

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 14th day of January 2003.

original Application no. 414 of 2000.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Jeet Narain, S/o Ram Dulare,
R/o Village pura Dahhi, P.O. Meja Road,
Distt. Allahabad.

... Applicant

By Adv : Shri B.N. Singh

versus

1. Union of India through the General Manager,
N. Rly., Baroda House,
NEW DELHI.
2. Divisional Rail Manager,
N. Rly.,
ALLAHABAD.
3. Divisional Electrical Engineer (TRD),
Northern Railway,
KANPUR.

... Respondents

By Adv : Shri Amit Sthalekar

O R D E R

Hon'ble Maj Gen K.K. Srivastava, A.M.

In this O.A., filed under section 19 of the A.T. Act, 1985, the applicant has challenged order dated 23.3.2000 passed by respondent no. 3 (Ann A1) removing the applicant from service and has prayed that the same be quashed with direction to respondents to reinstate the applicant with full back wages with all consequential benefits.

2. The facts, in short, are that the applicant was working as Khalasi in respondent's establishment. The services of the applicant were earlier terminated by order dated 10.4.1989 passed

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by respondent no. 2 on the charge of producing fake casual labour card. Applicant challenged the same by filing OA no. 461 of 1989 and the order dated 10.4.1989 was set aside by this Tribunal by order dated 6.11.1997. The respondents were given liberty to initiate disciplinary proceedings within three months. The respondents filed Civil Misc. Writ Petition no. 7045 of 1998 before Hon'ble High Court of Allahabad and by order dated 26.2.1998 the order of the Tribunal dated 6.11.1999 was not stayed as far as reinstatement was concerned. The applicant was reinstated by order dated 23.7.1998. A fresh chargesheet dated 2.12.1998 was served on the applicant on 5.12.1998 with allegation that the period of working shown in casual labour card no. 64596 w.e.f. 6.5.1997 to 5.6.1998 is fake. Applicant raised objection regarding initiation of enquiry beyond period of 3 months besides denying the charges vide letter dated 6.12.1998. As per applicant, inspite of this the enquiry officer was appointed. Enquiry was conducted. A copy of enquiry report was sent to the applicant vide respondent no. 3 letter dated 3.10.1999. The applicant filed his objection about the conduction of enquiry vide his letter dated 17.10.1999. The disciplinary authority passed the removal order dated 23.3.2000. which has been impugned. Hence this OA which has been contested by the respondents.

3. Shri B.N. Singh, learned counsel for the respondents has assailed the impugned order dated 23.3.2000 mainly on two grounds. Firstly, that the charge sheet dated 2.12.1998 was served beyond the period of 3 months which was specified by this Tribunal vide order dated 6.11.1997 and secondly, the inquiry was not conducted in a proper manner so much so that the working of the applicant rendered during 1977-78 in broken periods under one Sri Madan Mohan Srivastava, P.W.I., Meja Road, Allahabad were not got verified by Sri Madan Mohan Srivastava, the then P.W.I., Meja Road, Allahabad. A searching inquiry had to be done. Instead

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the charges were stated to be proved by the enquiry officer on the statement given by the Section Engineer Shri Gulam Ahmad and Sri K.K. Mishra, clerk working under Divisional Personnel Officer (in short D.P.O.). The applicant was also denied opportunity of cross examination. The learned counsel for the applicant also argued that number of irregularities were committed in conducting the inquiry and the applicant was not given reasonable opportunity to defend his case. Therefore, the charge sheet, which was issued on 2.12.1998 i.e. after more than four months from the date the applicant was reinstated i.e. 23.7.1998, and also the enquiry report cannot be held legally maintainable.

4. Resisting the claim of the applicant Sri Amit Sthalekar learned counsel for the respondents submitted that the entire case cropped up during verification when the name of the applicant was included in the panel of electric khalasi in 1984. A full-fledged enquiry has been conducted, proper and reasonable opportunity has been given to the applicant and the contention of the applicant is far from the truth. The applicant also did not fully cooperate in the inquiry.

5. Shri A. Sthalekar, learned counsel for the respondents also argued that the present O.A. is not maintainable as the applicant has not filed any appeal against the punishment order dated 23.3.2000.

6. We have heard learned counsel for the parties, carefully considered their arguments and closely perused records.

7. The applicant has challenged the punishment order dated 23.3.2000 on the ground that charge sheet was not served on the applicant within 3 months as stipulated by this Tribunal's order dated 6.11.1997 and also that the inquiry has not been conducted

in a proper manner.

8. The order of this Tribunal dated 06-11-1997 reads as Under:

"We, therefore, set aside the order of discharge simplicitor dated 10.4.89. The applicant shall be taken back on duty as an employee within a month of receipt of this order and shall be considered as having attained temporary status from the date he completed 120 days of work on the basis of record available with the respondents. He is said to have completed only 111 days of work by 30.11.83 in the pleadings of the respondents. He shall not be entitled to any back wages as he was not on duty".

9. It is an admitted fact that the respondents filed writ petition No.7045/98 before Hon'ble Allahabad High Court which is still pending for final adjudication. The Hon'ble Allahabad High Court passed an interim order dated 26.2.1998 staying direction of this Tribunal only to the extent of payment of Rs.25,000/- as compensation. Once the order of this Tribunal was not stayed by Hon'ble Allahabad High Court, the respondents took action to reinstate the applicant w.e.f 25.7.98. As per the applicant he should have been proceeded against within 3 months from the date of reinstatement which was not done.

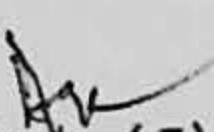
The chargesheet was served on 2.12.1998 i.e after more than four months. ^{As per applicant} the chargesheet should be declared as void ^{ab initio}. We are not inclined to accept this plea, in view of the fact that the writ petition No.7045/98 is still pending before Hon'ble Allahabad High Court. Therefore, the delay of ~~two~~ month ^{a little more than a month} in issuance of chargesheet would not render it void.

10. Section 20 of the Administrative Tribunals Act 1985 lays down that the statutory remedies must be exhausted before filing the O.A. in the Tribunal. This plea has also been taken by the respondents in para 28 of the Counter Affidavit and the respondents have pleaded that the O.A is premature and not maintainable. The applicant in para 29 of the Rejoinder

Affidavit has not given any convincing reason for not filing the appeal. The preliminary objection raised by the respondents which is going to the root of the matter has force and, therefore in the interest of justice, we consider it necessary that the applicant files a detailed appeal before the appellate authority within a period of 4 weeks which shall be treated as having been filed in time. and should be decided within a specified time by a reasoned and speaking order.

11. In the facts and circumstances, the O.A. is finally disposed of with the direction to the applicant to file an appeal before Appellate Authority within four weeks which shall be decided by Appellate Authority within a period of three months from the date of communication of this order.

12. There shall be no order as to costs.



Member (J)



Member (A)

pc/-