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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated: Allahabad this 7th day of June 1996

CORAM: Hon.'ble Mr T.L.Verma, Member (J)
Hon.'ble Mr D.S.Baweja, Member(A)

ORIGINAL APPLICATION NO. 124 OF 1987

Shitla Prasad Tripathi son of Sri R.L.Tripathi
aged about 45 years resident of E/135-A, Station
Colony North, Eastern Railway, Izatnagar, Bareilly
(U.P.) - Petitioner - Applicant
(By Advocate Sri Ashok Khare)

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur
2. The Divisional Railway Manager, North Eastern Railway, Izatnagar
3. The Divisional Signal & Telecommunication Engineer, North Eastern Railway, Izatnagar
4. The Divisional Personnel Officer, North Eastern Railway, Izatnagar
5. The Additional Divisional Railway Manager, North Eastern Railway, Izatnagar (U.P.) - Respondents
(By Advocate Sri A.K.Gaur)

ORDER

(By Hon'ble Mr D.S.Baweja, Member (A))

This application has been filed under section 19 of the Administrative Tribunal's Act 1985, praying for quashing of the order dated 17.1.81 imposing punishment of removal from service with all consequential benefits, taking the applicant ^{back} in service. In addition, ^{on} several other reliefs have been also prayed for.

2. A show cause notice was issued to the applicant vide letter dated 20.12.80 alleging participation in demonstration in front of Divisional Railway Manager's Office at Izatnagar, North Eastern Railway in un-authorized manner without obtaining prior permission and actively participated

in the proceedings of the demonstration which included criticism of the Government, use of vile and abusive language against the officers in most unparliamentary language. He was removed from service vide order dated 17.1.81 under Rule 14(ii) of Railway Servants Discipline and Appeal Rules, 1968, dispensing with the inquiry. The applicant submitted an appeal dated 24.2.81 within 45 days of receipt of the punishment order. The appeal was also dismissed and the same was conveyed vide order dated 31.12.81.

3. The applicant filed a Writ Petition No. 2273/82 before Hon'ble Supreme Court relying on the judgement of Hon'ble Supreme Court in Challapan's case. Hon'ble Supreme Court was pleased to admit the writ petition and order was passed to pay the salary to the petitioner last drawn and left open to the respondents to take work or not to take work from the petitioner by order dated 3.4.82. The Railway Administration started paying salary to the petitioner as per the order of the Hon'ble Supreme Court. However, the respondents stopped the salary of the applicant after the judgement in case of U.O.I. Vs. Tulsi Ram Patel. Hon'ble Supreme Court did not consider the writ petition of the petitioner on merit. However, Hon'ble Supreme Court was pleased to pass ^{an} order in para 176 of the above referred judgement with the direction that in case of those, who are relying on the judgement of Challpan's case, they may file appeal before 30.9.85 ^{to the} Department concerned, who will hear the appeal on merit. Accordingly the applicant filed an appeal dated 25.9.85 in the office of Divisional Railway Manager, Izatnagar, North Eastern Railway within the time limit allowed by the Hon'ble Supreme Court. This application has been filed on 16.2.87 subsequent to filing of appeal on 25.9.85 as the appeal was not disposed of.

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4. The applicant has sought ^{several} service reliefs detailed in Para 7 of the original application. However, subsequently during the hearing, the learned counsel for the applicant made a statement at bar that he does not press for other reliefs except the relief 7(i) which concerns the quashing of the punishment order dated 17.1.81.

5. The applicant has made elaborate averments which cover not only the relief 7 (i) concerning the quashing of the termination order dated 17.1.81 but the ^{other} order reliefs also. Since the other reliefs have been not pressed for as stated earlier, we are concerned only with the averments made ^{for} ~~with~~ relief 7 (i) only.

6. The respondents have filed the counter affidavit wherein the averments made by the applicant have been strongly refuted and detailing that the circumstances were such that it was not practicaly to hold the inquiry.

