

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1108/92

DATE OF DECISION : 7.4.1993

Shri Gian Singh

... Applicant

vs.

Union of India & Ors.

... Respondents

CORAM

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

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

1. Whether to be referred to the Reporter ? *Yes*
2. Whether reporters of local newspapers may be allowed to see the Judgment ?
3. Whether to be circulated to other Benches ? *No*

Adige
(S. R. Adige)
Member (A)

Sharma
(J. P. Sharma)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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OA 1108/92

SHRI GIAN SINGH

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

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

HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant

... SHRI G.D. BHANDARI.

For the Respondents

... SHRI B.K. AGGARWAL.

JUDGEMENT

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

This is an application dated 20.4.92 u/s 19 of the Administrative Tribunals Act 1985, filed by Shri Gian Singh, former Booking Clerk, Railway Station, New Delhi, praying for quashing of paragraphs ii, iii & iv of the impugned order dated 18.3.92 (Annexure A-5), whereby the penalty of removal from service imposed vide order dated 12.1.90 has been set aside, and the case has been remitted to the Disciplinary Authority for taking de novo action from the stage of sending enquiry report, and in the meantime, treating the applicant to have been placed under suspensio



from the date of removal from service i.e. from 15.1.90 till further orders.

2. The applicant was appointed as Group-D staff on 20.9.58 in the Northern Railway and was promoted to the post of Booking Clerk in the Delhi Division on 3.10.76. He belongs to Scheduled Caste community. While working as Booking Clerk at New Delhi Railway Station, the following charges were framed against him :

- "(i) He prepared BPT No. 309389 on 9.10.86 in different process for different particulars on passenger as well as record/Accounts foils intentionally to defraud railway and pocket Govt. cash & Rs.652/- i.e. difference in amount in both of them.
- (ii) He did not put his initials on passenger foils of BPT to avoid detection of his misdeed.
- (iii) He created false shortages in booking and huge amount of Rs.1052.50 was lying outstanding against him as on 18.8.88."

These charges were served on the applicant, and a disciplinary enquiry conducted, in which the E.O., in his report dated 30.10.89 (Annexure A-7), held that charges (i) & (iii) had been proved against the applicant. Thereupon, the Disciplinary Authority, by his order dated 12.1.90 (Annexure A-15), ordered the applicant's removal from service, which were communicated to him vide letter dated 16.1.90 (Annexure A-16).

3. Against that, the applicant submitted an appeal dated 12.2.90 (Annexure A-2), protesting his innocence and claiming that the Disciplinary Authority had, while dismiss-



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the applicant from service, relied upon the findings of the EO without giving the applicant a chance to explain his position, which violated the principles of natural justice. With reference to this appeal, the applicant received letter dated 12.2.90 (Annexure A-3) stating that his appeal had been carefully considered by the Appellate Authority who rejected the same. The grounds for rejecting the appeal were, however, not mentioned in this letter. Against that, the applicant filed a Revision Petition before the GM, Northern Railway, 16.8.90 (Annexure A-4), taking the plea that the EO's findings were false, malafide, arbitrary and in violation of the principles of natural justice, and that the applicant had not been given a reasonable opportunity of defence. The applicant alleged that a defence witness, one Shri Kulwant Singh, was not summoned and hence the applicant's defence was prejudiced. He also alleged that the Disciplinary Authority had not applied his mind judicially to the facts of the case and no reasoned, speaking order had been passed. The Appellate Authority's order was also a cryptic and non speaking one. The applicant also prayed that this case be referred to the Railway Rates Tribunal, Madras, for advice before disposing of the same, in case, the Revisional Authority did not find it convincing in any way. Upon that Revision Petition, the ^{as by his impugned order dated 18.3.92 (Annexure A-5)} Revisional Authority (GM, N.Rly.) quashed the order of removal from service and remitted the case to the Disciplinary Authority from the stage of sending the enquiry report to the applicant and calling for his comments thereon before

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finalising the case by the Disciplinary Authority and in the meanwhile, treating the applicant as deemed to have been placed under suspension from the date of removal from service i.e. 15.1.90.

4. The grounds taken in this application are that; (i) under Rule 24(2) Railway Servants (D&A) Rules, 1969, it is obligatory on the Revisional Authority to refer the case to the Chairman, Railway Rates Tribunal, for advice, if so requested by the employee, before disposing the Revision Petition, in case he does not accept the petition and cancel the punishment awarded, (ii) Rule 24(2) does not provide for remitting the case and taking de novo action from any stage of the enquiry proceedings, (iii) the Revisional Authority's order, treating the applicant deemed to be under suspension w.e.f. 15.1.90 violates the Railway Servants (D&A) Rules and the Railway Board's Policy directed, (iv) the impugned orders are not the orders of the Appellate Authority but for all practical purposes it is the decision of the Northern Railway, New Delhi, who has super imposed his own ^{and} decision ~~from~~ that of the competent authority, a copy of which has neither been supplied nor reproduced, (v) in State of U.P. Vs. Shri Brahm Dutt Sharma (AIR 1987 SC 943), the Hon'ble Supreme Court has held that when a Show Cause Notice is issued to a Govt. Servant, the Govt. servant must plead his case before the authority concerned and the court should be reluctant to interfere with the notice on that stage unless



