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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 28th day of February, 1996

Original Application No.1264/87

District : Bareilly

CORAM:- } Hon'ble Mr. S. Das Gupta, A.M.
 } Hon'ble Mr. T.L. Verma, J.M.

Shri Shailendra Kumar Misra

S/o Prem Chandra Misra

C/o Shri A.L. Franke, Divisional Sports
Supervisor, North East Railway Izatnagar,
Bareilly.

(Sri Ashok Khare, Advocate)

. Petitioner

Versus

1. Union of India through Ministry of Railway,
Railway Board, New Delhi.
2. Divisional Railway Manager,
North Eastern Railway, Izatnagar,
Bareilly.
3. Additional Divisional Railway Manager,
North Eastern Railway, Izatnagar,
Bareilly.
4. Senior Divisional Electrical Engineer,
North Eastern Railway, Izatnagar,
Bareilly.

(Sri V.K. Goel, Advocate)

. Respondents

O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

Through this application filed under Section 19
of the Administrative Tribunals Act, 1985, the applicant
has challenged an order dated 27-1-1992 passed by
respondent no.4 by which the applicant was removed
from service. He has sought a direction to the respondents

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to treat the applicant to be in continuous service and to grant him all consequential benefits.

2. The facts of the case may be stated briefly. The respondent no.4 issued a notice dated 24-8-1981 (Annexure-1) stating therein that the applicant was guilty of serious misconduct and calling upon the petitioner to submit his explanation by 4-9-1981. The applicant submitted his explanation dated 1-9-1981 in which he asked for certain documents mentioned therein to enable him to submit an effective reply. Thereafter, another notice dated 15-9-1981 (Annexure-3) was issued to the applicant by respondent no.4 stating therein that he should attend his office on any working day by 19-9-1981 for personal hearing. The applicant met respondent no.4 and submitted his representation reiterating that the documents mentioned in its earlier representation be made available to him. Thereafter without holding any enquiry prescribed under the rules the impugned order dated 27-1-1992 (Annexure-6) was issued removing the applicant from service with immediate effect in exercise of power conferred under Rule 14(2) of the Railways Employees (Discipline and Appeal Rules, 1968 (DAR for short))

3. The aforesaid order was challenged by the applicant by means of a writ petition before the Hon'ble Supreme Court. This petition as well as ^{similar} ~~the facts of~~ other petitions were considered by the Hon'ble Supreme Court and disposed of by a judgement dated 11-7-1985 reported in AIR 1985 S.C. 1416 - UOI Vs. Tulsiram Patel and Others. The petitions were dismissed but there was a direction that the appellants can file an appeal before the departmental authority by 30-9-1985 and the

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appellate authority was directed to condone the delay in filing the appeal ^{and} consider the same. The applicant claims that in pursuance of the aforesaid direction he filed an appeal before the Divisional Railway Manager on 27-9-1985 ~~to which~~ He has annexed a document as Annexure-8 purporting to be a copy of the said appeal. It is also alleged that no action was taken by the authority to dispose of the appeal and this led the applicant to file ~~the~~ petition before this Tribunal for a direction for disposing of the appeal. This petition was disposed of in limine by an order dated 3-3-1987 directing the respondents to decide the appeal of the petitioner in accordance with law within a period of four months. The petitioner has alleged that despite the aforesaid direction no orders were passed by the respondents on his appeal. This has led the applicant to file the present application seeking reliefs aforementioned.

4. The respondents have filed a written reply in which it has been stated that the applicant failed to avail of the opportunity of filing the appeal in pursuance of the directions of the Hon'ble Supreme Court. However, the applicant thereafter had filed a petition before a Bench of this Tribunal with incorrect facts that he had filed an appeal in pursuance of such directions and obtained an order of the Tribunal directing the respondents to dispose of the appeal. On receipt of the aforesaid order of the Tribunal, the Divisional Railway Manager, after looking into the facts and the documents on record, held by his order dated 6-4-1987 that as no appeal has

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been filed by the applicant in pursuance of the Hon'ble Supreme Court's directions, there was nothing further to be done by the respondents. A copy of the order dated 6-4-1987 has been placed as Annexure-CA-1. It has been further averred that the applicant had created such a terror at pilibhit where he was posted that it had become reasonably impracticable to hold any enquiry under the DAR. The respondents, therefore, dispensed with any enquiry in exercise of power conferred under Rule 14(ii) of the DAR and imposed the penalty of removal from service.

5. The applicant has filed a rejoinder affidavit in which he has questioned the validity of the action of the respondents in dispensing with the enquiry. He has also reiterated that he had filed an appeal in pursuance of the directions of the Hon'ble Supreme Court, ^{but} ~~where~~ the respondents did not act upon it.

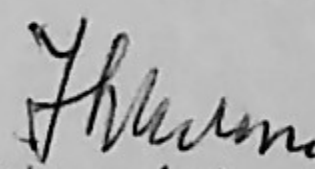
6. We have heard the learned counsel for the parties and carefully perused the records.

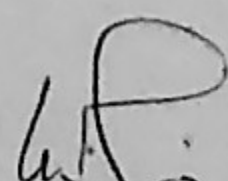
7. The applicant's challenge to the order of disciplinary authority was already adjudicated by the Hon'ble Supreme Court and the appeal against the said order was dismissed. That being the case there is no scope for the applicant to ^{re-agitate} ~~re-adjudicate~~ the matter as he has done in the present application in which the reliefs prayed for is of quashing the impugned order of removal from service. This application based on the said relief is not maintainable before us. So far as the question of disposing of Appeal is concerned, it is

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not one of the reliefs prayed for in this OA. Moreover, even this question was ^{agitated} ~~adjudicated~~ by the applicant in a previous application which was disposed of in limine. by a bench of this Tribunal directing the respondents to dispose of his appeal within a specified period. It is the case of the respondents that they had nothing further to do in pursuance of the aforesaid direction as the applicant has not preferred any appeal. The case of the applicant on the other hand is that he did file an appeal and the same was not acted upon. Even if it is assumed that the applicant did file an appeal, the respondents had already been directed by the Tribunal to dispose of the said Appeal by an order dated 3-3-1987, in O.A. No. 159 of 1987. If the said direction was not complied with, the applicant could have approached the Tribunal in a contempt application alleging non-compliance with the Tribunal's direction. He could even have approached the Tribunal with a prayer for implementation of its direction. However, the applicant did not ^{do} ~~had~~ any such thing. He has filed a fresh application seeking quashing of the impugned order which is a closed chapter after the decision of the Hon'ble Supreme Court on his appeal.

7. In view of the foregoing, we find no merits in this application and the same is dismissed. The parties shall bear their own costs.


Member (J)


Member (A)

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