

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

O.A. No./I.A. No. 854/97

Date of decision 25/7/2000

Nanbha Applicant(s)

Sri S. Dwivedi Counsel for the
Applicant (s)

VERSUS

Union of India & others Respondent (s)

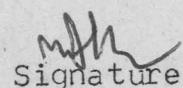
Sri A.V. Srivastava Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. Rafiq-Uddin, JM V.C./Member (J)

Hon'ble Mr. M.P. Singh, AM Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether their Lordship wish to see the fair copy of the judgment ?
4. Whether to be circulated to all Benches ?


Signature

PIYUSH/

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 25th day of July 2000.

Original Application No. 854 of 1997.

Hon'ble Mr. Rafiq-Uddin, Judicial Member.

Hon'ble Mr. M.P. Singh, Administrative, Member.

Nanhoo S/o Sri Sheo Bhodhan resident of
Jairam Nagar Near 50 No. Railway Gate, Fatehpur
Railway Station District-Fatehpur.

.....Applicant

C/P Sri S. Dwivedi

Versus

1. Union of India through the
General Manager Northern Railway,
Baroda House New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Allahabad.
3. Divisional Superintending Engineer(II)
Northern Railway Allahabad.
4. The Assistant Engineer, Northern
Railway Fatehpur.
5. Sri Rama Shanker, Assistant Engineer
Northern Railway, Allahabad.
6. Sri Vakeel Chandra, Inspector of Works,
Northern Railway, Mirzapur.
7. Sri Nagendra Singh, Supervisor(Under I.O.W.
Fatehpur), Northern Railway Fatehpur.

.....Respondents

C/R Sri A. Tripathi

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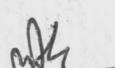
ORDER

By Hon'ble Mr. M.P. Singh, AM

The applicant is aggrieved by the order dated 25.9.1996 passed by Assistant Engineer, Northern Railway, Fatehpur.

2. The brief facts of the case are that the applicant was initially appointed as casual worker in the year 1971 and later on he was posted as Helper Khalasi in the scale of Rs. 750-940/-.. As per order of Divisional Engineer he was promoted to officiate on the post of Pump Operator and was posted at Sludge Pump House, Fatehpur. He has alleged that the respondents were taking work from him of the post of Pump Operator, but he was being given salary of the post of Helper Khalasi i.e., Rs. 750-940/-.. According to him the vacancy of Pump Operator is still existing at Sludge Pump House at Fatehpur but he has not been regularised. He made a number of representations in this regard. However, no decision has been taken by the respondents to regularise his services as Pump Operator. He, therefore, filed an O.A. 356/91 before the Central Administrative Tribunal, Allahabad, The Tribunal vide its judgement dated 5.7.94 disposed of the O.A. by directing the respondents to decide the regularisation matter within a period of three months.

3. Thereafter the respondents issued a chargesheet against the applicant on 3.10.1994. The inquiry proceedings started but the charges levelled against



him could not be made out. Against the arbitrary action of the respondents, the applicant filed another OA. No. 548/95 before Tribunal. The Tribunal vide its judgement dated 12.2.1996 dismissed the application. The applicant then submitted a review petition which was also rejected on 11.4.97. In the meantime Inquiry Officer completed the Inquiry and submitted his report. The Disciplinary Authority without considering the defence note and reply of show cause notice of the applicant imposed the penalty of removal from service vide order dated 25.9.1996. The applicant preferred a Departmental Appeal to Divisional Superintending Engineer(II) on 29.10.1996. He also sent a reminder to Divisional Superintending Engineer(II) with regard to his appeal on 6.2.1997. However, he has not received any reply in response to his appeal from the respondents. Aggrieved by this the applicant has filed this OA and has sought following reliefs:-

- i) That the respondents be directed to regularise the service of the applicant on the post of Pump Operator w.e.f. 30.3.89 and be given all the benefits attached to the said post.
- ii) That the respondents be directed to give salary of the post of Pump Operator w.e.f. 7.4.1994 to till date to the applicant and he be given interest at the rate of 18% per annum on the said amount till the date of actual payment.
- iii) That the chargesheet dated 3.10.1994 (Annexure A-I to the Compilation I), proceeding

M.M.

of Inquiry, Inquiry report and show cause notice dated 20.6.96 (Annexure A-II and A-III to the Compilation No. I) and the order dated 25.9.1996 (Annexure A-IV) passed by no.4 respondent/be declared illegal and same may be quashed and further it is prayed that the respondents be directed to reinstate the applicant on his post with all the consequential benefits, attached to the post.

iv) That any other suitable order or direction which this Hon'ble court may deem fit and proper under the circumstances of the case, may be given in favour of the applicant.

v) That the cost of petition in favour of applicant.