the same is shown to have been issued without any authority,

(vi) in a catena of cases, it has been held that denovo enquiry cannot be conducted. Some of the cases cited are; Karnataka High Court decision in *Syed Syfulla Vs. Suptg. Police* (AIR 1982-83 SLR 145), decision on (AIR 1961 299 Kerala (1962 SC 1334), (1971 SC 1447). (vii) in Calcutta High Court case, *Dolla Gobinda Dass Vs. UOI*, it has been held that there cannot be any fixed principle for not entertaining an Writ Petition before the Departmental proceedings are final concluded, and the same principle of law has been upheld by the Principal Bench in the case *Tobonainan Vs. UOI* (1990-1-ATLT-CAT-149). In exceptional cases, the Tribunal may entertain the application without compelling the applicant to wait till the final orders are passed in an enquiry which is pending, as observed in *Dr.A.D. Dutt Vs. UOI* (1978-2-SLR 17), *Shakraya Pada Mukerjee Vs. UOI* (AIR 1986 CAT 424), and lastly (viii) the Appellate Authority is require to pass a speaking and reasoned order, ^{and by} meet all the points raised by the applicant in his appeal vide CAT Calcutta Bench's decision in *Ram Kamal Dass Vs. UOI* (1989-6-SLR-501).

5. The respondents have contested the application and have stated that a copy of the enquiry report was supplied to the applicant and that the applicant never agitated this point in his appeal and all the documents relied upon were provided and produced before the Enquiry Officer. The

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applicant did not ~~make any~~ ^{make any} allegation of bias, malafide etc. on the part of the Enquiry Officer before the Appellate Authority. It has been denied that the impugned order was in violation of Rule 24(2) and it has been contended that consultation with the Railway Rates Tribunal is not at all necessary. It has been pleaded that this application is devoid of merit and is fit to be dismissed.

6. We have heard Shri G.D. Bhandari, learned counsel for the applicant, and Shri B.K. Aggarwal, learned counsel for the respondents.

7. Shri Bhandari argued at great length that a reference to the Chairman, Railway Rates Tribunal, for advice was mandatory in this case as it had specifically been requested by the applicant in paragraph 12 of his revision petition.

8. Rule 24(2) Railway Servants (Discipline & Appeal) Rules, 1968 reads as follows:-

"A Group 'C' Railway servant who has been dismissed or removed or compulsorily retired from service may, after his appeal to the appropriate appellate authority has been disposed of, and within 45 days thereafter, apply to the General Manager for a revision of the penalty imposed on him. In this application, he may, if he so chooses, request the General Manager to refer the case to the Railway Rates Tribunal for advice before he disposes of the revision petition. On receipt of such a request the General Manager shall refer the case to the Chairman, Railway Rates Tribunal for advice sending him all the relevant papers.

On receipt of the revision application by the General Manager, or on receipt of advice from the Railway Rates Tribunal, as the case may be, the General Manager shall dispose of the application in accordance with the procedure laid down in Rule

and pass such orders as he may think fit:

Provided that the procedure mentioned in this sub-rule will not apply in cases where the General Manager or the Railway Board are the Appellate Authority:

Provided further that where a revision application has been disposed of by the General Manager under his sub-rule, no further revision shall lie under Rule 25."

9. From the above it is clear that the revision application must be filed within 45 days from the date of the Appellate Order, but in the instant case, while the Appellate Order was dated 12.2.90, the revision petition was filed on 16.8.90, i.e. more than six months after the disposal of the appeal. In view of the inordinate delay in filing the revision petition, and in view of the absence of any reasons adduced by the applicant to account for the delay or prayer made by him to condone the delay, the applicant would normally have forfeited his right to any consideration of the revision petition and particularly any reference to the Railway Rates Tribunal ~~for~~ advised. Even so, the General Manager, Northern Railway, did entertain the revision application and in accordance with Rule 25(1)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968, remitted the case to the Disciplinary Authority directing such further enquiry as he considered proper in the circumstances of the case. Under the circumstances, the action of the Revision Authority in quashing the penalty of removal from service and directing the Disciplinary Authority for *denovo* action from the stage of sending the enquiry report to the applic

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and calling for his comments thereon before finalising the case, is wholly in order. The treatment of the applicant as being under suspension with effect from the date of removal from service i.e. 15.1.90 ~~is~~ also cannot be called into question because the allegations against the applicant, if proved after proper enquiry are sufficient to warrant from dismissal from service and till an ultimate decision is taken in the matter fully exonerating the applicant, he cannot be reinstated in service. Shri Bhandari has relied upon a number of rulings to support his contention that *de novo* enquiry cannot be held, but these rulings relate to different facts and circumstances. On the other hand, under Rule 25(1)

(c) Government Servants (Discipline & Appeal) Rules, 1968, the General Manager, Railways, is fully empowered to remit the case to the Disciplinary Authority to make such further enquiry as he may consider proper in the circumstance of the case, and as this is a rule under which the applicant squarely falls, it must be held that the General Manager, Northern Railway, was fully empowered to remit the case to the Disciplinary Authority for further enquiry from the stage of supply of the enquiry report onwards, after quashing the order of dismissal.

10. As final orders in the disciplinary proceedings have still to be passed, and as the applicant ~~will~~ get full opportunity for his defence during the course of the departmental proceedings, no interference in the impugned orders

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is warranted at this stage. The application is accordingly dismissed and the interim orders passed on 24.4.92 staying the operation of order dated 18.3.92 (Annexure A-5) ~~are~~ hereby vacated. The respondents are directed to dispose of the departmental proceedings expeditiously, preferably within six months from the date of receipt of a copy of this order.

No costs.

Adige
(S.R. ADIGE)

MEMBER (A)

J. Sharma
7.4.93
(J.P. SHARMA)
MEMBER (J)