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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

OA No. 2397/91

Date of decision: 15th October, 92

Sh.B.D.Arya Applicant

versus

Union of India through
General Manager,
Northern Railway & ors.... Respondents

CORAM: THE HON'BLE SH.T.S.OBEROI, MEMBER(J)
THE HON'BLE SH.P.C.JAIN, MEMBER(A)

For the Applicant ... Sh.B.S.Mainee,
Counsel.

For the Respondents ... Sh.P.S.Mahendru,
Counsel.

1. Whether local reporters may be allowed to see the Judgement? Yes.
2. To be referred to the reporter or not? No.

JUDGEMENT

(DELIVERED BY HON'BLE SH.T.S.OBEROI,
MEMBER(J)

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants seeks the following reliefs:-

- "8.1 That this honourable Tribunal may be pleased to allow the application.
- 8.2 That this honourable Tribunal may be please to set aside the impugned order dated 8.8.1991 Annex.A-1 and impugned order dated 22.7.1982(Annex.A-2).
- 8.3 That this honourable Tribunal may be pleased to direct the respondents to reinstate the applicant immediately on the post from which he had been dismissed from service pending decision of the applicant's appeal by the Delhi High Court.
- 8.4 That this honourable Tribunal may be pleased to direct the respondents to pay pay and allowance to the applicant for the period for which he is out of job on account of void orders of dismissal from the service.
- 8.5. That any other or further relief which this honourable Tribunal may deem fit and proper under the circumstances of the case may also be granted in favour

of the applicant.

8.6 That the cost of the proceedings may also be awarded in favour of the applicant."

2. The applicant's case briefly is that he was falsely implicated in a criminal case under Section 161 IPC and Section 5(2) read with Section 5(1) (D) of Prevention of Corruption Act, and was sentenced to R.I. for one year under Section 161 IPC and R.I. for two years under Section 5(2) read with Section 5(1)(D) of the said Act. However, on appeal filed against the conviction and sentence, before the High Court of Delhi, his sentence was suspended and he was released on bail on furnishing a bond for the sum of Rs.5,000/- with one surety for the like amount to the satisfaction of the Trial Court. Consequent upon the said conviction of the applicant, the respondents have taken departmental action against him and dismissed him from service under Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant's plea is that since his sentence has been stayed and he has been released on bail, the action taken by the respondents under Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968 is not justified, and that he should be allowed to resume his duties as a Railway servant, till decision of the appeal in the criminal

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case. He has also prayed for quashing of the Notice(Annexure A-1) issued by Respondent No.4 (Estate Officer,Northern Railway),calling upon him to vacate the Railway quarter No.15/1,Railway Colony,Delhi Kishan Ganj,Delhi, in his occupation, and also to deposit the damages, as mentioned therein. He has averred that he had filed an appeal against the order of dismissal, but no decision on the same has yet been communicated to him.

3. In the counter filed on behalf of the respondents, the applicant's case has been opposed. Their case is that the present OA is barred by Rule 10 of the Central Administrative Tribunal (Procedure)Rules,1987, as the applicant has taken up the plea regarding reinstatement in service as well as quashing of the notice for vacating the quarter in question. They have also taken up the plea that Annexure A-1 is only a notice and is not an order in strict connotation of Section 19 of the Administrative Tribunals Act,1985 and that the applicant without availing of the departmental remedy by filing an appropriate representation against Annexure A-1, has chosen to file the present OA, hence the same is not maintainable. The respondents have also stated that the applicant has not

given correct statement, while stating that he has not been communicated the decision on the appeal filed by him, as his appeal had been rejected, as far back as 8.11.82, vide Annexure R/1 to the reply filed on behalf of the respondents and so the present OA is barred by limitation. The respondents also stated that the first notice to the applicant to vacate the quarter in question was issued on 24.10.89 (Annexure A-8), but he had not challenged the same. As regards the appeal filed by the applicant against his conviction in the criminal case, the respondents took up the plea that there is no bar under the rules to departmental punishment, pending appeal in the criminal case, and therefore, the action taken by the respondents, in the departmental proceedings under Rule 14(1) of the Railway Servants(Discipline & Appeal) Rules, 1968 was in order.

4. In the rejoinder filed by the applicant, the points taken up in the OA were broadly reiterated.

5. We have heard the learned counsel for both the parties and have perused the material, on record.

6. The learned counsel for the applicant, while urging the points [redacted] stated in the

OA, as briefly discussed above, pleaded that even the Appellate Order, referred to by the learned counsel for the respondents is not a speaking order, being cryptic. He referred to the judgement of the Hon'ble Supreme Court in the case of Ram Chander Vs. Union of India & ors reported in AIR 1986 SC 1173, in support of his contention. The learned counsel for the respondents assailed the OA, on the ground of limitation as well as on merits, urging that the applicant has not given correct factual position with regard to rejection of his appeal nor has ~~he~~ challenged the appellate order.

7. We have considered the rival contentions, as briefly discussed above. So far as relief contained in para 8.2 of the OA against the order dated 22.7.82(Annexure A-2), the same is obviously grossly belated and hence barred by limitation. The applicant's plea regarding his reinstatement in service, therefore, cannot be granted in the present OA and hence disallowed. As regards relief against notice dated 8.8.91 (Annexure A-1), keeping in view that even the respondents had issued the first notice on 24.10.89 (Annexure A-8), and the applicant continues to be in occupation of the quarter in question,

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the respondents shall allow the applicant a period of three months, from the date of this order, to make alternative arrangements, subject to his liability to normal licence fee etc. as per rules. Subject to above observations, the OA is dismissed without any order as to costs.

(Recd 15/10/92)
(P.C.JAIN)
MEMBER(A)

Oberoi 15.10.92
(T.S.OBEROI)
MEMBER(J)