

M.A./721/88
in
O.A./502/87

(4)

CORAM : HON'BLE MR. P.H.TRIVEDI : VICE CHAIRMAN
HON'BLE MR. P.M.JOSHI : JUDICIAL MEMBER

23.09.1988

Learned advocate Mr. M.K.Paul is not present. Mr. B.R.Kyada learned advocate for the respondents has no objection against the production of the documents being allowed. Hence, the application is allowed. The documents be taken on record. With this order, M.A./721/88 stands disposed of.

P.H.Trivedi
(P.H.TRIVEDI)
VICE CHAIRMAN

Smp
(P M JOSHI)
JUDICIAL MEMBER

Coram : Hon'ble Mr.P.H. Trivedi : Vice Chairman
Hon'ble Mr.P.M. Joshi : Judicial Member

11/04/1989

Heard Mr.M.K. Paul and Mr.B.R. Kyada the learned advocates for the petitioner and the respondents respectively. The appeal against order of removal from service has been disposed of by letter dt. 7.9.1987 by rejection and by the conclusion that the appeal warrants no reduction in the punishment imposed. On perusal of the application and the reply filed by the respondents and after hearing the learned advocates on both sides, we find that the main grounds of the petitioner viz -

(1) that the petitioner was not provided any defence assistance, (2) that the proceedings were in English and (3) that the inquiry officer was prejudiced against the applicant and which objection was not taken into account by the respondents, are found to have no force on perusal of the record. The Enquiry Officer has stated that the person named by the petitioner for assisting him for defence did not show his consent and therefore was not considered. The allegations against the Enquiry officer were in general terms were considered and the plea was rejected. The proceedings being heard in English was not a handicap because they were translated to the petitioner and reply was given in Gujarati by the petitioner were admitted during the hearing. The petitioner has made much of some dispute he had regarding providing of cycle which was not in a serviceable condition on account of his illhealth. Further his cause is that a punishment awarded to him of removal from service is far too severe for charge for which he has been held to be guilty.

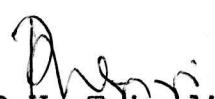
He cites the judgment of Supreme Court SCC 1984 (Vol.2) page 569/570 in support of his contention. He also states that the appellate authority's order is laconic and does not give reason for not considering the grounds on which the appeal is rejected. We do not find that on this ground the appellate authority can be defaulted because he has stated that he had perused Enquiry officer's report and there was no new material or no reason for him to defer from the conclusion of the Enquiry officer and there is no reason why that he should record a detailed order, though we must also observe that a tendency of writing such orders confirming punishment leaves the party with a feeling that his appeal was not fully considered.

Recently the Supreme Court has ruled that the Tribunals are not competent to reappraise orders given in disciplinary proceedings or act as appellate authorities for interfering with the quantum of punishment if the enquiry or orders do not suffer from any infirmity. It is, therefore, necessary that we should restrain ourselves from giving any direction regarding reduction of the punishment already awarded. However, in the facts and circumstances of this case, it is appropriate that the case should be remitted to the appellate authority for his considering whether in the light of the Supreme Court's judgment cited by the learned advocate for the petitioner and in view of the fact that the petitioner has put in service of 17 years and has been without job for last five years, any lesser punishment would not serve the ends of justice. The appellate authority to

(2)

:: 3 ::

give a suitable orders without being prejudiced by the petitioner having sought his remedy before this Tribunal. The appellate authority may pass suitable orders within 2 months from the date of this order. With these observations and directions the case is disposed of. No order as to costs.


(P.H. Trivedi)
Vice Chairman


(P.M. Joshi)
Judicial Member

*Mogera..

MA/902/88

in
OA/502/87

Coram : Hon'ble Mr.P.H. Trivedi : Vice Chairman
Hon'ble Mr.P.M. Joshi : Judicial Member

11/04/1989

Learned advocates Mr.M.K. Paul and Mr.B.R.Kyada for the applicant and the respondents respectively present. Learned advocate for the applicant does not press the M.A. and withdraws the same, M.A./902/88 accordingly stands disposed of.



(P.H.Trivedi)
Vice Chairman



(P.M. Joshi)
Judicial Member

*Mogera

R.A./91/89

in

O.A./502/89

(a)

Coram : Hon'ble Mr.P.H.Trivedi : Vice Chairman
Hon'ble Mr.P.M.Joshi : Judicial Member

29/9/1989

Per : Hon'ble Mr.P.H.Trivedi : Vice Chairman

The Misc. Application seeking review of our judgment in OA/502/89 dated 11.4.1989 contains a reference of the case relied upon by the petitioner for the judgment favourable to him. The judgment sought to be review on the other hand ^{confirms} pleads sufficient reasons. The petitioner has failed to make out to our satisfaction any error or law to manifest on the record justifying review of our judgment. Accordingly the Misc. petition is rejected.

P.H.Trivedi

(P.H.Trivedi)
Vice Chairman

P.M.Joshi

(P.M.Joshi)

Judicial Member

AIT

C.A./54/89

in

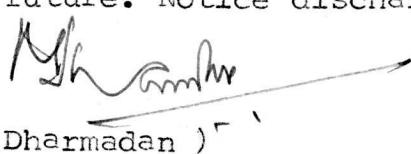
O.A./502/87

10

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. N. Dharmadan .. Judicial Member

24.4.1990

Mr. M.K. Paul, learned advocate for the petitioner reports that the orders have been complied ^{with} on 7.11.1989 by respondents passing appropriate orders in compliance of the direction dt. 14.4.1989 which gave two months for the purpose, ^{again} therefore the expiry of the date of implementation of the judgment is on 11.6.1989, the respondents have passed the orders on 7.11.1989. We are unhappy about the respondents having unduly delayed ~~for~~ the compliance and if they found difficulty ⁱⁿ to the compliance, the proper procedure would be that they should apply for extension ^{of time} to some extent providing justification for delay. If they had tendered apology to the Court while reporting compliance on 7.11.1989. The default of the respondents have, therefore, three fold. Firstly, no compliance with the instruction within time given to them, secondly, no ^{time} sought of extention of time giving justification and thirdly, no report of compliance with tendering apology for delay. However, in view of the compliance dt. 7.11.1989 although belated, we do not propose to take a serious view on it. A copy of this order be ^{considered} sent to the Chairman, Railway Board for ~~taking~~ necessary action against the Divisional Railway Manager, Western Railway, Rajkot for ^{orderly} ~~compliance of~~ some instance for the future. Notice discharged.


(N Dharmadan)
Judicial Member


(P H Trivedi)
Vice Chairman