

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

M

O.A. No. 616/90
T.A. No.

199

DATE OF DECISION 5-6-1990

Shri S. K. Gupta

Petitioner

Shri B. S. Mainee

Advocate for the Petitioner(s)

Versus

General Manager, Western Rly. Respondent

& Others

Shri O. N. Moolri

Advocate for the Respondent(s)

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

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

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

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

The applicant, who has worked as Senior Luggage Clerk in Western Railway, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned order dated 16.2.1990 passed by the Senior Divisional Commercial Supdt., Western Railway, whereby he has ordered the removal of the applicant from service. The applicant has also sought for his reinstatement in service with full consequential benefits.

2. The case was listed for admission and interim relief on 30.5.1990, when we went through the records of the case carefully and heard the learned counsel for both the parties. In our opinion, the application could be disposed of at the admission stage itself.

3. The applicant began his career as a Parcel/Luggage Clerk in 1981 and was promoted as Senior Luggage Clerk in 1986. He has alleged that the Senior D.C.S. under whom he had worked, was not favourably disposed towards him and in view thereof, he was suspended on 1.4.1988 and reinstated on 2.4.1988. He was again placed under suspension on 20.8.1988 which was revoked on 25.2.1989. He was transferred from Agra Fort to Kota illegally, which is a subject matter of an application in the Central Administrative Tribunal, Jodhpur Bench. The Tribunal has passed a stay order against the said transfer. The applicant filed a contempt petition against the respondents. Thereafter, they cancelled the transfer order.

4. On 21.3.1988, the applicant was served with a memorandum together with Articles of Charge for major penalty under the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. The allegation against him was that he had demanded Rs. 25/- per package from one customer for loading of five packages of leather shoes from Agra Fort to P.O.G.R. On his refusal to pay the illegal demand, the applicant deliberately detained the consignment for two days.

5. The applicant denied the charges levelled against him. Thereafter, an inquiry was held and the Inquiry Officer has submitted a report finding him guilty of the charges. The disciplinary authority passed an impugned order of removal from service without giving him a copy of the inquiry report and getting his explanation before passing the impugned order.

6. The applicant has alleged that the order passed by the disciplinary authority is a non-speaking order, that

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there were procedural irregularities in the inquiry, and that in any event, the punishment imposed is grossly disproportionate to the alleged misconduct.

7. The applicant has not exhausted the remedies available to him by way of an appeal and revision. The learned counsel for the respondents opposed the admission of this application on the ground that the applicant has not exhausted the remedies available to him. The learned counsel for the applicant drew our attention to two decisions of this Tribunal wherein similar cases had been dealt with by the Tribunal, where the applicants had not exhausted their remedies before filing the application in the Tribunal (judgement dated 3.8.1988 in OA-1444/89 - J.V. Khanna Vs. Union of India & Others, judgement dated 9.2.1990 in OA-2043/89 - J.N. Mishra Vs. Union of India & Others).

8. It is true that the applicant in the instant case has not exhausted the remedies available to him under the relevant service law. At the same time, we are of the ~~absolute~~ ^{absolute} opinion that in exceptional cases, there is no bar on the Tribunal to entertaining an application even where the applicant has not exhausted the remedies available to him. In our opinion, this a fit case in which an order similar to that passed in the case of J.N. Mishra, mentioned above, to which both of us were parties, deserves to be passed.

9. Accordingly, we direct the applicant to file an appeal to the Appellate Authority within two weeks from the date of receipt of the order. In the appeal, he may raise all the contentions which he has raised in the present application before us. The Appellate Authority shall consider and dispose of the appeal in accordance with the provisions of law and pass a speaking order within

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six weeks from the receipt of the application. Till the appeal is disposed of as indicated above, the respondents are restrained from implementing the order dated 26.12.1988.

10. The application is disposed of on the above lines. We make it clear that the applicant will be at liberty to file a fresh application in accordance with law, if so advised, in case he feels aggrieved by the decision given by the Appellate Authority.

The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member
5/6/890

5/6/890
(P. K. Kartha)
Vice-Chairman (Judl.)