(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
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Registration T.A No. 1633/87.

Bhagwan Das ..... Plaintiff.

Versus.

Union of India & Others. .... Defendants.

Hon'ble Ajai Johri,A.M.
Hon'ble G.S.Sharma,J.M.

(By Hon'ble Ajai Johri,A.M.)

1. This suit has been received on transfer from the Court of munsif,West Allahabad under section-29 of the Administrative Tribunals Act 1985.

2. The plaintiff in this suit,who was working as a Clerk in the Workshop at Izatnagar on the N.E.Railway was taken-up for making some false declaration about his dependants. The applicant had replied to the charge-sheet which was issued to him on 3.4.72. He alleges that the Enquiry Officer was not competent, he was not given proper opportunity for depending himself and the material on which the charge was held to be proved was not sufficient. The applicant was also later on given a dismissal order on 11.11.76, he filed an appeal against the same and according to him,his appeal was allowed on 29.12.77. But the plaintiff was again given a show cause notice on 3.3.78 as to why he should not be removed from service,and the plaintiff requested for copies of the documents etc. He was not given any copies and was removed from service by an order dated 8.6.78. His appeal against this order was rejected on 24.9.78. His Revision petition to the General Manager,N.E.Railway and thereafter to the Chairman,Railway Board were not replied. The plaintiffs alleges that his dismissal from service is illegal on the grounds of discrimination because he belongs to the reserved community and he has been made a victim of the social stigma and on the grounds that the enquiry authority was not competent and was bias ed, he was not given proper opportunity to defend himself and his revision applications were not considered.

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43/2

He filed this claim petition in 1981 praying for declaration that his dismissal from service be declared as null & void and he may be considered as being continued in service as a Clerk with consequential benefits.

3. The application has been apposed by the respondents. They have said in their written statement that the applicant was removed from service w.e.f. 11.11.76 and was re-instated w.e.f. 30.12.77. This action was taken under Rule 14(II). They have further said that the plaintiff was appointed as a Junior Clerk on 17.7.58. While he was working in the Izatnagar Workshop he was taken-up on 3.4.72 as he had failed to maintain absolute integrity. The plaintiff made a representation on 19.4.72 asking copies of certain documents. He was allowed to inspect the relied on documents on 10.5.72 and he had also taken copies of the same. He replied to the charge-sheet on 23.8.72. After careful consideration of the same an enquiry was ordered. The plaintiff attended the enquiry alongwith the defence assistant. The Enquiry Officer submitted his findings on 9.9.73. Ultimately a show cause notice was issued to him for removal. The plaintiff represented against the penalty proposed to be imposed on him and after consideration of the same he was removed from service w e.f. 7.6.78. According to the defendants there is no illegality or irregularity in the procedure in the proceedings of the D.A case.

4. The applicant has filed a rejoinder affidavit in January, 1989. He has said that the findings of the Enquiry Officer are based on surmises and conjectures and are not based on facts. Also since he has been taken back in service he could not be taken-up again in a fresh proceeding on the same matter. The new show cause notice given to him in 1978 was based on the old proceedings. Though he was not supplied the relevant documents. The malafide intentions of the respondent is evident from the fact that after his removal from service on 11.6.76 he was re-instated on 30.12.'77 and he has been again removed. He relied on the case of Harbas Lal Arora Vs. Union of India (AIR 1960 Alld. 164) wherein it was held that any

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attempt to resurrect charges or proceedings which had concluded in favour of the petitioner would not be bonafide exercise of power to remove the petitioner. He has further stated that the Appellate Authority did not supply his mind and rejected his appeal arbitrarily.

5. We have heard the learned counsel for the parties. The learned counsel for the defendants raised an objection that this application was not maintainable because the applicant had been removed in 1978 and he had elected to invoke theWrit jurisdiction. The Writ petition was rejected on account of the delays and latches and therefore the suit gets extinguished and does not survive for adjudication. The contention made by the learned counsel for the applicant was that the applicant was not given adequate opportunity, he was not supplied the copies of relied on documents the quantum of punishment is high and these points were raised by him in the appeal but were not considered by the Appellate Authority while passing the order.

6. In 1978 on 3.3.78 a memorandum was issued to the plaintiff advising him that he was not fit to be retained in service and it was proposed to remove him from service. The findings in this case, which were annexed to the show cause notice, referred to the memorandum for major penalty issued to the applicant for mis-use of passes. The Article of charges were that while he was working in the Izatnagar Workshop, he failed to maintain absolute integrity in as much as that he gave false declarations about death of his father and obtained passes for dependants which were not otherwise admissible. This was done by him in 1970 & 1971. This enquiry report was submitted in Sept.1973. Annexure 7 of the Rejoinder shows that a regular enquiry was conducted in which the plaintiff has participated. From the face of the record it is clear that the plaintiff had not raised any objection in regard to the bias etc. of the Enquiry Officer. It is also clear that the re-instatement on the applicant on 16.7.'77 was not in connection with this disciplinary case. He was re-instated as a result of a IInd review after his removal from service under

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A3/4

Rule 14(II) which was conducted with reference to the G.Ms decision in the P.O.M. Since the two cases are not inter related the plaintiffs contention that his case had already been once decided & that he could not be taken-up again falls through. In the instant case he was removed only by the impugned order dated 8.6.78. His earlier removal on 11.11.76 was not in connection with these proceedings as the re-instatement order makes clear.

7. As far as the enquiry proceedings, in the case in which he was given the charge-sheet in 1972, are concerned the enquiry in the case got concluded in September, '73 and thereafter the show cause notice was issued to him in March '78. It appears that in the intervening period the plaintiff had been removed under Rule 14(II) on 11.11.76 and no final decision had been taken on this case. We do also not find that there is any lacunae in the disciplinary proceedings. The plaintiff has not been able to prove the same by any cogent evidence.

8. In Writ Petition No.4916/79, the plaintiff had agitated the matter of his removal from service w.e.f. 7.6.78 and he had prayed for the quashing of the same order. In the annexures to this Writ Petition he had attached the papers in regard to the findings etc. in respect to the charge-sheet issued to him in 1972. A perusal indicates that his appeal was considered by the Appellate Authority and disposed of by a speaking order. This Writ Petition was dismissed by the Allahabad High Court on the grounds that their was a delay of 194 days beyond 90 days from the date of the impugned order. The petition was dismissed on 14.9.79.

9. There is no doubt that the Writ Petition was dismissed on account of the delay and latches on the part of the plaintiff. But the objection raised by the learned counsel for the respondents that this suit gets extinguished can not be accepted. There is also no doubt that the

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plaintiff had elected the Writ jurisdiction but, his petition was not dismissed on merits. It was dismissed for delay and latches.

10. As far as the reliefs prayed for are concerned we have already observed that we do not find any procedual mistake in the D.A enquiry or in the disposal of the appeal. The Appellate order is a speaking order and the authority has considered the aspects raised in the appeal. Since there is nothing illegal in this orders no intervention can be sought from this Tribunal in this respect.

11. The learned counsel for the applicant had also mentioned during the arguments that the quantum of punishment is not commensurate with the offence committed by the plaintiff. We find that in this claim petition as well as in the rejoinder the plaintiff has only sought for quashing the removal order and has not taken any such plea, We can not allow a new plea to be introduced at this stage.

12. In the above view we find no merits in this petition. The petition Suit No.547 of 1981 is accordingly dismissed with costs on parties.

Member(J) Member(A)

Dated: 25/February,1989.

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