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CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH

ALLAHABAD

DATED: THIS THE 15th DAY OF JANUARY 1997

CORAM : Hon'ble Mr. S. Das Gupta AM
Hon'ble Mr. T. L. Verma JM

ORIGINAL APPLICATION NO. 153 of 1988

Jamil Ahmad son of Sallan,
resident of Partapur Chaudhary,
Izatnagar, Distt: Bareilly

-----Applicant

C/A Sri Saumitra Singh

VERSUS

1. Divisional Railway Manager,
North Eastern Railway,
Izatnagar, Bareilly.

2. Additional Divisional Railway Manager,
North Eastern Railway,
Izatnagar, Bareilly.

3. Senior Divisional Electrical Engineer,
Izatnagar, Bareilly.----- Respondents

C/R Sri V. K. Goel.

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ORDER

By Hon'ble Mr. T. L. Verma JM

This application under section 19 of the Industrial Tribunals Act, 1985 has been filed forquashing the order dated 6.1.1981 whereby the applicant had been terminated from service, order dated 30.10.198y passed by the Appellate authority confirming punishment of removal from service and the order dated 6.4.1987, whereby representation dated 12.3.1987 submitted by the applicant has been rejected.

2. At the relevant time, the applicant was appointed as Train lightener Fitter under the Divl. Railway Manager, Izzarnagar, Bareilly. Notice dated 11.12.1980 was served calling upon him ^{to show cause} why action should not be taken against him for his having entered the Inspection carriage no. 250 on 11.12.1980 in a drunken state and thereafter committing assault on the Divisional Mechanical Engineer (D.M.E. for short), Sri Kular Nath Shuntingman and also attempt^{ed} to assault Nathu Ram and Raja Ram. It was also alleged that he had damaged to the Saloon. The applicant, however, did not submit reply to the Show cause notice as a criminal case under section 425 and 426 I.P.C. read with section 120 and 121 of the Indian Railway Act was subjudice. Immediately thereafter, an order was issued by the Senior Divisional Engineer on 6.1.1981 stating that it was not reasonably practicable to hold enquiry against the applicant and removed the applicant from service with effect from 6.1.1981 under rule 14(2) of Railway Servant (Discipline and Appeal) Rules 1968. The applicant filed an appeal against the order of penalty

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of 19.2.1981 (annexure 4). While the aforesaid appeal was pending, the applicant filed writ petition before the Hon'ble Supreme court, challenging the D.A. & R rules and the disciplinary proceedings initiated against him. The writ petition ^{along with a bunch of other petition} was dismissed by the judgment and order dated 11.7.1985. While upholding the constitutional validity of Rule 14(2) of Discipline and Appeal rules, the Hon'ble Supreme court issued direction to the railway administration to dispose of the pending appeals promptly. Further direction issued was that the ^{who had not filed appeal} employees be permitted to file appeal by 30.9.1985 ~~by~~ condoning the delay in filing the same. The applicant had already filed appeal against the penalty imposed on 19.2.1981. He filed another appeal/review petition on 12.9.1985. The appellate authority ^{allegedly} ~~h~~ did not communicate the result of appeals filed on 19.2.1981 and 12.9.1985. The applicant, therefore, filed O.A. No. 158/87 for issuing direction to the respondents to dispose of his appeal dated 12.9.1985. This O.A. was, however, dismissed in-limine with the direction to the respondents to decide the appeal dated 12.9.1985 within four months. It is alleted that the respondents did not comply with the aforesaid direction of this Tribunal, which compelled him to approach this Tribunal again by filing Civil Misc. Contempt application no.11/87. The aforesaid contempt petition was disposed of by order dated 10.11.87. The contempt petition was dropped on the ground that the appeal filed by the applicant had already been disposed of in 1982. The applicant contends that he came to know of the fact that the appeal and representation filed by him had already been decided only on 4.11.1987 through the copies of the orders annexed to the C.A. filed in contempt petition as annexure nos. 8 and 9.

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The applicant, thereafter filed this application on 1.2.1988 for the reliefs mentioned above.

3. The impugned orders have been assailed by the applicant on the ground that no ground what-so-ever existed for invoking provision of Rule 14(2) of D.A.& R. rules 1968. The order dated 6.1.1984 whereby the applicant has been ~~terminated~~^{removed} from service, therefore, is illegal, void and without jurisdiction.

4. The respondents have contested the claim of the applicant. In the counter affidavit filed on their behalf, it has been stated that this application is barred by limitation inasmuch as the same has been filed more than 3 years after the appeal and representation submitted by the applicant were rejected. The further case of the respondents is that it was not reasonably practicable to hold the enquiry against the applicant as he had threatened the complainant as well as the witnesses with dire consequences, if action was initiated against him.

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

6. Inview of the pleadings of the parties, first question that falls for our consideration is whether this application has been filed within time. Admittedly writ petition no.6500/81 was dismissed by the Hon'ble Supreme court on 11.7.1985 and that the same has been reported in A.I.R. 1985 SC 1416. While dismissing the writ petition filed by the applicant, Hon'ble Supreme court issued direction to the respondents to dispose of the pending appeal expeditiously. The contention of the applicant is that the respondents, despite the aforesaid direction of the Hon'ble Supreme court

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did not decide the appeal and the representation filed by the applicant on 19.2.1981. He, therefore, filed O.A. No.158/87.

