

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 1675/90

DATE OF DECISION: 31.8.1990.

SHRI BIPIN BIHARI PARSAD

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS.

SHRI B.S. MAINEE

ADVOCATE FOR THE APPLICANT

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

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

The above OA came up for admission before us on 28.8.1990. The applicant Shri Bipin Bihari Parsad working as Electric Khalasi, Senior Traction Foreman's Office, Northern Railway, New Delhi, was issued a chargesheet for major penalty on 3.11.1988 on the basis of allegations that he had forged service entry in the Service Labour Card No.184963. He was supplied a copy of the enquiry report on 28.6.1990 with the direction that he might make a representation, if any, to the disciplinary authority. The applicant submitted a detailed reply to the show cause notice on 9.7.1990. He has now come to know that "the APO, New Delhi has passed orders on 1.8.1990 seeking to remove the applicant from service on the basis of said enquiry report" and therefore his service is likely to terminate in the immediate future.

2. Advocate, Shri B.S. Mainee, appearing for the applicant submitted that this being an exceptional case was a fit case where pending filing an appeal against the order of the disciplinary authority before the appellate

authority, the Tribunal may consider admitting the application and restraining the respondents from implementing the order seeking to remove the applicant from service said to have been passed on 1.8.1990. The learned counsel in this connection drew our attention to the decisions of this Tribunal in OA-616/90, Shri S.K. Gupta Vs. General Manager, Western Railway & Others, OA-1444/89, Shri J.B. Khanna Vs. Union of India & Others and in OA-2043/89 Shri J.N. Misra Vs. Union of India & Others, where relief was granted to the applicants in more or less similar circumstances.

3. We have considered the matter carefully. We are of the view that first, the order of removal from service is said to have been made on 1.8.1990 but the same is not served. In any case that is not the order impugned in the OA. The impugned order attached to the application and which is sought to be quashed by the relief claimed in the application, is a memorandum dated 20.6.1990 addressed to the applicant, enclosing a report of the enquiry and advising that "the disciplinary authority will take suitable decision after considering the report. If you wish to make any representation or submission you may do so in writing to the disciplinary authority within 15 days from the receipt of this letter". Thus the impugned order is really no order and its quashing is tantamount to interfering with the due process of law in disciplinary cases. The order for removal from service is not on the file as said earlier. Secondly, even after the order for removal from service is passed, there are statutory remedies available to the applicant by way of filing an appeal under Rule 18 of Railway servants Disciplinary and Appeal Rules, 1968 to the prescribed appellate authority, even if the subsequent Revision remedy is not to be invoked. Thus,

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(M)

obviously the departmental remedies are available to the applicant under the statutory rules and he must exhaust the departmental remedies before coming to the Tribunal.

We also do not find any exceptional character in the case which would persuade us to use our discretion in admission etc. at this stage. It will be relevant to refer here to the Full Bench Judgement of this Tribunal in DA-27/90 decided on 12.4.1990 (1990 (2) CAT, 525, B. Parmeshwara Rao Vs. Divisional Engineer Telecommunications Eluru and another, holding that no application should ordinarily be admitted by the Tribunal unless the applicant has exhausted alternate remedy i.e. filing appeal and waiting for six months or till the date the appeal is decided. The DA, is therefore, disallowed as pre-mature and is, accordingly, dismissed. The applicant shall, however, be at liberty to approach the Tribunal after exhausting the alternate remedies available to him under the statutory rules.

Daburji
(I.K. RASGUTRA) 31/8/90
MEMBER (A)

Dinesh
(T.S. DEROI)
MEMBER (J)