

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. No.1003/1992.

(13)

NEW DELHI, THIS THE 17TH DAY OF SEPTEMBER, 1997.

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR. S.P.BISWAS, MEMBER (A)

Dinesh Kumar,
s/o Shri Vishwanath,
House No.1040, G-Block,
Man Sarovar Park,
Shahdara,
Delhi.

....Applicant.

(By Advocate Shri B.S. Mainee)

Vs.

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Administrative Officer (Construction)
Northern Railway,
Kashmeri Gate,
Delhi.
3. The Sr.Civil Engineer (Contn-I),
Northern Railway, State Entry,Road,
New Delhi.
4. The Assistant Engineer (Constn)
Northern Railway, Saharanpur.

...Respondents

(By Advocate Shri P.S.Mahendru)

ORDER

JUSTICE K.M.AGARWAL:

By this application, the applicant has made a prayer for reinstatement in service after quashing the impugned order of removal from service passed by the disciplinary authority and the appellate order affirming the order of disciplinary authority.

2. Briefly stated, the applicant was a casual labour Khallasi since 4.9.1983. Temporary status was conferred on him on 1.4.1984. While working under the

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Inspector of Works (Construction), Northern Railway, Meerut City, he was found to have indulged in an act of misconduct on 4.10.1991. He was, therefore, put under suspension by order dated 5.10.1991 along with one Rakesh Kumar, the applicant in O.A. No.1002/92, which was heard and is being decided along with this O.A. No.1003/92. Whereas in O.A. No.1002/92, the applicant alleged that he returned the chargesheet as it was in English, the applicant in the present case refused to accept the envelope containing the chargesheet on the ground that he was under suspension and, therefore, could not accept the envelope. (See the contents of Annexure R-2). An attempt was made to serve him by registered post, but he refused to accept the envelope by post. (See Annexure R-5). However, suppressing this fact, the applicant has built up his own story in his application under Section 19 of the Administrative Tribunals Act, 1985. The Inquiry Officer, therefore, proceeded ex parte against him and submitted his inquiry report, (Annexure R-6), finding him guilty of misconduct. On the basis of this report, the disciplinary authority passed the impugned order of removal from service, which was affirmed in appeal filed by the applicant. Hence, this application was filed for the said relief.

3. The learned counsel for the applicant submitted that this case is squarely covered by a decision of this Tribunal in O.A. No.1844/92, decided on 9.5.1997 between **SHRI RAM SARAN LAL Vs. U.O.I.**

4. We perused the judgment delivered in O.A. No.1844/92 and found that the learned counsel for the applicant was not right in contending that this case was covered by the decision of this Tribunal in the aforesaid

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O.A. In O.A. No.1844/92, the grievance of the applicant was that a copy of the inquiry report was not supplied to him before imposing the penalty of removal from service. This fact was conceded by the respondents and in view of the decision of the Supreme Court in **MANAGING DIRECTOR, ECIL, HYDERABAD Vs. B. KARUNAKAR, JT 1993 (6) SC 1**, it was found that the imposition of penalty was vitiated due to non-supply of a copy of inquiry report to the applicant before imposition of the penalty. Accordingly the order was set aside. In the present case, the applicant refused to accept the envelope containing the chargesheet on the ground he was under suspension. He also refused to accept the envelope sent by registered post and thereafter did not participate in the inquiry. In these circumstances, it appears that the Inquiry Officer conducted the inquiry ex parte and returned a finding that the misconduct was proved. On this basis the impugned order of penalty was imposed on the applicant.

5. After remaining ex parte, the applicant cannot claim that he was not given an opportunity of defending himself. Further, having suppressed the material facts before the Tribunal, he cannot claim any indulgence in his case.

6. In **GOVERNMENT OF TAMIL NADU & ANR. Vs. A. RAJAPANDIAN, JT 1994 (7) SC 492**, it has been said that it is authoritatively settled by string of authorities of Supreme Court that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Similarly it has been held that the

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Tribunal has no power to interfere with the penalty imposed by the disciplinary authority. See U.O.I. Vs.

PARMA NANDA, 1989 (1) SCALE 606.

7. For the foregoing reasons, we find no merit in this O.A. Accordingly it is hereby dismissed but without any order as to costs.

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(K.M.AGARWAL)
CHAIRMAN

S.P.BISWAS
(S.P.BISWAS)
MEMBER (A)