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CENTRAL ADMINISTRATIVE TRIBUNAL ,ALLAHABAD BENCH.

...

O.A. No. 1348 of 1988

Dated: 27 April, 1995

Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. J.S. Dhaliwal, Member(J)

Harbinder Singh son of late Shri
Sohan Singh, R/o Village and Post
Phagwara, District Jahallendar,
Punjab., S.S. Fitter, A.E.N. C.S.P.
N. Rly. Allahabad. ... Applicant.

(By Advocate Sri P.K. Kashyap)

VERSUS

1. Assistant Engineer, Concrete Sleeper
Plant, Northern Railway, Subedarganj,
Allahabad.
2. Senior Engineer, Concrete Plant,
Northern Railway, Subedarganj,
Allahabad. ... Respondents.

(By Advocate Sri A.K. Gaur)

O R D E R

(By Hon. Mr. S. Das Gupta, Member(A))

The relief which the applicant has sought
in this Original Application filed under Section
19 of the Administrative Tribunals Act, 1985 is
that the order dated 8.10.1987 (Annexure- A 9)
by which the applicant was removed from service
and the order dated 19.2.1988 by which the appellate
authority rejected the appeal be declared as illegal
and that the respondents be directed to pay the wages
of the applicant during the period he was removed
from service.

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2. The brief facts of the case leading to the filing of this application are that the applicant was serving as a Semi Skilled Fitter in the Concrete Sleeper Plant, Northern Railway, Subedarganj, Allahabad. It is the case of the applicant that he went to his home district in Punjab on 18.1.1985 to see his ailing sister. He gave an application for leave before moving for ~~from~~ Punjab to one Gyan Chandra, the then Assistant Shop Superintendent. He returned to join his duty on 30.1.1985 but was allowed to join duty only on 22.2.1985. He was served with a charge-memo on 6.4.1985 for absence for the period from 18.1.1985 to 29.1.1985 but before he could give a reply to the charge-memo he had to leave again for Punjab on 10.4.1985 on suddenly getting the news that his sister was seriously ill. Thereafter, the applicant himself became sick and was under the medical treatment. He was declared fit to resume duty only on 20.4.1987 and came back to join his duty on 21.4.1987 with sickness and fitness certificate dated 20.4.1987 issued by the Private Medical Practitioner. He was, however, not allowed to resume duty but was given a photo stat copy of the another charge-sheet, A copy of which is at Annexure- A 2 to this application. An inquiry officer was appointed on 8.6.1987. The applicant requested the respondents to allow him to join duty ~~from~~ first and thereafter conduct the inquiry but despite repeated representations, he was not allowed

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to join duty. There was no prosecution witness to establish the charges against the applicant and it is alleged that even no documentary evidence was produced during the inquiry to substantiate the charges. On the other hand, he examined two witnesses to prove that he had submitted an application for leave before leaving for Punjab. The applicant contends that the inquiry officer came to the conclusion that the applicant was not guilty of the charges and yet the disciplinary authority passed the impugned order dated 8.10.1987 removing him from service. A copy of the findings of the inquiry officer was not given to the applicant along with the removal order. This was, however, given to him after the several representations on 21.1.1988 and thereafter the applicant preferred an appeal on 5.2.1988 against the impugned order of removal. This appeal was, however, rejected by the impugned order dated 19.2.1988 on the ground of limitation.

3. The respondents have filed a written statement in which the preliminary objection has been taken that the application is time barred. On the merits of the case, it has been submitted that the applicant did not give any leave application and left station without permission of the competent authority and remained on unauthorised absence from 18.1.1985 to 21.2.1985. He was given a charge-memo for this

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misconduct but without giving a reply to the charge-memo he again ~~took~~ ^{left} taken leave on 11.4.1985 without permission of the competent authority and remained on unauthorised absence for a period two years and ten days upto 20.4.1987. During this entire period he neither informed the authorities about his sickness nor any sick certificate was forwarded to the office of the respondents. He came back with a sickness certificate and fitness certificate on 21.4.1987 and the said certificates ^{was} ~~were~~ issued by the doctor on the same day i.e. on 20.4.1987. The applicant was, therefore, charge-sheeted for unauthorised absence and thereafter the inquiry officer was appointed. The inquiry officer did not anywhere say that the absence of the applicant was not unauthorised and infact, he has held that the applicant was on unauthorised absence. The findings of the inquiry officer were accepted by the disciplinary authority who issued the impugned order of penalty. The applicant was afforded reasonable ~~an~~ opportunity to defend himself.

4. The applicant has filed a rejoinder affidavit in which the contentions made in the O.A. have merely been reiterated.

5. We have heard the learned counsel for the parties and have carefully gone through the pleadings of the case.

6. From the averments, it is clear that whether or not, the applicant left without any intimation

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or after submitting an application for leave, the fact remains that he was absent from duty for more than two years during which period he never communicated ^{to} ~~that~~ the competent authorities about his sickness nor did he send ^{any} leave application supported by medical certificates. The applicant has, therefore, acted totally irresponsibly. In these circumstances, we find nothing wrong in the disciplinary authority charge-sheeting the applicant and thereafter imposing the penalty of removal from service. We have also gone through the report of the inquiry and we do not find anything perverse in the findings of the inquiry officer. There is no doubt that the inquiry officer has come to the conclusion that one of the charges i.e. that the applicant did not give a reply to the earlier charge-memo ^{has been} ~~has not~~ established, Since he had to move in a hurry before he could give a reply to the same. He has, however, clearly held that the other charge i.e. the charge of unauthorised absence has been fully proved and this finding has been accepted ~~proved and this finding has been~~ ^{by} the disciplinary authority. We, therefore, find nothing wrong with the impugned order dated 8.3.1987 ^{and} ~~of~~ the disciplinary authority imposing the penalty of removal from services.

7. The appeal of the applicant was, however, not considered on merits but was rejected on technical grounds. It appears from the impugned order of the appellate authority that it was rejected

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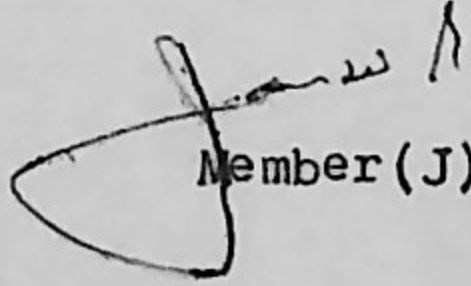
as being time barred. There is no doubt that there is statutory provision in the Discipline and Appeal Rule that an appeal against an order of penalty shall be submitted within 45 days and admittedly, the appeal was preferred much after the expiry of this period of limitation. Yet, we have seen from the averments of the applicant @@ that after being given the penalty of removal from service, he requested for a copy of the inquiry report. The ~~final~~ ^{first} representation elicited no response and only after giving a reminder, he was given a copy of the inquiry report only on 21.1.1988.

8. After the decision of the Hon. Supreme Court in Ramjan Khan's case, it is settled principle of law that a copy of the inquiry report has to be given to the applicant. This principle would not be applicable to this case as the impugned order was passed much before the Ramjan Khan's case. However, when the applicant made a representation for being given a copy of the inquiry report so as to enable him to file a proper appeal, There was a duty cast on the respondents to furnish a copy of the report of inquiry to him or atleast to reject his representation by speaking order. The respondents have not denied in the counter affidavit that the applicant did make such representation and also a reminder was issued to him when the earlier representation failed to elicit response. It is also not denied that a copy of the inquiry report was actually given to him only on 21.1.1988. If

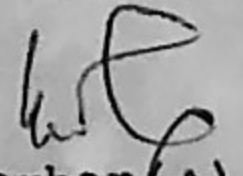
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he had received a copy of the inquiry report only on 21.1.1988, the appeal which he preferred on 5.2.1988 cannot be considered as time barred. The appellate authority should have considered the appeal on merits and not reject the same on technical ground of doubtful validity.

9. In view of the foregoing, we quashed the appellate order dated 19.2.1988 and remit the case back to the appellate authority for consideration of the appeal of the applicant on merits and its disposal by a reasoned and speaking order within a period of 3 months from the date of communication of this order. There will be no order as to costs.


Member (J)

(n.u.)


Member (A)