

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

D.A. No.
T.A.No.

108

1988

DATE OF DECISION

Bhagwati Prasad Petitioner

Dr. G.R. Padia

Advocate for the Petitioner(s)

versus

Union of India & Others Respondents

Sri. P. Mathur

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.K. Agrawal J.M.

The Hon'ble Mr. K. Obayya A.M.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether to be circulated to all other Benches ?

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Ghanshyam/

(A3)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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T.A. NO. 108 of 1988

(O.S. NO. 192 of 1977)

Bhagawati Applicant.

Vs.

Union of India & others Respondents.

Hon'ble Mr. D.K. Agrawal, J.M.

Hon'ble Mr. K. Obayya, A.M.

Original Suit No. 192/77 instituted in the court of Munsif West Allahabad is before us on transfer under Section '29' of the Administrative Tribunals Act, 1985 and registered as T.A. No. 108/88. The prayer of the plaintiff is for declaration that the order of his reversion dated 16.09.75 from the post of permanent Way Mistry (P.W.M.) to the post of Mate is illegal and should be set aside.

2. The plaintiff who was employed in the ~~North~~^{Western} Railway was working as P.W.M., Meja Road on an scale Rs. 330-560. On 21.9.73 when there was an accident involving collision between a Goods Train and a Dip Lorry which was under his charge. He was served with a charge-sheet on 22.11.1973 for dereliction of duty. The plaintiff submitted his explanation dated 06.12.73 denying the charge. There was an enquiry which was held ^{up the charge} on the basis of which he was awarded a punishment of reduction to the post of Mate (Rs. 250-308) for a period of two years without cumulative effect.

3. The contention of the applicant is that the enquiry was held ex-parte without giving opportunity to defend his case and the documents relied upon were not supplied, as such, the enquiry can not be sustained and the punishment order is liable to be set aside.

4. In the written statement filed on behalf of the defendants, it is stated that enquiry was held following the procedure laid down in the rules, enquiry notices were sent to the plaintiff to his residential address noted in the records, but the notices were returned undelivered, as the plaintiff was not available, however, the plaintiff attended the enquiry on 8.7.84 and 9.7.84, on which dates ⁷ out of 20 witnesses were examined. Thereafter, the plaintiff chose not to attend the enquiry, though he was informed of the next date of enquiry. Consequently, the defendants had no alternative but to finalise the enquiry in his absence. It is also stated that all the documents relied upon were supplied to the plaintiff, and the fact finding report containing 80 pages with 2 sketches was also given. Before imposition of punishment a show cause notice, together with enquiry report was served on the plaintiff, it was acknowledged by him on 11.7.75 but the plaintiff did not submit any reply, in the circumstances, considering all aspects, the punishment was imposed reducing him to a lower post for a period of 2 years.

5. The plaintiff has not filed any rejoinder despite opportunity. We have heard the learned counsel for the parties. We also wanted to peruse the record relating the departmental proceedings but the same was not made available on the ground that the record was destroyed in accordance

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with the rules. An affidavit to this effect was also filed by Shri Anurag, the Senior D.S.O. The learned Counsel for the defendants has also filed the Weeding list, in which there is an entry of this case as item No. I under 1973 accidents. The learned counsel for the plaintiff in his objection desired that the adverse inference may be drawn for failure of the defendants to produce the relevant records.

6. We have carefully considered the pleadings of the parties and the submissions of the counsels of both sides. On the question of opportunity, the plaintiff has not denied that he attended the enquiry on 7.8.84 and 8.8.84. Notices issued to him were returned undelivered. The fact that he was not attending the office is also not in dispute. The defendant's contention is that he absconded from duty with effect from 20.11.1974. The plaintiff has also received show cause notice for imposition of punishment. In this background the contention that he was totally un-aware of the enquiry is not credible. The punishment awarded was reduction to a lower rank for a period of two years. After the punishment period, he was entitled for the post and scale of the higher post of P.W.M. which he was holding before the imposition of punishment. The plaintiff has not joined duty even after expiry of the punishment period. It would appear that he was not interested in joining duty. Taking into consideration the facts and circumstances of the case, we are of the view that no case is made out for denial of opportunity or arbitrariness in the imposition of the

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punishment. The suit has no merit and accordingly it is dismissed with no order as to cost.

Rutherford
Member (A)

SK Legerwood
Member (J)

January 18 1991.

Allahabad.