.1985. He had not filed any appeal against the order of removal, which has become final; and
- (iii) The mandatory provision for exhaustion of remedy before coming to the Tribunal had not been complied with. The applicant's O.A. is not maintainable as he has not come before the Tribunal with clean hands and suppressed material. The Application is also not maintainable for the applicant has stated that he has been removed from service by oral order and no written order has been served upon him and that the date of the order is 26.3.1985.

In the other paragraphs of the written statement, it is clearly stated that there can be no removal by an oral order and no Application can be filed on the basis of an oral order. The allegation that the applicant was a Union

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(B)

activist, was denied. The applicant was served with a charge-sheet for major penalty for his misbehaviour with the running staff and for using unparliamentary language against the Divisional Mechanical Engineer, Tughlakabad. The inquiry in this case could not be finalised as the witnesses who were employees of the Central Railways did not attend. The order placing him under suspension w.e.f. 12.1.1984 was in order and the Asstt. Mechanical Engineer, who passed the order, was competent to pass such orders. The order of his suspension was conveyed to the applicant. The complaint against the applicant was not false nor was due to any animosity. The applicant had an opportunity to prove that the complaint was false. However, he did not take up his defence and avoided to appear in the inquiry. There was no illegality involved in the orders of the transfer of the applicant. He had deliberately failed to obey these orders and did not report for duty. The applicant had been intentionally and deliberately avoiding to receive all communications sent to him on one or the other excuse. His representations were neither tenable nor justified. He also avoided to receive the charge-sheet for major penalty sent to him by Registered A.D. Subsequent communications sent to him for attending inquiry and also the impugned order of his removal were received back with the remarks that he could not be

(B)

(b)

contacted despite various attempts. The orders were pasted at the door of his house as well as put up on the Notice Board. It was stated that the applicant could not make the complaint after having deliberately kept away from the communications sent to him. It was further stated that the applicant did not receive notice sent to him deliberately and as such it is a lie on his part to raise such pleas for non-service. The respondents had no option, but to proceed ex-parte against the applicant, as the applicant failed to appear and accept notices, failed to co-operate and attend the inquiry. The applicant was never found at his residence in Railway Quarter. He had filed an application before the Conciliation Officer under the Industrial Disputes Act. Subsequently, he withdrew it presumably because it was highly misconceived.

When the matter came up for hearing, learned counsel for the applicant Shri Vijay Singh stated that there was ex-parte proceedings against the applicant, and the charges had not been proved and the inquiry was started and concluded in one day only. There was no mention against whom he had misbehaved. He further stated that there is nothing on the record to show that the charges have been proved against the applicant.

(b)

Shri O.N. Moolri, learned counsel for the respondents, contended that two questions need be decided; firstly, that the O.A. was highly belated and barred by time; secondly, against the order of removal, he did not exhaust remedy provided under the law and had approached this Tribunal. He further urged that there was no merit in his contention for he was deposing falsely. He did not appear before the Inquiry Officer although he was aware and he had avoided the same.

We indicated that we would like to see the original record regarding the inquiry. The record has been submitted to us and we have perused the same. It appears that the applicant had been making representations after representations to the authorities concerned to consider his case. There is, however, nothing to show that the applicant had been served with a notice of the inquiry nor is there anything to show when the applicant was informed about the order of removal, or that he had filed an appeal to the superior Railway Authority, which was permissible within 45 days. There is also evidence to show that the notice was sent to his residential address and the Postman had also reported that he had not met the applicant despite his repeated visits to his house. There can be no doubt either that the applicant was suspended and a copy of the charge-sheet was served and, therefore, he was aware about the same. He protested against his transfer to Bhatinda saying that until the suspension order is set

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(b)

aside, the question of transfer did not arise. The suspension order was revoked and he was directed to report at Bhatinda, which he did not. He made representation that he had not been given Journey Pass, expenses etc. and, therefore, he could not report for duty. The fact of the matter is that he had not complied with the transfer order. He could not be served with a notice of the Inquiry either at his residential address at the Railway Quarter in Tughlakabad nor he could be served at the place where he had been transferred. The applicant had received a copy of his removal order. He should have immediately filed an appeal to the superior Railway Authority and agitated all these questions with them. He did not do so. Secondly, even after coming to know of the removal order dated 26.3.1985, he had not filed any appeal and as such had not exhausted the remedy provided under the law. The applicant's representation is that he had received a copy of the removal order only on 10.3.1987 and he had filed the present Application on 25.3.1987. This is /disputed. Even ^{not if the order of removal} he had received ^{so belatedly,} he should have filed an appeal within 45 days of the receipt of a copy of the order. He did not file any appeal.

In the Full Bench case of B. PARAMESHWARA RAO vs. THE DIVISIONAL ENGINEER, TELECOMMUNICATIONS, ELURU AND ANR, decided on 12.4.1990, it has been laid down that a person must exhaust the remedy provided under the law i.e. by filing an appeal and if the appeal is

(PC)

not decided within a period of six months, then he can approach the Tribunal on the expiry of six months from the date of filing of the appeal. Even this was not done. It is evident that he had been sending representations after representations to the Railways, but in the case of S.S. RATHORE VS. STATE OF MADHYA PRADESH (AIR 1990 SC 10), their Lordships of the Supreme Court laid down that repeated representations do not extend the period of limitation.

From the above, it is evident that neither the applicant exhausted the remedy provided under the law nor did he approach the Tribunal within the period of limitation. Consequently, his present Application is barred both under Section 20 and 21 of the Administrative Tribunals Act, 1985.

In view of the above, the applicant cannot succeed in the Original Application and it, therefore, fails.

There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)


3.9.91
(AMITAV BANERJI)
CHAIRMAN

SRD: