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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.123 of 1987

Babu Nandan & Another Applicants

Versus

Union of India & Others Respondents

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon.S.Zaheer Hasan, V.C.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 challenging the order of removal from service dated 7.6.1985.

2. The applicant No.1 Babu Nandan was Driver and the applicant No.2 Girja Shanker was Diesel Assistant. It is said that on 8.1.1985 at Babhan Railway Station the applicants ignored the signal and by ^{shooting} overlooking the sand hump ~~after~~ knocked down the level crossing gate, barriers and shops etc. resulting ⁱⁿ the death of ten persons and injury to some others. The applicants were suspended on 8.1.1986. Charge memorandum was issued on 16.2.1985. On different dates the statements of seven witnesses were recorded and 30.5.1985 was fixed for their cross examination. Neither the applicants nor their defence counsel appeared on that date. So

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the Inquiry Officer concluded the proceedings and held that the charges were proved. The Disciplinary Authority simply mentioned that it agreed with the findings of the Inquiry Officer and passed the order of removal from service on 7.6.1985. The appeal was dismissed. A revision petition was filed and on 23.10.1986 it was ordered that the revision petition will be disposed of only after the conclusion of the criminal case pending against the applicant. On 9.2.1987 the present application was filed. The contention of the applicant is that he was not supplied certain documents nor their Hindi version was given as prayed. The order appointing the Inquiry Officer was not supplied to him. The applicant No.1 fell ill on 25.5.1985 and was admitted in Railway Hospital and remained under the Doctor's treatment for 20 days. So on 30.5.85 the applicant could not appear before the Inquiry Officer who passed an ex parte order on 31.5.1985 to which the Disciplinary Authority agreed and confirmed it on 7.6.85 agreeing with the findings of the Inquiry Officer. It was also contended that the Inquiry Officer has simply observed that from the statements of witnesses it was clear that the charges were made out and he has not discussed the evidence led in the case. It is also the grievance of the applicants that the appellate authority did not apply its mind and passed a non speaking order.

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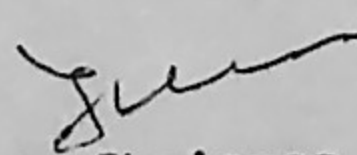
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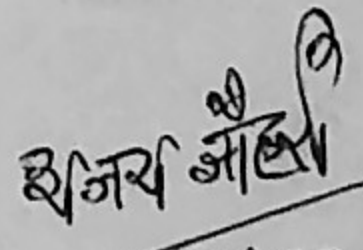
3. The accident took place on 8.1.1985. The applicant was suspended on the same date. Chargesheet was submitted on 16.2.1985. After several adjournments the case was fixed for cross examination of prosecution witnesses on 30.5.1985. The Inquiry Officer gave his findings on 31.5.1985 and the impugned order was passed by Disciplinary Authority on 7.6.1985. The appeal was rejected on 19.11.1985 by Divisional Railway Manager, Lucknow. Thereafter Shri Babu Nandan moved a revision application on 23.10.1986. The applicant was informed that the revision will be disposed of only after the decision of the criminal case. According to Supreme Court there is no bar to departmental proceedings if a criminal case is pending but in cases of grave nature it would be ^{advisable} ~~advisable~~ to ^{wait} ~~await~~ the decision of the criminal cases so that the defence in criminal case may not be prejudiced. In criminal cases the prosecution evidence is recorded first and thereafter the accused is asked to enter his defence. In a departmental proceedings the charges are framed and the explanation of the accused is called for. So it would be unfair to compel him in a departmental proceeding to disclose his defence and that might lead to his prejudice in defending himself in criminal court. On page 125 of the commentary by M.L.Jand on Railway Servants (Discipline & Appeal) Rules, 1968 it is mentioned that once a court has taken cognizance of an offence, all departmental proceedings for disciplinary action

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against the accused responsible for accident should be suspended. Probably, keeping in view the aforesaid observation of the Supreme Court and the direction issued by the Department the order dated 23.10.1986 ^{was passed} to the effect that the revision will be disposed of after the criminal case is over. Under the circumstances mentioned above, we direct the Revising Authority which passed the order dated 23.10.1986 to dispose of the applicant's revision after giving him personal hearing ^{in the case} after ^{where} the conclusion of the criminal case. The various points raised before us are mentioned in the grounds of appeal as well as in the grounds of the memo of revision. We hope that the Revising Authority will go through the same and pass a reasoned order. In case the applicants are not satisfied by the order to be passed by the Revising Authority they will be at liberty to come to this Tribunal. The petition is disposed of accordingly. Parties to bear their own costs.


Vice Chairman


Member (A)

Dated the 7th Sept., 1987

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