

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLD. BENCH,
ALLAHABAD

DATED :- ALLD. ON THIS 15th DAY OF ^{March} FEBRUARY, 1998

CORAM :- HON'BLE MR. D. S. BAWEJA, MEMBER (A)
HON'BLE MR. DVRSG DATTATREYULU, MEMBER (J).

ORIGINAL APPLICATION NO. 1256 OF 1993

Vanketeshwar Prasad Mishra S/o
Late Shri Vashudev Prasad Mishra,
R/o 87, Vivekanand Marg, Allahabad.

.... Applicant

C / A :- In person

Versus

- (1) Union of India through the Secretary
to the Govt. of India, Ministry
of Central Railway, New Delhi.
- (2) General Manager, Central Railway,
Bombay (Maharashtra).
- (3) Divisional Railway Manager,
Jabalpur (MP).

.... Respondents

C/R : Shri G P Agrawal

O R D E R
(By Hon'ble Mr. D. S. Baweja, Member (A))

This application has been filed seeking the relief of quashing the order dtd. 30.06.97 imposing punishment of removal from service and order dated 07.07.92 through which the Revision Application has been rejected. The applicant also makes a prayer that respondents be directed to treat the applicant in service from the date of removal from service till reinstatement and pay him the entire arrears of salary and other allowances etc.

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2. The applicant has stated his case as follows:-

The applicant fell ill on 20.10.73 and remained under medical treatment from 20-10-73 to 31-10-74. The applicant informed about his sickness to his office as well as to the concerned Asstt. Medical Officer. The applicant reported for duty on 01.11.74 alongwith copies of the medical certificates with a request to permit him to join the duty. However, during the period when he was on medical leave, a chargesheet was issued to the applicant for unauthorised absence on 25.06.74. Thereafter, an Enquiry Officer was nominated and enquiry was conducted. The Enquiry Officer in his finding found the claim of the applicant with regard to being on medical treatment and informing the office as genuine. The applicant was granted medical leave for the period from 22.10.73 to 31.10.74 by the competent authority. The applicant made several representations to allow him to join the duty but no action was taken by the respondents. The applicant received a letter dtd.29.03.76 directing him to join the duty immediately. The applicant immediately joined duty on 30.03.76. The applicant alleges that without any reason, the Divisional Mechanical Engineer(Carriage & Wagon) , Jabalpur appointed a second Enquiry Officer against the charge of being ^{on} unauthorised absence from 08.05.74 to 30.03.1976. The Enquiry Officer conducted the enquiry at the back of the applicant. Vide order dated 30.06.77, the applicant was imposed the punishment of removal from service and his services were deemed terminated from 30.06.77. The applicant moved an appeal against the punishment order which was not decided by the respondent. The applicant made a representation dtd.17.12.86 to the Railway Minister with a request to decide his appeal which was followed by several reminders. The Railway Minister directed the concerned Railway authorities to consider the appeal of the applicant. As per letter dated 21.06.91, the applicant was directed to submit Revision Application addressed to the General Manager. In compliance of this order, the applicant submitted his Revision Application on 01.07.91. This was followed by reminders dtd 27.07.91 and 16.08.91. However, the Revision Application of the applicant was not disposed off. The applicant filed O.A.No.720 of

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1992 seeking the relief of disposal of his Revision Application by the respondents. This O.A. was decided as per the order dtd. 29.09.92 with the direction that Revision Application of the applicant shall be disposed off within two months. General Manager, Central Railway, Bombay has finally disposed off his Revision Application as per the impugned order dtd. 07.07.92 which was received by the applicant only on 06.09.92. Being aggrieved, the present application has been filed on 20.08.93.

3. The applicant has challenged the impugned order on the following grounds:-

(a) Since the period from 20.10.73 to 31.10.74 had been regularised as medical leave, the second enquiry for the period from 08.05.74 to 30.03.76 is illegal, arbitrary and against the Law.

(b) The enquiry has been conducted at the back of the applicant and no opportunity was given to the applicant to participate in the same. Thus, there is violation of principles of Natural Justice.

(c) The copy of the Enquiry Report was not given to the applicant.

(d) The Revision Application was made by the applicant on 01.07.91 while the General Manager has passed the order on his representation dtd. 16.08.91 which was only a reminder. In view of this, the impugned order is not justified in the eye of Law. The impugned order dtd. 07.07.92 has been also passed without giving any opportunity of being heard.

