

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 2nd day of MARCH 2005.

Original Application no. 302 of 1999

Hon'ble Mr. D.R. Tiwari, Member A
Hon'ble Mr. K.B.S. Rajan, Member J

Shri Gyan Jee Pandey, S/o Sri B.D. Pandey,
Asstt. Electric : Driver, (Present),
Northern Railway, Allahabad.

....Applicant

By Adv : Sri S.K. Tyagi & Sri M Pandey

V E R S U S

1. The Union of India through the Secretary,
Ministry of Railways,
NEW DELHI.
2. The Divisional Electrical Engineer,
Rolling Staff Operation, Northern Railway,
ALLAHABAD.

....Respondents

By Adv : Sri A.K. Gaur

ORDER

By K.B.S. Rajan, JM

This O.A. has been filed challenging the following orders:-

- (a) Order dated 21.1.1994 passed by DRM, (Annexure -3)
- (b) Order dated 30.3.1998 passed by ADRM (Annexure -1)

2. The brief facts of the case are that the applicant joined as Assistant Electric Driver in June, 1987, and some time in July, 1993, when he was innocently watching a quarrel between two Ticket Collectors and the Assistant Driver, his name was also included in the FIR. On 22.7.1993. The applicant found pasted on the Notice Board an order terminating his service under Rule 14(2) of the Railway Servants (Discipline & Appeal) Rules, 1968



(in short Rules of 1968) without holding any inquiry much less any show cause notice. As per the said order, the applicant stood removed from service w.e.f. 22.7.1993.

3. The applicant, through an appeal challenged the aforesaid order for removal from service purportedly issued by the disciplinary authority, bringing therein various legal infirmities (Annexure-2 of the O.A.). The appellate authority considered the appeal and modified the penalty order and converted the punishment from removal to 're-appointment as Electrical Driver w.e.f. 22.1.1994 without any benefit of the earlier service.' (Annexure -3 of the O.A.)

4. In an identical matter, another employee by name Nagendra Bahadur who was also removed on the same day on identical allegation filed a Petition before this Tribunal and this Tribunal had quashed the order of termination by order dated 29.11.1996. On the strength of the above order, the applicant had a representation dated 4.1.1997 made for a similar benefit. Though the authorities below had recommended his case, the DRM, however, rejected the same vide order dated 30.3.1998.

5. The applicant, thus, challenged the two orders namely order dated 21.1.1994 and order dated 30.3.1998.

6. The applicant had assailed aforesaid two orders mainly on the ground that parity in treatment has not been given when his case is admittedly identical to other case of Nagendra Bahadur.

7. The respondents had furnished their reply stating that the main reason for punishment of the applicant was in fact on account of his undesirable activities stoppage of train carrying essential commodities and mobilization of



his co-workers for disruption of the trains and thereby causing serious loss to the Railway properties. The respondents have also contended that the appellate authority had considered the unconditional apology made by the applicant for his misconduct and as such took a sympathetic attitude towards him.

8. From the perusal of the record, it is seen that subsequent to the decision of this Tribunal in the case of Nagendra Bahadur quashing and setting aside the penalty order, the respondents pursued the disciplinary proceedings and the same culminated in the findings of the I.O. as the charges are not proved.

9. During the course of argument, the learned counsel for the applicant vehemently argued that the order of removal was passed by the disciplinary authority without holding any inquiry stating in the said order, that it is considered it is not reasonably practicable due to physical intimidation of the witnesses to hold the inquiry in the manner provided for in the Railway Servants (Discipline & Appeal) Rules, 1968. Now, therefore, in exercise of the powers conferred by Rule 14(ii) of the RS (D&A) Rules, 1988, the undersigned hereby removed the said Sri Gyan Ji Pandey Assistant Electric Driver under CTFO/RSO, Allahabad, Northern Railway from service w.e.f. 22.7.1993.

10. The learned counsel for the applicant has also argued that his case is identical to that of Sri Nagendra Bahadur and when in his case inquiry was conducted and he was found not guilty, in this case as well such an inquiry could have been conducted, which the respondents failed to do so.


11. The learned counsel for the applicant further contended that the penalty as contained in rule 6 of the Rules of 1968 do not contemplate 're-



appointment and forfeiture of past services' and as such the penalty order cannot be sustained.

12. The counsel for the respondents mainly contended that the application is barred by limitation inasmuch as the order dated 21.1.1994 is sought to be agitated against as late as in 1999.

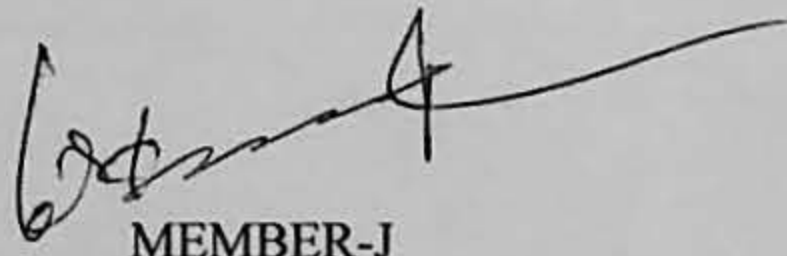
13. We have given our anxious considerations to the case and we have also perused the entire records. First as to the preliminary objection on limitation. The impugned order is dated 21.1.1994. This order was challenged in the amended application. The main order that was challenged was that of 30.3.1998. By this order, the respondents had rejected the claim of the applicant for parity of treatment with reference to another individual Nagendra Bahadur, who was also placed in identical situation and in whose case the Tribunal had quashed and set-aside the penalty order of removal from service. As this order was challenged within limitation and the earlier order dated 21.1.1994 is in closely knit with this order, in our considered view, the bar of limitation may not apply. Further, the matter is such that the applicant's case cannot be thrown on technical ground of limitation, hence the plea of limitation stands rejected. Admittedly, no inquiry was conducted in this case and the punishment afforded was 're-appointment' and forfeiture of past services which is not in the list of penalties in rule 6 of Rules of 1968. No reason has been spelt out in the disciplinary authority's order, wherein he had held that it was not reasonably practicable to hold the inquiry. The words "intimidation of witness" are not borne by any documentary or other evidences. Rule 14(2) of the Rules of 1968 cannot be invoked without proper and sufficient reasons as held by the Apex Court in the celebrated case of Tulsi Ram Patel Vs Union of India & Ors, AIR 1985 SC 141. In addition to the same, the penalty awarded is not the one which is prescribed in the Rules. Thirdly, even when viewed that similar treatment should be given, as in



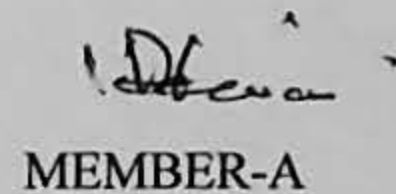
the identical case the penalty proceedings did not result in any punishment, the same could be extended in this case as well.

14. In view of the above reasons, the O.A. is allowed. The order dated 21.1.1994 and 30.3.1998 are quashed and set-aside. The respondents shall treat the applicant as not having been inflicted with the punishment and all the consequential benefits shall follow. Such consequential benefits should be made available to the applicant within a period of six months from the date of receipt of certified copy of this order.

15. Under these circumstances no order as to cost.



MEMBER-J



MEMBER-A

GIRISH/-