

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

(8)

OA NO.2340/91

DATE OF DECISION:20.2.1992

SHRI SOM PRAKASH MISRA

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:

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

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

FOR THE APPLICANT

SHRI G.D. BHANDARI,
COUNSEL.

FOR THE RESPONDENTS

SHRI ROMESH GAUTAM,
COUNSEL.

JUDGEMENT (ORAL)

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

Heard the learned counsel for both the parties.

2. The case of the applicant, as put forth by Shri G.D. Bhandari, learned counsel is that copy of the enquiry report was not supplied to the applicant before imposing the penalty. This fact, the learned counsel pointed out is also borne out by the counter-affidavit filed by the respondents in paragraph-5 A-B (page 37 of the paper book) where the respondents have stated that "contents of paras A-B are wrong and denied. The enquiry report was supplied to the applicant along with the notice of imposition of penalty."

3. The learned counsel for the respondents, Shri Romesh Gautam on the other hand submitted that the application is pre-mature, as the dismissal order passed by the disciplinary authority is dated 5.9.91. The said order allowed the applicant to file an appeal within 45

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days under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant, however, did not file any appeal. The application, therefore, is premature. This argument was repelled by the learned counsel for the applicant by referring us to Annexure A-7 (page 27 of the paper book). The said letter dated 13.5.1991 is addressed to the applicant and reads as under:-

"In connection with above you are hereby informed that Rule 18 (3) of the service conduct rules, formerly applied in the SF - 5 may please be treated as dropped."

The learned counsel for the applicant, therefore, submitted that the applicant's right to file an appeal has been withdrawn.

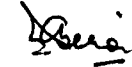
4. We have considered the submissions made by the learned counsel for both the parties and perused the record very carefully. We are of the view that as far as the letter of 13.5.91 is concerned that was issued much before the disciplinary authority had imposed the penalty of dismissal from service on the applicant. Further the rule mentioned in the said letter viz. Rule 18 (3) is of the service **conduct** rules and not of the Discipline and Appeal Rules, 1968. The view that the right to file the appeal was withdrawn from the applicant does not seem to be acceptable. The applicant should have filed the appeal before the competent authority in the prescribed time before approaching the Tribunal. Had this been done, possibly the present short-coming in the procedure of copy of the enquiry report having not been furnished to him before imposition of penalty might have been rectified, resulting in saving of time. The fact, however, remains that the respondents have not supplied a copy of the enquiry

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report having not been furnished to him before imposition of penalty might have been rectified, resulting in saving of time. The fact, however, remains that the respondents have not supplied a copy of the enquiry report to the applicant before imposing the penalty of dismissal on him. In accordance with the Full Bench decision of the Tribunal in **Prem Nath K. Sharma v. UOI & Ors. 1988 (6) ATC 904** confirmed by the Hon'ble Supreme Court in **UOI & Ors. v. Mohd. Ramzan Khan JT 1990 (4) SC 456**, we set aside the order of dismissal dated 5.9.1991. The respondents are further directed that they will pass necessary orders regarding the treatment of the period from the date he was dismissed from service viz. 5.9.1991 and the date he is reinstated in service for taking further disciplinary action, if so advised, against him. The respondents, however, are not precluded from continuing the disciplinary proceedings against the applicant from the stage of supplying a copy of the enquiry report to him. The above order shall be implemented by the respondents as early as possible but preferably within 12 weeks from the date of communication of this order. No costs.


(I.K. RASGOTRA)
MEMBER(A)


(T.S. OBEROI)
MEMBER(J)

February 20, 1992.

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