

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

O.A.No.3005 of 1992

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New Delhi, this the 3rd day of December, 1993.

HON'BLE MR J.P.SHARMA, MEMBER(J)

HON'BLE MR B.N.DHOUNDIYAL, MEMBER(A)

Shri B.S.Kumar

Ex.Assistant Superintendent(Inspection)

Diesel Locomotive Works

Varanasi.

..... Applicant.

(by Mr B.S.Mainee, Advocate).

vs.

Union of India: Through

1. The Secretary  
Ministry of Railways  
Rail Bhawan  
New Delhi.

2. The Member, Mechanical  
Railway Board  
Rail Bhawan  
New Delhi.

3. The General Manager  
Diesel Locomotive Works  
Varanasi.

..... Respondents.

(by Mr P.P.Khurana, vice Mr Inderjeet Sharma,  
counsel for the respondents).

ORDER(Oral)

B.N.DHOUNDIYAL, MEMBER(A)

This O.A. has been filed by Shri B.S.Kumar Executive Assistant Superintendent(Inspection), Diesel Locomotive Works Varanasi against the impugned order dated 23.10.1992 issued by the Deputy Chief Personnel Officer communicating the decision of the Member Mechanical, Railway Board rejecting the review petition of the applicant.

2. The admitted facts of the case are that the applicant was working in the Railways from 26.10.1951 till he was removed from service by the impugned order dated 20.5.1982.

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This order of removal from service was passed after holding an ex-parte inquiry against the applicant under the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant had taken leave from 20.4.1981 to 25.4.1981 with permission to leave Headquarters to look after his aged parents. He requested the respondents for extension of leave for 21 days vide his letter dated 26.4.1981. He again requested for extension of leave for 76 days. Further request for extension of leave were made and later he himself became a patient of hypertension. He extended his leave and submitted medical certificates on 10.2.1982 and 14.8.1982. He reported back for duty alongwith a Medical Certificate on 2.6.1983. He was not allowed to join his duties as an order for removal from service had already been passed on 20.5.1982. He submitted an appeal on 8.6.1983, which was rejected on 15.2.1985. This Tribunal referring to the case of Ram Chander vs. Union of India & others, AIR 1986, SC 1173, held that adequate opportunity had not been given to the applicant and the order of removal from service dated 20.5.1982 and the appellate order dated 16.9.1987 were set aside. It also directed the applicant to file a review petition to the respondents within a period of 30 days from the date of receipt of the order, bringing out all relevant factors, including as to why he did not formally intimate to them his address and whereabouts immediately after the expiry of the sanctioned leave.

3. We have heard the learned counsel for the parties. The main point, under consideration is whether the authority hearing the appeal could

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go beyond the orders of this Tribunal, quashing the order of removal dated 20.5.1982 and the rejection of appeal dated 16.9.1987. The harmonious construction of para 20 of the judgment of this Tribunal dated 29.5.1992 would show that what the Tribunal had in mind was that while considering the review petition of the applicant, the respondents shall decide whether there was a prima facie case for instituting a fresh inquiry. However, the impugned order dated 23.10.1992 goes much beyond the scope of review and reads as under:-

"Your Review Petition dated 29.6.1992 submitted in pursuance of the orders of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi dated 29.5.1992, has been considered by the Member Mechanical, Railway Board, New Delhi, who has decided that the penalty of 'Removal' imposed on Shri B.S.Kumar is justified and has rejected your Review Petition dated 29.6.1992. A copy of the speaking orders dated 12.10.1992 in this regard passed by Member Mechanical, Railway Board, is enclosed herewith, for your information."

In the attached order it is stated that the penalty of removal from service imposed on the applicant is justified.

4. It is obvious that the concerned authorities have mis-interpretted the judgment of this Tribunal dated 29.5.1992 and had no authority to revive the order of removal or an order rejecting the appeal, which had already been set aside by the Tribunal. The impugned order dated 23.10.1992 is, therefore, not sustainable and is hereby quashed and set aside. The authorities shall re-consider his review application/ representation and if they

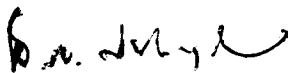
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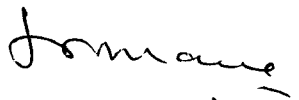
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deem proper, order a fresh inquiry affording full opportunity to the applicant to defend his case.

5. There will be no order as to costs.

  
( B. N. Dhoundiyal )  
Member (A)

  
( J. P. Sharma )  
Member (J)

/sds/