

Open Court

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

...

Original Application No. 456 of 1997.

this the 3rd day of July, 2001.

HON'BLE MR. S. DAYAL, MEMBER (A)  
HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Mumtaz Ahmad, S/o Sri Abrar Hussain, aged about 51 years,  
R/o Mandaur, Post Jagatpur, District Allahabad.

Applicant.

By Advocate : Sri S. Madhyan.

Versus.

Union of India through the Secretary, Ministry of Railways,  
New Delhi.

2. Divisional Railway Manager, Moradabad Division, Moradabad.
3. Sahayak Karmik Adhikari, Uttar Railway, Moradabad.
4. Chairman, Railway Board, Rail Bhawan, New Delhi.
5. Chief Mechanical Engineer, Northern Railway, Headquarter,  
Office Baroda House, New Delhi.

Respondents.

By Advocate : Sri P. Mathur.

ORDER (ORAL)

S. DAYAL, MEMBER (A)

This application has been filed for setting-aside  
the orders dated 23.3.94 and 7.11.94 and for reinstatement  
of the applicant at his own post with full pay and other  
benefits available to him.

2. The applicant has mentioned in the O.A. that he was appointed as Cleaner in the year 1976 and was promoted as Assistant Diesel Driver in the year 1986. He claims that his wife had fell seriously ill on 6.6.92 and he had left all of sudden to take her for medical treatment, which was continued upto 5.12.1992. The applicant claims to have

sent an application to the respondent no.3 by post and joined his services on 19.12.1992. He was given a chargesheet dated 21.12.92. It is claimed that without affording any opportunity of hearing, an ex-parte order was passed against him and he was removed from service. His appeal was dismissed by the appellate authority without application of mind and his Review petition was also dismissed by the Chief Mechanical Engineer on 7.11.94.

3. We have heard the arguments of Sri Satish Madhyam, learned counsel for the applicant and Sri P. Mathur, learned counsel for the respondents.

4. At the outset, the learned counsel for the respondents has stated that the present application is barred by limitation as the cause of action arose on 7.11.1994, whereas the present O.A. has been filed on 11.3.1997. There is a delay of more than one year. The applicant in his application for condonation of delay has stated that the order dated 7.11.1994 was served on him in March'95. It is stated that the applicant had handed-over the brief of the case to Sri Anwar Khan in June'95 for filing the case in the Tribunal. As the aforesaid Anwar Khan was not feeling well, he immediately could not file the case. In the meanwhile, the relevant papers of the applicant were mis-placed, and were traced during white washing of the house in the month of March'97. Thereafter the present O.A. has been filed. Thus, there is a delay which has been explained and there are <sup>are</sup> ~~found~~ reasons to condone the delay in filing the O.A. and consider the O.A. on merits.

5. The claim of the applicant that the order was passed ex-parte has been considered by us. We find from the proceedings that Sri Shyam Lal, who appeared as witness on behalf of the administration had been cross-examined by Sri Mumtaz Ahmad. Similarly Sri Ram Bilas, who appeared on behalf of the respondents was also cross examined by Sri Mumtaz Ahmad.

Sri Mumtaz Ahmad had also given a statement during the enquiry in the presence of the Enquiry Officer. Hence, the plea of the applicant that without affording any opportunity of hearing, an ex-parte order was passed against him, is factually in-correct and is rejected. We find from the record of the proceedings that the applicant had made an appeal against the order of punishment to the ADRM, Northern Railway, Moradabad. This memorandum of appeal was considered by the appellate authority and was rejected by order dated 23.3.94. The applicant in his memorandum of appeal has shown the circumstances under which he was required to proceed to his home town for treatment of his wife. It is claimed that a very harsh view has been taken by the disciplinary and appellate authority in imposing the punishment of removal from service. We consider it appropriate to set-aside the orders dated 23.3.94 and 7.11.94 in so far as it relates to quantum of punishment and direct the appellate authority to consider as to whether the lesser quantum of punishment in the peculiar circumstances of the case <sup>can be awarded.</sup> ~~can be made.~~ Necessary orders in this regard shall be passed within a period of three months from the date of communication of this order.

6. The O.A. stands disposed of as above with no order as to costs.

*Ram Mada*  
MEMBER (J)

*Harj*  
MEMBER (A)

GIRISH/-