

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1546 of 2003

Date of Decision 14/12/03

Sujan Singh Applicant(s)

Sri A.K. Srivastava Counsel for the
Applicant(s)

V E R S U S

Union of India & Ors Respondents(s)

Sri A. Shalekar Counsel for the
Respondents(s)

CORAM :

Hon'ble Mr. S.C. Chauhan Member (A)

Hon'ble Mr. K.B.S. Rajan Member (J)

1. Whether Reporters of local News Papers may be allowed to seen the Judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment.
4. Whether to be circulated to all the Benches.



SIGNATURE

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO.1546 OF 2003.

Dated: Allahabad this the 14th day of Dec, 2005.

Hon'ble Mr. S.C. Chaube, Member-A
Hon'ble Mr. K.B.S. Rajan, Member-J

Sujan Singh, S/o Sri Phoran Singh, R/o Q.No. 219 F
Block, Dhabighat, Railway Colony, Tundla District
Faizabad.

.....Applicant.

By Adv: Sri A.K. Srivastava.

V E R S U S

1. The Union of India through General Manager, Northern Central Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Central Railway, Allahabad.
3. General Manager (Personnel), Baroda House, New Delhi.
4. Divisional Commercial Manager, Northern Central Railway, Allahabad.

.....Respondents.

By Adv: Sri A. Sthalekar.

O R D E R

BY K.B.S. RAJAN, MEMBER-J

The applicant is fighting an already lost battle. He prays for a direction to the respondents to invoke their discretionary power in a particular



way. This is not possible in view of a catena of decisions of the Apex Court as spelt out in the paragraphs below. The application is therefore liable to be dismissed for reasons stated hereunder.

2. The facts of the case as contained in the O.A. are as under:-

- (a) The applicant was posted as Coach Attendant in the year 1982. The applicant was issued a Chargesheet dated 27.10.1994 interalia on the charge that he allowed two second Class ticket holders to travel in Ist Class Compartment after taking a bribe of Rs. 80/-.
- (b) The disciplinary authority without considering the evidence on record removed the applicant from his service vide order dated 22.1.1996. The said order was made subject to Original Application no. 1388 of 1997 and in Writ Petition no. 4006 of 1997 on the ground of quantum of punishment, which was upheld by both the Courts.
- (c) In the meantime, circular dated 4.5.2000 was issued providing job to the employees of the Railway Board whose services have been removed or who have been dismissed from service.
- (d) The applicant moved a representation dated 1.8.2001 with the request to re-employ the applicant on the post of Coach Attendant.

(e) The aforesaid representation remained pending and the applicant was compelled to file O.A. no. 1240 of 2001 which was disposed of vide order dated 8.11.2001 with the direction to the applicant to pursue his application before the employers. The applicant served a copy of the order dated 8.11.2001 on the Additional Divisional Railway Manager.

(f) The said representation was rejected vide order dated 24.4.2002. A perusal of the order dated 24.4.2002, it would reveal that the request has been rejected merely on the ground that he had already exhausted all avenues under the DAR as the applicant has been advised to make a mercy application before the General Manager, Northern Railway, New Delhi for re-employment of for any consideration.

(g) The applicant moved an application to General Manager. The General Manager considered the application and did not find any merit in the Mercy petition warranting a favorable consideration because of the fact that the applicant exhausted departmental avenues and also moved this Tribunal and lost the case there.

(h) The General Manager did not decide the Mercy application of the applicant in the light of the circular of the railway Board dated 14.5.2000, which provides that a dismissed/removed railway employee can be re-employed under Ruled 402 IREC Vol. 1 subject to the provisions contained in the said Rule.

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3. The version of the respondents as contained in CA are as under:-.

- (a) The applicant, ex-coach Attendant was issued major penalty chargesheet for serious irregularities detected during the vigilance check conducted by the Vigilance team. The DAR enquiry was conducted. The Disciplinary authority passed the order of punishment of removal from service.
- (b) The applicant preferred an appeal, which was rejected. The revision appeal was also rejected.
- (c) Thereafter the applicant moved the Court and filed O.A. no. 1388 of 1997, which was dismissed. The petitioner filed a Writ Petition, which was also dismissed. Thereafter, a representation of the applicant requesting for reinstating him in service was received, the advice was that his case could not be considered.
- (d) Again the applicant submitted a representation to the Divisional Railway Manager. The decision of Divisional Railway Manager was conveyed .
- (e) The applicant again filed O.A. no. 1240 of 2001, this Tribunal dismissed the case with the direction that the applicant may, however, ^{peruse} his application in response to the decision of the Railway Board's letter dated 24.4.2000 with his employers".

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(f) The applicant submitted a representation to the Additional Divisional Railway, wherein the Additional Divisional Railway Manager, Allahabad had passed order that 'As per rules', since he has exhausted all avenues under the DAR, the only option available to him to make a mercy application to General Manager, North Railway, New Delhi for re-employment or for any other consideration. On this, he had submitted representation to the General Manager, who had passed the order after careful consideration of the case that his case did not merit consideration.

4. Documents have been perused and arguments heard. Counsel for the applicant submits that all that he prays is that the respondent should be directed to give him re-employment on the basis of the Railway Board Circular dated 14-05-2000. This order gives full discretion to the General Manager to use his discretion to an ex employee who has been removed from service. This discretion has been utilized in the instant case and by a very clear order that the applicant he has indicated the reason for his decision that the applicant has no merit in this case. The reasons are:-

- (a) Dependencies have been kept in view.
- (b) Past service Records were considered.
- (c) Record of punishment was analyzed.
- (d) The applicant has already exhausted remedies upto the Revision level.

(e) The applicant had also made an unsuccessful attempt with the C.A.T.

5. Rule 402 of the Railway Establishment Code reads as under:-

"No person who has been dismissed from Government service or convicted for a criminal offence shall be re-employed without the sanction of the President, or if the employment or re-employment is a Group 'C' or 'D' post, without sanction of the General Manager."

6. The above provision does not give any right to an employee for re-employment but only a discretion to the employer for offering re-employment. Thus, it is a statutory discretion available at the hands of the employer. "It is well settled that a court of law cannot compel a statutory authority to exercise its statutory discretion in a particular manner. The legislative will in conferring discretion in an essentially administrative function cannot be interfered with by courts." - **T.V. Choudhary, In re v, (1987) 3 SCC 258.**

7. It has also been held by the Apex Court, "When certain power of the Government is administrative and discretionary, the said power should be exercised subject to the same limitations which govern all such administrative and discretionary powers. The authority competent to take a decision should exercise its discretion bona fide and in good

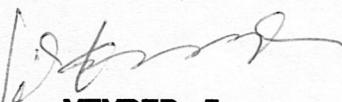


faith by addressing itself to the matter before it and should not allow itself to be influenced by extraneous or irrelevant considerations. The caution is that the issue cannot be disposed of in an arbitrary or capricious way. **The court can only ask the authority concerned to exercise the discretion vested in it but it cannot be asked to exercise it in a particular way.**" (**CED v. Prayag Dass Agarwal, (1981) 3 SCC 181**).

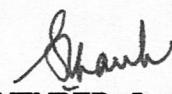
8. In the instant case, the authorities had already been asked to consider the case of the applicant in accordance with 402 of IRCA and on their rejection, neither extraneous or irrelevant considerations were considered in rejecting nor can the decision be branded as made in an arbitrary or capricious way.

9. The decision is after full application of mind and the reasons are comprehensive and speaking.

10. Hence, we find no merit in the OA and it is therefore, dismissed. No cost.


MEMBER-J

Girish/-


MEMBER-A