(e) The impugned order does not give any reasons with regard to the observation that he is a habitual absentee and, therefore, such an order is not justified in the eye of Law.

4. The respondents have contested the application through filing of counter reply as well as supplementary counter reply. The respondent submit that the applicant was first issued a Major Penalty Chargesheet dated 21.06.74 for unauthorised absence from 20.10.73 to 07.05.74 for not following the procedure for availing medical leave. However, based on the finding of the

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Enquiry Officer, a lenient view was taken and the competent authority treated the period as leave due. However, the applicant remained absent from 08.05.74 onwards till 30.03.76. For this unauthorised absence, the applicant was issued another Chargesheet dated 05/21-06-76 which was acknowledged by the applicant on 29.06.76. A ex-parte enquiry was conducted as the applicant avoided to receive the letters fixing the date of enquiry as per the remarks of postal authorities. The Enquiry Officer held the applicant guilty of the charge. A Show Cause Notice dated 02.05.77 was issued to the applicant which was received by him on 20.05.77. The applicant submitted his explanation against ^{the} Show Cause Notice. After considering the finding of the Enquiry Officer and the reply to the Show Cause Notice given by the applicant, the Disciplinary Authority imposed a punishment of removal from service as per order dated 22.06.77 to be effective from 30.06.1977. The respondent also contend that the applicant had filed an appeal on 01.08.77 which was also rejected by the order dtd.20.08.77 and applicant was advised accordingly by registered post. Thereafter, the applicant represented his case in 1986 to the Railway Minister and this was followed by several reminders. On a direction received from the Railway Minister, the applicant was directed to file Revision Application as per letter dtd.21.06.91. The Revision Application of the applicant has been considered by the competent authority as per the order dated 07.07.92 ^{in O.A.No.720 of 1992.} In view of these facts, the respondents plead that the applicant is not entitled for the relief_s prayed for. The respondents have also strongly opposed the application on the plea that it is barred by limitation. The respondents submit that the appeal of the applicant had been considered as per the order dtd.20.08.77 and since the cause of action arose three years before setting of the Tribunal, the present application does not lie within the jurisdiction of the Tribunal. The respondents also contend that Revision or Review is not a statutory provision and consideration of the same cannot extend the limitation.

5. The applicant has filed rejoinder reply controverting the submissions of the respondents and reaffirming the grounds raised in the Original Application.

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6. The applicant has appeared in person and on behalf of respondents Shri G.P.Agrawal has appeared. We have heard their arguments. We have carefully considered the arguments advanced and also the material brought on record.

7. The counsel for the respondent, was directed to produce the original file of disciplinary proceedings as well as Personal File of the applicant. The same were made available during the hearing of the case.

8. Before going into merits of the reliefs prayed for, the issue of limitation and maintainability raised by the respondents shall be considered. First the respondents have contended that the applicant was removed from service from 30.06.1977 and his appeal had also been considered and rejected as per the order dated 20.08.1977. In their view, the cause of action arose earlier than three years before the setting up of the Tribunal and therefore, the matter does not lie within the jurisdiction of the Tribunal for adjudication. Further the respondents submit that revision or ^{appeal} review is not statutory provision and consideration of the same cannot extend the limitation. After careful consideration of the facts, we are not not inclined to subscribe to the view point of the respondents. As indicated earlier, applicant had filed O.A.No.720/92 seeking the relief of direction to respondents to decide his revision petition. This O.A. was decided on 29.09.1992 with the direction to dispose of the revision petition within a period of two months. It is, however, noted that before the O.A.No.720/92 was decided, the review petition had been already disposed of as per the impugned order dated 07-07-1992. Since the revision petition had been considered by the Competent Authority, the order of the disciplinary authority and the Appellate authority merges with the same. The Department on their own choice, have entertained the revision petition on representations being made and once the same has been considered by the Competent authority, then the limitation is to be reckoned from date of the order of the revision authority. Keeping this in view, we find that the present



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application is not barred by the limitation and the objection raised by the respondents does not sustain.