It is also submitted that the writ petition filed by the applicant before Hon'ble Supreme Court was dismissed by judgement dated 11.7.85. Hon'ble Supreme Court had directed the petitioner to file an appeal before the Department before 30.9.85. No appeal had been preferred by the applicant within the time limit allowed. The appeal dated 25.9.85 said to have been submitted in the Office of Divisional Railway Manager had not been received. The present petition is not legally maintainable in view of the Hon'ble Supreme Court's judgement dated 11.7.85 as the petitioner has not availed the opportunity to file appeal and ^{instead of} ~~involving~~ the jurisdiction of the Tribunal through a fresh application. Since the controversy has already been resolved by the Hon'ble Supreme Court, the only remedy to the applicant was to file ^{an appeal} ~~application~~ and due to non-compliance of the direction of the Hon'ble Supreme Court, the application deserves to be dismissed. Further the application is also hopelessly time barred and liable to be dismissed on this account also.

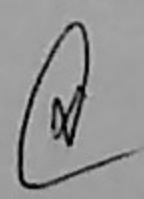
7. Before going into the merits of the case with regard to imposing of punishment of removal from service under Rule 14(ii), we will first continue^{fine} to the direction given by the Hon'ble Supreme Court in the judgement dated 11.7.85.

8. Short question which needs to be answered is whether the applicant filed the appeal before the target^{date} specified by Hon'ble Supreme Court. The applicant claims of having filed appeal dated 25.9.85 before the directed date while the respondents have denied having received any appeal by 30.9.85. The applicant filed a supplementary affidavit wherein he has made further averments with regard to submission of appeal. He has submitted that the appeal dated 25.9.85 was handed over to dealing clerk Sh. Rajendra Kumar Saxena, who has put his initial, and date on the duplicate copy but he did not put any seal of the office stating that he has no instruction to put office seal on such letters. The applicant has also averred that he took an extra care and sent a copy under certificate of posting on the same day^{and} a Xerox copy of which has been brought on record. The applicant has also argued that since being out of job from 17.1.81 it could not be imagined that he will not avail the opportunity to file one appeal before 30.9.85 ~~provided~~ given by the Hon'ble Supreme Court with reference to his writ petition. He also made prayer in this affidavit that Sh. Rajendra Kumar Saxena ~~who~~ is presently posted as Office Superintendent in the office of Divisional Railway Manager and ^{his} signature may be got verified from Handwriting Expert. The respondents have filed a counter to this supplementary affidavit reiterating that the appeal dated 25.9.85 alleged to have been submitted by the applicant has not been received. It has also ^{been stated} ~~stated~~ that ~~as per~~ prevailing practice of receiving the appeal is to either send it by registered post or to give ^{the} in office. Receipt and Despatch Section and obtained receipt from the concerned clerk, who will affix the office stamp and date

on which it is received. As per the records, Sh. Rajendra Kumar Saxena was neither working in the Receipt and Despatch Section nor he was attached to the Divisional Railway Manager in any capacity at that time when the appeal is alleged to have been filed. No rejoinder to this supplementary counter has been filed by the applicant. Further the applicant has not revealed the office where Sh. Rajendra Kumar Saxena was working when he handed over appeal on 29.8.85 to him and said to have obtained his initials. He also submits that he sent the copy of his appeal by post under the certificate of posting. From the copy of certificate of posting on the record, it is noted, it is not legible as to when the letter was posted. By sending an appeal on 25.9.85, how he expected that it will reach before the target date. It is also not clear as to why he did not send the appeal by registered A.D. post. Even for submission of the appeal in office he should have made sure that proper acknowledgement is obtained knowing fully that the appeal is to be submitted before the target date stipulated.

Further it is also significant to note that applicant has not made even a whisper either in the application or in the supplementary affidavit that he sent any reminder for non-disposal of his appeal. The appeal was filed on 25.9.85 and O.A. was filed only on 16.2.87 i.e. after more than 19 months and perhaps he kept quiet for all this period. This is not imaginable particularly when the applicant is out of job.

9. From the above facts of the case, the applicant is not able to establish that he submitted appeal on 25.9.85. We are, therefore, not able to persuade ourselves to accept the version of the applicant of having submitted the appeal on



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25.9.85 and agree with the submission of the respondents.

10. ^{From} ~~For~~ the discussions above, we have concluded that the appeal was not filed by the applicant before 30.9.85 as directed by Hon'ble Supreme Court. Once he has failed to avail the opportunity made available by the judgement of Hon'ble Supreme Court, the same matter cannot be agitated afresh through filing an application before the Tribunal.

11. In the light of the above facts, the application is not maintainable and the same is dismissed. *with no order as to costs*

[Signature]
Member (A)

[Signature]
Member (J)

RJ