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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.302 OF 2005

ALLAHABAD THIS THE 28th DAY OF SEPTEMBER, 2005

HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A

Arjun Lal, S/o Sri Bandha, aged about 47 years, R/o
Quarter No. BW 99/B, Prem Nagar Colony, Roja Jn.
District Sahjahanpur..

.....Petitioner

(By Advocate Shri A.K. Srivastava.)

V E R S U S

1. Union of India, through General Manager, N.R.,
Baroda House, New Delhi.
2. D.R.M., N.R., Moradabad Division, Moradabad.
3. Sr. Divisional Operating Manager, N.R.,
Moradabad Division, Moradabad.

.....Respondents

(By Advocate: Sri A. Tripathi.)

ORDER

BY K.B.S. RAJAN, MEMBER-J

The controversy being short, details of facts
need not be long. The applicant earlier approached
the Tribunal challenging the penalty order of
compulsory retirement passed 24-04-2003 and this
Tribunal in OA No. 675/03 filed by the applicant had
passed a final order on 13th July, 2004 the operative
portion of which reads as under:-

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"..... We are, therefore, persuaded to dispose of the O.A. with a direction to the respondents to consider and decide the appeal, the applicant has already preferred expeditiously within a period of three months having due regard to the observation made in this order. Appellate authority shall also take into consideration all the attending circumstances under which the applicant could not vacate the quarter."

2. The respondents had, thereafter decided the appeal of the applicant and passed the impugned order dated 07-03-2005 which is reproduced in full:-

"I have carefully gone through your appeal carefully and observed as under:-

1. Proper procedure has been followed.
2. Penalty awarded is not harsh, compulsory retirement is not a harsh penalty as the C.O. gets all benefits.
3. Appeal is barred by time, hence rejected.
4. Employee shall stand compulsory retire from service with immediate effect."

3. The applicant had challenged the aforesaid order, inter alia on the ground that the Respondent No. 3 has not considered the order dated 13-07-2004 prior to deciding the appeal. He had, in support of his case cited a few cases as well.

4. The respondents have contested the O.A. Their version is as under:-

"4. Thereafter after going through the procedure, penalty of "compulsory retirement" was awarded to the applicant by the Disciplinary authority (DOM/MB) on 17.4.2003, which was to be effective from 30.6.2003.

5. That Sri Arjun Lal instead of submitting his appeal against the said penalty filed present petition before Central Administrative Tribunal, Allahabad. The Hon'ble Tribunal stayed the orders of

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Disciplinary Authority and directed the respondents to maintain status quo as on 26.6.2003. The orders of the Hon'ble Tribunal have been implemented.

6. That thereafter after exchanging the counter and rejoinder reply of the instant Original application was finally heard by the Hon'ble Tribunal and Hon'ble Tribunal vide his judgment and order dated 23.7.2004 disposed of the Original application and directed the respondents to consider and decide the appeal of the applicant within a period of three months from the received of the appeal and also considered the absorption made by the Court before deciding the appeal in his judgment and order dated 13.7.2004. The applicant submitted his appeal dated 9.6.2003 again on 23.8.2004 without mentioning the grounds are showing irregularity or illegality in the punishment order passed by the disciplinary authority and simply made an prayer to quash the punishment order passed by the disciplinary authority. The appellate authority considered the appeal submitted by the applicant and passed the order dated 7.3.2005 by which the Appellate authority rejected the appeal of the applicant by a speaking order as such there is no irregularity or illegality in the punishment order as well as Appellate order passed by the disciplinary authority as well as appellate authority.
5. Arguments were heard and the documents perused. The applicant has invited our attention to the order dated 04-04-2003 whereby the very same house was allotted to the applicant and contended that in view of the above coupled with the fact that he was charged penal rent, there is no question of any order of penalty.
6. On the other hand the counsel for the respondents has vehemently argued that the applicant had not raised any grounds on merit in the appeal as

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could be seen from his appeal dated 9-6-2003 and as such, the order passed is purely legal.

7. We have given our anxious consideration. First of all, the order dated 7th March, 2005 is cryptic, non speaking and does not reflect that the appellate authority had even an inkling about the order dated 13th July, 2004, passed by the Tribunal. Had the order been considered, though not in detail, at least there would have been a reference to the order in the impugned order. The same is conspicuously missing. The appellate authority had also not taken into account the re-allotment of the same accommodation to the applicant. All these go to show that there has been a thorough non application of mind and as such the order dated 7th March, 2005 cannot be legally sustained.

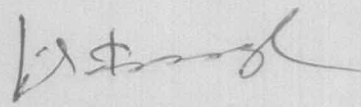
8. This is the second round of litigation. The applicant stands compulsorily retired. He has not challenged the order of the Disciplinary Authority but as per the order of this Tribunal also, it is the appellate authority which has to consider the appeal. As such, we cannot pass any order of reinstatement. However, we direct that the appellate authority would consider the appeal of the applicant, and the fact that the applicant has been re allotted the quarters and also the decisions on this point by various courts/tribunals. The fact that the applicant was charged penal rent should

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also be taken into account as that itself is a heavy burden on him. The applicant should be given an opportunity of being heard by the appellate authority. A convenient date and venue should be fixed by the appellate authority for this purpose and at least a week in advance the intimation to the applicant should reach so that he could ensure his presence on that day. The appellate authority, it is hoped, shall give a patient hearing to the applicant and dispassionately consider the case in the back ground of the case and law on the subject and pass a suitable order. Should he come to the conclusion that the applicant be reinstated with a lesser penalty, order regarding the period of absence should also be clearly spelt out to avoid further litigation on that score. The application is disposed of with the above observations.

9. It is made clear that this Court has not expressed any opinion on the merit of the case. No cost.


MEMBER-A
MEMBER-J

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