9. From the averments made by the applicant, it is noted that the main plank of the defence put forward by the applicant is that medical leave was sanctioned for the period from 20.11.73 to 31.10.74 after conducting enquiry and, therefore, second enquiry alleging unauthorised absence for the period from 20.11.73 to 31.10.74 is illegal, arbitrary and against the law. Taking into consideration the facts brought out by the respondents and also perusal of the disciplinary proceedings file, we are unable to find any substance in the contention of the applicant. The applicant was issued a chargesheet for unauthorised absence from 20.10.73 to 07.05.74. The enquiry for the same was conducted in which the applicant participated. The Enquiry Officer concluded that the contention of the applicant that he had informed the concerned authorities about his sickness is genuine. Keeping in view the findings of the Enquiry Officer, competent authority ordered to regularise the period for which the chargesheet was issued as medical leave. From the disciplinary proceedings file and his personal file, we find that the leave has been sanctioned only for the period from 20.10.73 to 07.05.74. The contention of the applicant that he was sanctioned leave from 20.10.73 to 31.10.74 is not borne by the facts revealed in the counter affidavit as well as the disciplinary proceedings and personal file. The applicant was issued a second chargesheet for an unauthorised absence for a specific period from 08.05.74 to 30.03.76. Keeping these observation in view, we are unable to find any merit in the contention of the applicant.

10. The second ground of challenge of the impugned order is that the enquiry has been conducted at the back of the applicant and no opportunity was given to the applicant to participate in the same. As noted from the disciplinary proceedings file and also submitted by the respondents in the counter affidavit, the major penalty chargesheet was acknowledged by the applicant on 29.06.1976. Thereafter, the Enquiry Officer was nominated. The applicant was advised by the registered post about the date of enquiry but the registered letter was received back with the postal remark as

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brought out in para 10 of the counter reply. From these remarks, it could be inferred that the applicant avoided the receipt of the registered letter. In the face of these facts, the contention of the applicant that he was not given any opportunity to participate in the enquiry is not sustainable. The disciplinary proceedings file clearly brings out that the applicant avoided receiving the letter fixing the date of enquiry. This is also substantiated from the fact that other communications sent on the same address had been received by the applicant. Applicant's avoidance has resulted in proceeding ex-parte in conducting and finalisation of the enquiry.

11. The third ground is that copy of the enquiry officer's proceedings was not made available to the applicant. This contention also lacks merit. The applicant was issued a show cause notice after the enquiry was completed and the same was received by the applicant on 20.05.77. He also submitted an explanation to the show cause notice. The final order had been passed by the disciplinary authority taking into account his explanation for the show cause notice.

12. The fourth contention of the applicant is that the applicant had filed revision petition through his letter dated 01.07.91 while the General Manager has passed order treating his representation dated 16.8.91 which was only a reminder as revision petition. The applicant has brought these documents on record at A-3 and A-5. We have gone through the same and find that the letter dated 16.8.91 at A-5 is the same as his revision petition dated 01.07.91 at A-3 except that he had made a reference to his earlier letter dated 01.07.91 sent as per the direction of the respondents. The main points made in defence of this case, are exactly the same as in the letter dated 01.07.91 claimed to be the revision petition. This issue raised by the applicant is only a technical in nature and consideration of letter dated 16.08.91 treating as revision petition, does not vitiate the order of the revision authority. The applicant has also made a pleading that the impugned order dated 07.07.92 has been passed without giving any opportunity or personal hearing. The applicant has not quoted any rule under which the revision authority is required to afford opportunity of personal



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hearing before disposal of revision petition. Further from his letters dated 01.07.91 as well as 16.08.91 , we do not find any request having been made for personal hearing by the revision authority. In the light of these facts, there is no substance or force in this ground of defence by the applicant.

13. The last ground advocated by the applicant is that the impugned order dated 07.07.92 of the revision authority, does not give any reason with regard to the observation that the applicant is a habitual unauthorised absentee. We have carefully gone through the order dated 07.07.92. The observation of being habitual unauthorised absentee is only incidental and not main thrust of the order of the revision authority. The order clearly indicates that the petition is time barred as well as does not have any merit. Keeping this in view, we are unable to find any merit in this ground of challenge of the impugned orders.

14. The various informities in the disciplinary proceedings pointed out by the applicant have been deliberated upon above and we find that none of these informities are fatal to the disciplinary proceedings as to vitiate the impugned orders.

15. In the result of the above, we are unable to find any merit in the application and the same deserves to be dismissed and is accordingly dismissed. No order as to cost.

9/3/92
MEMBER (J)

MEMBER (A)

/snt/