

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 23rd day of February, 2001.

Original Application No. 601 of 1995

alongwith

Original Application No. 1186 of 1993

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Dayal, Member- A.

Shree Krishna S/o Shri Manphool, working as
Gangman under P.W.I, N. Railway, Jhinhak,
Distt. Kanpur Dehat.

.....Applicant

Counsel for the applicant :- Sri Anand Kumar
Sri C.P. Gupta.

V E R S U S

1. Union of India through the General Manager,
Baroda House, New Delhi.
2. Assistant Engineer, Northern Railway,
Etawah.
3. Permanent Way Inspector, Northern Railway,
Phaphund.

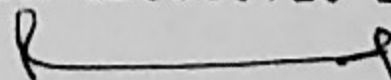
.....Respondents.

Counsel for the respondents:- Sri Amit Sthalekar.

O R D E R (oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C)

Applicant Shree Krishna joined the railway
as casual Gangman on 25.08.71. Subsequently he was



empanelled ^{as} permanent Gangman. It is claimed that on his written representation dt. 25.08.93, Mate of the Gang Sri Rashid Mohd. became annoyed and stopped ^u taking work from the applicant. He made representations to the authorities on 10.04.93, 15.04.93 and also gave legal notice on 22.05.93 but no relief was granted by the superior authority. Applicant ~~has~~ ^{then} filed O.A No. 1186/93 in this Tribunal on 10.08.93. The O.A was entertained on 13.08.93. Notices were issued to the respondents and interim order was passed to the following effect :-

"Considering these facts the respondents, meanwhile, are directed to pay the salary and other allowances to which the applicant was entitled to get as regular employee."

2. The relief claimed in O.A No. 1186/93 is for a direction to the respondents to allow the applicant to perform his regular duty as casual Gangman and pay his monthly salary including ~~errors~~ ^u. He also claimed ~~t~~ for the exemplary compensation for harassing him. However, ~~the~~ ^{no} interim order was passed in favour of the applicant in this O.A. The memo of charge dt. 25.08.93 was served on the applicant alleging that he absent from duty from 09.04.93 to 23.08.93 without any information which caused disturbance in the railway work. It is also stated that from the past record it is revealed that applicant is habitual absenty, and he has not improved. Applicant has filed a letter in his reply to ~~believe~~ ^{deny} allegations vide letter dt. 23.10.93. In the reply he specifically mentioned that he was allowed to discharge his duties from 01.04.93. He sent representation on 10.04.93 by registered post to P.W.I, Jhinhak. The second representation was sent to the P.W.I, Phaphund by registered post on



15.04.93. Though legal notice was given on 22.05.93 through registered post. The last representation was made on 10.07.93 through registered post. to Divisional Engineer, Etawah and applicant claimed for allowing him to join his duties. When no action was taken he filed O.A in this Tribunal. Applicant claimed that he never absent from the work as alleged from 09.04.93 to 23.08.93. Allegations are ~~false~~ and baseless.

3. The disciplinary authority by short^{and} criptic order dt. 23.11.93 imposed the penalty on the applicant by punishment of reduction in scale by 3 increments in three stages for two years. Against the order of disciplinary authority applicant filed an appeal on 03.01.94 which remains^{pend} pending and disciplinary authority failed to decide the same. The applicant then filed O.A No. 601/1995 in this Tribunal.

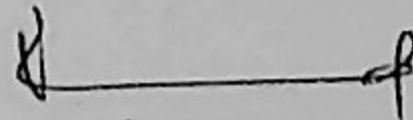
4. We have heard Sri C.P. Gupta, learned counsel for the applicant and Sri Amit Sthalekar, learned counsel for the respondents and perused the records.

5. In our opinion the order of the punishment in the facts and the circumstances of the case can ^{be} not sustained. Applicant in his explanation clearly ~~stated that~~ ^{stated that} when he was not allowed to discharge his duties by Mate concerned, he filed representation on 10.04.93, 15.04.93, 22.05.93 and 10.07.93. All these representations were sent by the registered post. The disciplinary authority has failed to discuss^{ed} this defence of the applicant. The applicant in his explanation has mentioned number of receipts under



which representations were forwarded. It would not have been difficult for the disciplinary authority to ascertain whether the applicant ^{had} ~~was~~ represented for not ^{being} allowed ^{to} to work on his post. Frustrated by the attitude of the higher authorities applicant filed O.A No. 1185/1993 in this Tribunal in which interim order was passed directing the respondents to pay the salary. Disciplinary authority has ~~also~~ also failed to take into notice this material facts about pendency of the proceedings in this Tribunal. Ignoring this vital defence of the applicant, he passed the order without taking ~~of~~ note of the explanation. In our opinion the order is illegal and can not sustain.

6. Sri Amit St Halekar, learned counsel for the respondents has submitted that the appellate authority may be directed to decide the appeal of the applicant. However, we are not inclined to accept this request as in para 7 of the C.A respondents have maintained absolute silence about claim of the applicant for filing appeal and pendency of the same for more than a year. In para 4.vii of the O.A No. 601/95 , applicant specifically claimed about filing of the appeal with reference to the date but appeal was not decided for a long time. Hon'ble Supreme Court in case of S.S. Rathore Vs. State Of M.P. AIR, 1990 SC (10) has held that departmental appeal and revision should be decided by the authorities within period of three to six months. In the present case the appeal was filed on 03.01.94 which remain pending for more than a year when O.A No. 601/95 ^{was} filed in this Tribunal on 09.06.95. By now more than 7 years have passed. After such a long time,



we do not think it necessary to ^{re-allocate} ~~re-allocate~~ the applicant to appellate authority, in the facts of the case, in which allegations against the applicant appears to have been cooked only with a purpose of harassment.

7. For the reasons stated above O.A No. 601/95 is allowed. The order of punishment dt. 23.11.93 is quashed. Respondents shall refund^e the amount deducted from the salary of the applicant in pursuance of the impugned order within a period of three months from the date a copy of this order is filed before competent authority. O.A. No. 1186/93 is also allowed and interim order dt. 03.08.93 is made absolute.

8. There will be no order as to costs.