7. This O.A. was dismissed in limine with the direction to comply with the direction of the Hon'ble Supreme court. This direction issued by this Tribunal was also not complied with and thereafter contempt petition no. 11/87 was filed. The contempt petition was, however, dismissed on the ground that appeal and the representation filed by the applicant had been disposed of much before the O.A.158/87 was filed. The respondents contended that the appeal and representation have been disposed of in 1985 itself and the applicant was also informed of the result. On our direction, the respondents have made available the file pertaining to the disciplinary proceeding initiated against the applicant. The perusal of this file reveals that the representation and appeal of the applicant were disposed of and the result thereof was communicated to him through E.F.O/B.C. by letter dated 30.10.1985. We have no reason to believe that the aforesaid letter was not despatched to the applicant. In that view of the matter, it can safely be presumed that the letter, whereby the result of the order passed in the appeal and representations submitted by the applicant was communicated must have been served atleast in November, 1985. Application, if any, challenging the legality or otherwise of the order passed by the appellate authority, therefore, should have been filed by December, 1986. This application which has been filed on 1.2.1988, thus, is clearly barred by limitation.

8. The learned counsel for the applicant submits that he came to know that the appeal and repre-

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sentation submitted by the applicant have been decided in October, 1985 only through the annexure attached to the counter affidavit filed with the contempt petition no. 11/87. It appears that the entire exercise of filing the O.A. as well as the contempt petition adopted by the applicant was only to somehow explain the delay in filing this O.A. The applicant had a cause of action for moving the Hon'ble Supreme court for initiating contempt proceedings against the respondents, if the directions issued in writ petition no. 6500/81 had not been complied with. The O.A. 158/87 had been filed without any justification to issue direction to the respondent Railway to comply with the direction issued by the Hon'ble Supreme court. That apart, the O.A. in which the respondents were directed to decide the appeal dated 12.9.1985 in accordance with the law within a period of 4 months was dismissed in limine. As such the respondents had no occasion to controvert the averments made by the applicant in the said O. A. The very fact that the applicant instead of moving the Supreme court for initiating contempt proceedings against the respondents filed O.A., which was not at all maintainable clearly goes to show that this was done just to create evidence to explain the delay in filing O. A. challenging the order passed by the appellate authority. We, for reasons stated above, are not at all satisfied that the delay in filing this application against the order passed by the appellate authority has been explained.

9. Even otherwise, there is no merit in this application. The law laid down by the Hon'ble Supreme court in Union of India versus Tulsi Ram Patel's case reported in AIR 1985 SC 1416 followed in several decisions thereafter is to the effect that the disciplinary

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authority is not expected to dispense with the disciplinary enquiry lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of enquiry or because departmental case against the govt. servant is weak and must fail. However, the decision to dispense with holding of enquiry should be based on material on the record and the disciplinary authority should record the reasons in writing for dispensing with the holding of enquiry. Reasons recorded, however, need not be communicated to the government servant.

10. In view of the position of law as stated above, we direct the learned counsel for the respondents to produce for our observation file pertaining to the disciplinary proceeding initiated against the applicant so that it may be ascertained whether reasons for dispensing with the enquiry had been recorded and if ~~so~~, the reasons recorded are based on material records of the disciplinary proceeding ~~and~~ made available to us which we have perused. From the perusal of the records, we find that the disciplinary authority has recorded his reasons for holding that it was not reasonably practicable to hold enquiry. It has been stated that there was no likelihood of witnesses turning up for giving evidence out of fear of the applicant. The satisfaction of the disciplinary authority is based on the report of the D.M.E. that the applicant had threatened him with dire consequences, if action was initiated against him. This and other material considered by the disciplinary authority for arriving at the aforesaid decision, in our opinion, is sufficient to hold that the subjective satisfaction of the

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disciplinary authority to dispense with departmental enquiry was based on tangible materials. The order of dismissal passed against the applicant, therefore, cannot be said to be legally unsustainable.

ii. In addition to the above, it is also pertinent to mention that at the time, representation and the appeal filed by the applicant were considered by the appellate authority, criminal case initiated against the applicant had been finally disposed of. The applicant had informed the appellate authority enclosing the copy of the decision in the criminal proceeding that he had been acquitted. The appellate authority had considered the decision of the criminal court while disposing of the departmental appeal of the applicant. We have also perused the decision of the Magistrate passed in the case instituted against the applicant. The criminal case had also been instituted against the applicant for his having entered the Inspection Carriage of the D. M. E. and causing damage to the same ~~without~~ under section 426 I.P.C. read with section 120 and 121 of the Indian Railway Act. This criminal prosecution had arisen out of the same incident for which the applicant was departmentally proceeded against. Witnesses cited in the criminal case were the same who were assaulted by the applicant. From the perusal of the judgment, it appears that the persons who were present at the time of alleged occurrence have either not supported the occurrence at all or supported the occurrence, but declined to identify the applicant as the person who was involved in the occurrence. The applicant as well as the witnesses examined in the criminal case are colleagues and worked at the same place. They were, therefore, expected to know each other. Their reluctance to identify the applicant in the criminal case

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as the person who was involved in the occurrence supports the conclusion of the disciplinary authority that the witnesses will not come forward to give evidence in the case out of fear of the applicant.

12. In the facts and circumstances of the case discussed above, we are satisfied that the disciplinary authority was justified in holding that it was ^{not} reasonably ~~un~~practicable to conduct departmental enquiry against the applicant because the witnesses were under threat and were not inclined to give evidence.

13. For the reasons stated above, we are satisfied that no case for interference with the order passed by the disciplinary authority as well as appellate authority has been made out. This application is, therefore, dismissed, leaving the parties to bear their own costs.

J. Kaine
Member (J)

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Member (A)

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