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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1006 of 1987 (Civil Misc. Writ Petition 10481 of 1982)

Radhey Shyam

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Petitioner

Union of India &
3 others

Vs.

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Respondents.

Hon'ble Ajay Johri, AM
Hon'ble G.S.Sharma, JM

(By Hon'ble G.S.Sharma, JM)

In this Civil Misc. Writ Petition under Art.226 of the Constitution of India, which has been received from the High Court of Judicature at Allahabad u/s.29 of the Administrative Tribunals Act XIII of 1985, the petitioner has prayed that the order dated 24.11.1985 passed by the Sr. Divisional Mechanical Engineer, Northern Railway, Lucknow respondent no.4 removing the petitioner from service by way of punishment and the order dated 24.11.1976 passed by the then Divisional Superintendent (now Divisional Railway Manager) Northern Railway, Lucknow dismissing his appeal against the said punishment be set aside and he be treated as continuing in service as Fireman grade 'B' with all consequential benefits. There is also a prayer that the respondent no.2 be directed to decide the representation dated 30th Mary 1981 of the petitioner.

2. Shortly stated, the relevant facts of this case are that when the petitioner was deputed as Fireman Grade 'B' on 26.11.1973 on the 2-AF Faizabad-Allahabad Passenger Train with driver Kartar Singh, the said train met with an accident with a PAC truck at Railway Gate Gumti No.32 A between Dwarka Ganj and Sultanpur Railway Stations of the Northern Railway. An F.I.R. of the accident was lodged

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and the petitioner along with Engine Driver and the Gate-man was prosecuted in the Court of Munsif Magistrate (North) Sultanpur u/s. 279, 304-A, 337, 427 and 338 IPC and S.101 of the Railways Act. A fact finding enquiry was also entrusted regarding the said accident to a Committee and during the pendency of his prosecution in the criminal Court, the petitioner was served with a charge sheet for disciplinary proceedings in respect of the same accident. The petitioner did not cooperate in the said disciplinary proceedings on the ground that during the pendency of his criminal prosecution, no disciplinary case could be initiated in view of the Railway Board's letter dated 4.8.1974. The inquiry officer submitted his report to the disciplinary authority stating that in view of the aforesaid letter dated 4.8.1974 of the Railway Board, the accused, his coun-sel and all material witnesses refused to sit in any depart-mental proceedings and the findings drawn by the Committee stood good. Acting on this report, the disciplinary auth-
ority held that the petitioner was not a fit person to be retained in service and accordingly passed the impugned order of removal from service. The appeal preferred by the petitioner did not bear any fruit and was rejected by the appellate authority with the observations that the guilt was established and the punishment was proper.

3. The petitioner was convicted by the trial Court on 10.9.1979 but on appeal he was acquitted on 13.3.1981 by the learned Addl. Sessions Judge Sultanpur giving him the benefit of doubt. After his acquittal in appeal, the petitioner made a representation on 30th May 1981 to the DRM Lucknow for his reinstatement but the DRM did not pay

any heed to it. The petitioner, therefore, filed the present petition on the ground that under the instructions of the Railway Board the disciplinary proceedings could not be initiated after the cognizance of the offence was taken by the criminal Court and in any case, no evidence was produced before the inquiry officer in the disciplinary proceedings against the petitioner and only on the basis of the report of the Fact Finding Committee the petitioner was held guilty of the charge regarding the accident and he has thus been punished without any evidence. It has also been alleged that after his acquittal by the competent Court, his case should have been reviewed by the departmental authorities and he should have been reinstated in service as he was not found guilty of any offence in connection with the train accident.

4. Despite sufficient opportunities given to the respondents by the High Court and thereafter by this Tribunal, the respondents did not file any counter affidavit or reply in this case. However, at the time of arguments, the learned counsel for the respondents was present and maintained that the petitioner has no case and as he was given proper opportunity to defend himself in the disciplinary proceedings ^{but} ~~and~~ he preferred to remain absent ^{and} he was rightly found guilty of the misconduct and negligence giving rise to the train accident on 26.11.1973 and as he was given the benefit of doubt, he is not entitled to reinstatement in service.

5. The facts of the case of the petitioner, as narrated above, find support from the various annexures filed by the petitioner with the writ petition. It is ^{however,} ~~not~~ clear from the record as on which date the learned Magistrate

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had taken cognizance of the offence of the train accident taking place on 26.11.1973. Formerly, there were definite instructions of the Railway Board as contained in its letter dated 4.8.1965 relied upon by the petitioner that once a Court has taken cognizance of an offence all departmental proceedings for disciplinary action against an accused responsible for the accident should be suspended. This view was, however, reviewed by the Railway Board after the judgment of the Hon'ble Supreme Court in the case of Jang Bahadur Singh Vs. Baijnath Singh (1969 (1) S.C.R.-134) in which it was clearly held that the power of taking disciplinary action is vested in the disciplinary authority and the pendency of the Court proceedings does not bar the taking of the disciplinary action. Thus, so far as this contention of the petitioner is concerned, has no force.

6. It however appears from the inquiry report, copy annexure 2, that not only the petitioner did not appear before the inquiry officer, even the material witnesses sought to be examined by the administration refused to participate and only on the basis of the ex-parte Fact Finding Committee's report, the petitioner was found guilty by the inquiry officer and the disciplinary authority and the appeal was dismissed without entering into the depth of the matter. A Bench of this Tribunal in Ashok Kumar Vs. State of U.P. (1987(3) A.T.C.-581) has held that unless the prosecution produces the maker of the Fact Finding Report and affords opportunity of cross-examination to the delinquent, the said report cannot be relied upon for holding the charge established and it is against the principles of natural

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justice to place reliance on such report without due opportunity to the delinquent. In our opinion, the report of the Fact Finding Committee cannot be made the basis of punishment to the petitioner in the disciplinary proceedings and in the absence of any material against him, we are of the view that there was absolutely no evidence against the petitioner to connect him with the misconduct with which he was charged.

7. As the railway administration was not bound to wait for the ultimate result of the criminal prosecution of the petitioner, and the petitioner was acquitted much after his removal from service, it was the duty of the administration to consider the effect of his acquittal when it was brought to its notice by the petitioner by way of a representation dated 30th May, 1981, which they have failed to do without any cause, whatsoever. In any case, the punishment of removal from service awarded to the petitioner is not based on any legal or admissible evidence and the same cannot be allowed to stand.

8. The petition is accordingly allowed to the extent that the impugned orders dated 24.11.1975 and 24.3.76 are hereby quashed. This order shall, however, not prevent the respondents from initiating disciplinary proceedings against the petitioner afresh, if otherwise permitted by law. In that event the provisions

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of R.5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968 will apply. On the other hand, if no further proceedings against the petitioner are deemed necessary, the respondents shall pass requisite order for the payment of salary for the period of his remaining out of duty in accordance with law within a period of 3 months from the date of the receipt of this order. There will be no order as to costs.

Subaru
MEMBER (J)

3/PR/SP/2
MEMBER(A)

Dated: *April 15*, 1989
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