

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 714 of 1992

Allahabad this the 19th day of January 2000

HOn'ble Mr. S. Dayal, Member (A)
HOn'ble Mr. S.K.I. Naqvi, Member (J)

Jagdish Shanker Dwivedi, S/o Late Sri Suraj
Prasad Dwivedi, resident of 11/332, Soterganj,
Kanpur.

Applicant

By Advocates Shri R.N. Bajpayee
Shri B.N. Singh

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Area Manager, Northern Railway, Kanpur.
3. The Chief Commercial Superintendent, Nor-
thern Railway, Baroda House, New Delhi.
4. The Divisional Railway Manager, N. Rly.
Allahabad.

Respondents

By Advocate Shri D.C. Saxena

O R D E R

By Hon'ble Mr. S.K.I. Naqvi, Member (J)

Shri Jagdish Shanker Dwivedi has come
come up for an order to quash the orders dated
21.12.1990 and 11.2.1991 passed by the respondent
no.2 and order dated 11.6.1991 passed by respondent

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no.3 and also order dated 10-1-1992 passed by respondent no.1 and also for direction to respondents to re-instate the applicant with continuity in service with full backwages alongwith other benefits admissible.

2. As per applicant's case, while he was posted in the Office of Area Manager, Northern Railway Kanpur on the post of Head Clerk, on 23.9.1987, he was trapped by a C.B.I. personnel of Lucknow for having demanding and accepted Rs.50/- to show favour to Shri Santosh Kumar, Safaiwala. On his arrest, he was suspended w.e.f. that very date i.e. 23.9.1987. After investigation in this trap case, the final report was submitted by the investigating agency in April, 1988 and the suspension of the applicant was revoked w.e.f. 10.8.1988. He was subjected to departmental inquiry and D.C.S., Allahabad issued a charge-sheet for major penalty dated 02.6.1988 and vide letter dated 09.1.89, he appointed Shri J.N. Sharma as an Enquiry Officer to enquire into the charges as per the charge-sheet. On retirement of Enquiry Officer Shri J.N. Sharma, the enquiry was entrusted to Shri A.N. Mittal. The Enquiry report was submitted and applicant was given an opportunity to submit representation against the inquiry report vide order dated 29.10.1990. The applicant submitted his representation dated 19.11.1990 to Divisional Commercial Superintendent, Allahabad and thereafter Shri N.S. Sarkar, Divisional Commercial Superintendent, Allahabad in the capacity of disciplinary authority

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passed order for reduction by two stages below in the same time scale of pay temporarily for two years fixing pay from Rs.1680/- to Rs.1600/- in the scale of pay of Rs1400-2300/-. At this stage, the applicant had a right to file appeal within 45 days as provided under Rule 20 of the Railway Servant Discipline and Appeal Rules, 1968 and thereby the time limit for submission of appeal was upto 04.2.1991 but before the applicant could prefer the appeal, the respondent no.2 issued a show-cause notice calling upon the applicant to show-cause as to why the penalty imposed on him not be enhanced to removal from service. This order is dated 29.1.1991. The applicant replied to this show-cause notice but respondent no.2 vide order dated 11.2.1991 imposed the penalty of removal from service of the applicant. On having received this order, the applicant preferred appeal dated 23.3.1991 before the respondent no.3 but the same was rejected vide order dated 11.6.1991. The applicant exercised the last right and prefer a revision petition vide letter dated 12.7.1991 to respondent no.1 but the same was rejected on the ground of being not maintainable. To get quash the order of punishment by disciplinary authority and then notice for enhancement, the order of enhancement, appeal against the order of enhancement and the order of rejection of the revision, the applicant has come up before the Tribunal and has mainly mentioned the ground that the orders are arbitrary, without application of mind, vague, perverse and not passed on cogent, valid and legal evidence. The applicant has emphasised that the appellate authority could take proceeding for enhancement of punishment

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after expiry of the period of limitation for filing the appeal, but notice for enhancement of penalty of ~~or~~ removal from service was served before expiry of that period and therefore, clear cut contravention of Rule 25, Railway Servant and Discipline and Appeal Rules, 1968.

3. The respondents have supported the orders and against the applicant/~~have~~ mainly mentioned that the departmental proceedings were taken according to provisions under the rules and the punishment has been imposed in accordance with the proved charges of accepting the bribe. In para-16 of the counter-affidavit, it has been accepted by the respondents that the applicant had time to appeal against the punishment upto 03.2.1991 but the revision notice was served on 29.1.1991. No reason has been mentioned for non-compliance of Rule 25 of Railway Servant Discipline and Appeal Rules, 1968.

4. Considering the arguments placed from either side and perused the pleadings.

5. At the very outset, we may mention that the applicant has utterly failed to bring home the allegations regarding arbitrariness or prejudice or non-compliance of Rule during disciplinary proceedings stage. Therefore, we are not inclined to interfere the orders passed by the disciplinary authority on 21.12.1990 which has been annexed as annexure A-7 in compilation No.1 of the O.A.

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6. We find some substance in the submission of the applicant in respect of notice issued and order passed for enhancement of punishment. Rule 18 of the Railway Servant Discipline and Appeal Rules, 1968 provides for provision in respect of order against which appeal lies. Rule 20 of the Rules provides for period of limitation for appeal which runs as under:-

"No appeal preferred under this part, shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against, is delivered to the appellant."

7. The appellate authority can exercise the revisional power under Rule 25 and may confirm modify or set aside the order or impose any penalty where no penalty has been imposed. Rule 25(2) runs as under;:-

"(2) No proceeding for revision shall be commenced until after; -

- (i) the expiry of the period of limitation for an appeal, or
- (ii) the disposal of the appeal, where any such appeal has been preferred."

8. In the present matter, we find that the order of punishment passed by the disciplinary authority is dated 21.12.1990 and the show-cause notice is dated 29.1.1991 and thereby without completion of 45 days period provided from an appeal in such matters. Hence, clear cut infringement of

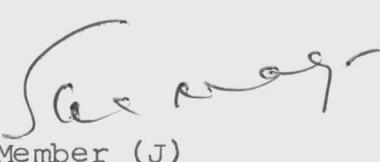
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of Rule 25(2) (i) and (ii) of the Railway Servant Discipline and Appeal Rules, 1968.

9. In view of the discussions aforesaid, it follows that the memo dated 29.1.1991, commencing review proceeding was illegal and deserves to be quashed. Since review proceedings could not have been started during the period of limitation and could not have been continued during the pendency of the appeal, the impugned order of removal dated 11.2.91, which is annexure A-11 to the O.A., is also illegal and deserves to be quashed.

10. For the above, the O.A. is partly allowed. The orders dated 21.12.1990 imposing penalty for reduction by two stages below in the time scale of pay is upheld.

11. The order dated 11.2.1991 passed by respondent no.2 is quashed. The respondents are directed to take consequential steps and pass necessary order in respect of service and salary status of the applicant ignoring the order dated 11.2.1991 ~~which has been quashed~~, within a period of 6 months from the date of communication of this order. No order as to costs.


Member (J)


Member (A)

/M.M.P