

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

Allahabad : Dated this 21 day November, 1996
Original Application No. 1100 of 1993

District : Gorakhpur

CORAM :-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Lakshman Singh Son of Sri Puran Singh,
C/o Hari Bhajan Singh, Bhogal Engineering works,
Station Road, Golghar, Gorakhpur.
(By Sri Bashist Teari, Advocate)

..... Applicant
Versus

1. Union of India through the General Manager,
N.E.Rly., Gorakhpur.
2. Deputy Chief Electrical Engineer, Workshop
N.E.Rly., Gorakhpur.
3. Chief Electrical Engineer, N.E.Rly.,
Gorakhpur.
4. General Manager (P),
N.E.Rly., Gorakhpur

(Sri D.C. Saxena, Advocate)

..... Respondents

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ORDER (Oor a 1.)

By Hon'ble Mr. S. Das Gupta, A.M.

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction to the respondents to pay pensionary benefits to the applicant treating him as having superannuated on 31-5-1991 with salary for the intervening period since 23-12-1982. He has also sought a direction to declare Rule 2014 (2) of the Railway Establishment Code Vol.II as unconstitutional and ultra vires.

2. According to the facts averred in the OA the applicant was working as Fitter to which post he was promoted in 1970. On 10-6-1982, the Deputy Chief Electrical Engineer, Workshop N.E. Railway, Gorakhpur issued a major penalty charge memo under Rule 9 of the Railway Servants Discipline and Appeal, Rules, 1968 (DAR for short) ~~alleging~~ absence from duty from 7-2-1982 to 2-3-1982 without any application for leave and also ~~alleging~~ that the applicant was absconding from duty since 1-5-1982. An inquiry into charges was held ex parte and after considering the report of the inquiry, the Deputy Chief Electrical Engineer imposed a penalty of removal from service by an order dated 23-12-1982 retrospectively w.e.f. 30-9-1982. The applicant by letter dated 12-11-1990 was requested for copies of the relevant documents which were given to him on 13-12-1990. A copy of the inquiry report was, however, not received and on further representation, dated 8-12-1990, the copy of the inquiry report was also supplied to him. Thereafter, on 13-2-1991, the applicant submitted appeal to the Chief Electrical Engineer,

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to his work's place and a copy was pasted on the notice board in presence of two witnesses. In the same manner the Inquiry Officer also sent the notices of the dates fixed for inquiry to the applicant at his home address under the registered post and these letters were returned with the remark that the addressee had left for a foreign country. Two copies of these notices were sent to the work's place of the applicant and the copy of the same was also pasted at the notice board in presence of the witnesses. As the applicant did not attend the inquiry of the dates fixed, the Inquiry Officer proceeded ex parte and on the basis of the inquiry report, the disciplinary authority imposed the penalty of removal from service. A copy of the ^{order of} disciplinary authority was also sent to the applicant under registered post at his home address and the same again was returned by the postal authorities with the remark that the addressee had left for foreign country. A copy of the order was sent to the work's place of the applicant and the same was also pasted on the notice board.

5. The respondents have further stated that an undated application was received for extension of leave w.e.f. 1-6-1982 to 1-9-1982. However, this application created doubts regarding the location of his presence and genuineness of his signature. In any case, during the ^{entire} period of 8 years of absence, ~~at any point of time~~, no further communication was received from the applicant. The respondents have further stated that ^{unauthorised} absence from duty is a serious misconduct.

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6. The applicant has filed a rejoinder affidavit in which he has contended that no notice of any kind was received by him from the Railway Administration, and that he was always available at his residence and had never gone abroad. He has alleged that it would appear that the postal authority was interested in some manner to act adverse to the interest of the applicant in collusion with some other persons and that is why all the letters sent to him were returned to him undelivered.

7. We have heard learned counsel for the parties and perused the record carefully.

8. Apart from the grounds already taken in the OA the learned counsel for the applicant also emphasised that as the impugned order is purported to have retrospective effect, the order of the disciplinary authority is bad in law.