5. The respondents have contested the case and have stated that the applicant was initially appointed as a casual labour and thereafter he was given the scale of khalasi on 21.1.1981. According to them there is no post of Pump Operator in Fatehpur Sub-Division in Engineering Department. The application submitted by the applicant for his transfer to the Electric Department was forwarded to Divisional Office for further action. He was appointed as a Khalasi and not Helper Khalasi and was never promoted as a diesel Pump Operator.

6. The Disciplinary proceedings were initiated against him in the month of October, 1994 under the

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provisions of D & A Rules, 1968. All the documents relied upon the articles of charges were served upon him Sri G.P. Rajput, Section Engineer P-way, Fatehpur was nominated as an Inquiry Officer. The Inquiry proceedings started from March 1995 which were challenged by the applicant before the Tribunal in OA no. 548 of 1995. The Inquiry Officer gave full opportunity to the applicant for asking any document required to defend his case. The statements of all prosecution and defence witnesses were taken and they were cross-examined by the Inquiry Officer and applicant alongwith his defence counsel. The copies of each statement were made available to him. The applicant alongwith his defence helper had participated during the whole Inquiry without raising any objection which proves that he was satisfied with the Inquiry proceedings. The Inquiry officer found the charges proved as framed against him in SF5. A show cause notice alongwith the fact finding report of Inquiry officer was served upon the applicant. After careful examination of fact finding defence note ~~thereafter~~ ^{ok} and other documents and giving full opportunity to the applicant, a penalty of removal from service, was imposed upon him vide order dated 25.9.1996. He has not filed his appeal to the Railway administration as per rule. Under such circumstances the application is totally misconceived and is devoid of merits and the same is liable to be dismissed.

7. Heard learned counsel for rival contesting parties and perused the record.

Abh

8. On examination of the facts placed before us we find that the relief sought in Para 8.1 is to direct the respondents to regularise his services as the post of Pump Operator. The same relief was claimed by the applicant in OA No. 356/91 filed by him before this Tribunal. This matter was decided by the Tribunal vide its order dated 5.7.94 (Annexure A 29)

9. In OA No. 548 of 1995, the applicant has sought the following relief.

- i) Regularise the service of the applicant to the post of Pump Operator from 30.3.89 and be given benefits attached to this post.
- ii) Respondents to be directed to give the statement of the account of the payment of Rs.8273/- made to the applicant on 15.3.95.
- iii) To give salary of the post of pump Operator from 7.4.1994 till date with interest of 18 percent per annum.
- iv) Quashing of the proceedings of inquiry initiated against the applicant as per chargesheet dated 3.10.1994.

It would be seen from para 8 of the present OA that almost all the reliefs sought by the applicant have already been adjudicated by the Tribunal. These cannot be raised again by filing successive applications. The only relief which has not earlier been adjudicated in para 8 is the order dated 25.9.96 passed by the respondents imposing the penalty of removal from service.

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10. The order of removal from service has been passed by the respondents after conducting an Inquiry in accordance with law, rules and instructions. The applicant participated in the Inquiry. All relevant papers to the articles of charges had been provided to him. The statements of all prosecution and defence witnesses were taken. They were cross-examined by the applicant alongwith his defence counsel. The copies of all these documents were made available to him. He was given full opportunity to defend his case. A copy of the Inquiry report was sent to him to make representation before imposing the penalty. It was only after examination of the fact finding defence note and other documents and giving full opportunity to the applicant, the order of removal from service was passed by the Disciplinary authority. It is a settled law by the Apex ~~Supreme~~ Court that this Tribunal cannot act as appellate authority over the appreciation of the evidence and about the quantum of punishment made by the Disciplinary authority. In view of the aforesaid reasons we do not find sufficient grounds to interfere with the order dated 25.9.1996 passed by the Disciplinary authority imposing the penalty of removal from service.

11. In the light of the above discussions and facts and circumstances of the case, the OA. is devoid of merit and accordingly dismissed.

12. There shall be no order as to costs.

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Member-A

Rajivuddin
Member-J

/neelam/