9. From the averments, it is clear that the applicant had not been attending duties since 1-5-1982. The explanation of the applicant is that he had fallen sick and, therefore, sent the application for sanction and later from 1-5-1982 to 31-5-1982 and again from 1-6-1982 to 1-9-1982 and this fact was acknowledge by the Inquiry Officer in his report. He has further stated that till 1990 he was suffering from certain serious disease and, therefore, could not report for duty.

10. At the outset it needs to be stated that the application is prima facie time-barred. The impugned order of disciplinary authority was passed in 1982, whereas this application was filed only on 21-7-1993. The learned counsel for the applicant pleaded that

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the order dated 1-7-1991 passed on his appeal and also the order dated 10-12-1991 passed on his subsequent representation to the General Manager would give a fresh cause of action to the applicant. Rule 20 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as DAR for short) specifically states that no appeal against the order of the disciplinary authority shall be entertained unless such appeal is preferred within a period of 45 days from the date on which a copy of the order appealed against is delivered to the applicant. It is further also provided that the appellate authority may entertain appeal after the expiry of the said period if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

II. Admittedly, the appeal was filed by the applicant more than 8 years after the order of the disciplinary authority was issued. The appeal was, therefore, wholly time barred and could have not been entertained by the appellate authority unless it was satisfied that the applicant had sufficient cause for not preferring appeal in time. It is the case of the respondents that the applicant was absenting ~~from duty~~ in this regard and in all probability, he had left for a foreign country. This also was a finding of the Inquiry Officer based on which the disciplinary authority had passed its order. It cannot, therefore, be stated that the appellate authority was satisfied that there was sufficient reason for the appellant for not filing the appeal in time. In that view of the matter, the appellate authority had no jurisdiction to take cognizance of the appeal nor to pass any order thereon. The order dated 10-12-1991 is, therefore, wholly violative of the provision of Rule 20 of the DAR and as such non est.

12. Subsequent representations preferred by the applicant again to the General Manager does not indicate that he was invoking revisional jurisdiction of the reviewing authority. In any case the representation was also wholly time barred and any order passed thereon again cannot, therefore, give any fresh cause of action to the applicant.

13. In view of the foregoing the present application is wholly time barred and we see no reason to interfere. Even otherwise we have seen from the records that even on merit there is no reason ~~even~~ to interfere. We have carefully seen the various documents and there are some strong reasons to presume that the applicant was not available at his residential address at the time when the disciplinary action was initiated against him. The attempt made by the applicant in the rejoinder affidavit to suggest that the postal authority had acted against his interest in collusion with some unknown persons in returning the letters addressed to him as undeliverable is wholly without any foundation. Learned counsel for the applicant sought reliance on the decision of the Hon'ble Supreme Court in the case of Dr. Ramesh Chandra Tyagi Vs. UOI and Ors, 1994 SCC (L&S) 562, to contend that there was no proper service either of charge sheet or the notices issued by the Inquiry Officer or the final order of the disciplinary authority. In that case the Hon'ble Supreme Court had held that there was no proper service of the charge sheet on the appellant although it was claimed that the same was served on him but the same was refused and returned with the endorsement "left". We have carefully perused the facts and circumstances of the case.

The circumstances in which the Hon'ble Supreme Court came to the aforesaid conclusion are quite different from the circumstances of the present case.

14. Learned counsel for the applicant also sought reliance of the case of Govind Prasad Vs. R.G. Prasad & Ors, 1994 SCC (L&S) 579 in support of his contention that there cannot be a retrospective operation of an order of the disciplinary authority. We have already noticed that the disciplinary authority's order was passed on 23-12-1982 by which the applicant was removed from service retrospectively w.e.f. from 30-9-1982. We see no reason to examine the validity or otherwise of this order. In the context of its retrospective operation, since, as we have already stated, the present OA is wholly barred by limitation.

14. In view of the foregoing, this application is dismissed. The parties shall, however, bear their own costs.

J. Mervin
Member (J)

W.R.
Member (A)

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