

Shri Kishordan B Gadhvi
Village Somari,
P.O.Dhutarpur,
Via.Jamwanthali,
Dist.Jamnagar.

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.. Applicant

Versus

1. Union of India
Through: General Manager,
Western Railway,
Churchgate, Bombay.
2. The Divisional Railway
Manager, Western Railway,
Kothi Compound,
Rajkot.

.. Respondents.

Coram : Hon'ble Mr. P.M. Joshi : Judicial Member
Hon'ble Mr. P.S.Chaudhuri : Administrative
Member

ORAL ORDER

25/4/1989

Per: Hon'ble Mr. P.M. Joshi : Judicial Member

In this application filed by the petitioner Shri Kishordan B. Gadhvi under Section 19 of the Administrative Tribunals Act, 1985, he has challenged the validity of the order dated 24.8.88 (Annexure 22) passed by the Divisional Railway Manager which reads as under:

" Divisional Rail Manager has passed the following orders." I have gone through the appeal submitted by you. You appear to be unrepentant about your misconduct and continue to charge the Administration of following illegal and unconstitutional means in effecting your removal from service. You had also been indulging in submitting baseless complaint in the past generating wide-spread discontentment among the staff".

" I do not see any merit in considering your appeal. The orders for removal from service will therefore remain unchanged."

In the present application he also challenged the order of removal from service dated 28/9/1981 against which he had filed a Regular Civil suit in the court of Civil Judge, Senior Division, Rajkot

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on transfer : 2 : ✓

which was renumbered as TA/1256/86. Mr. B.B. Gogia, the learned counsel for the petitioner however, during the course of his arguments declared that he does not now challenge the said order of removal from service. According to him, the petitioner in terms of the observations made by the Tribunal in Review Application (MA/233/87) dated 10/11/87 preferred an appeal and when the statutory appeal was filed by him and the decision rendered by the competent authority is a subject matter of judicial review. It was further submitted that the appellate authority has not applied its mind to the nature of the charge, the triviality thereof and the length of the service the petitioner had put in with the department. He had also made an attempt to agitate the ground that the accusations made against the petitioner ^{in the charge sheet} did not amount to misconduct.

Mr. B.R. Kyada, the learned counsel for the respondent has opposed the application contending inter alia that the respondents have already made it clear that the appeal was considered only on humanitarian ground and not as per the legal right and therefore it cannot be said that the authority has violated any rules or there is infringement of any rules. It was also submitted that the petitioner had preferred an appeal in terms of the observations made by the Tribunal in the judgment rendered in review application.

It is pertinent to note that the petitioner had challenged the orders of removal from service dated 28/9/1981 in the Regular Civil Suit filed by him and the same was transferred to this Tribunal. Having regard to the merits of the case, it was found devoid of merits whatsoever and the application (TA/1256/86) was dismissed. While dismissing the suit

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we have held that the enquiry has been duly carried out and there was no satisfactory evidence in support of the contentions of the petitioner regarding any defect in the inquiry or in his being prejudiced in making his representation. We have also further held that there are no grounds to interfere with the order of penalty imposed upon the petitioner." However, the petitioner moved this Tribunal to review our judgment by filing ~~this~~ application ^{MA/233/87}. We have clearly observed that there are no grounds to review of our decision and the application was dismissed. However, while dismissing the application we ~~have~~ made the following observations:

" However, we must observe that having regard to the fact that the petitioner has been dismissed after rendering a long period of service on the eve of retirement, of Judgment should not be construed to debar the respondent, should he wish to do so, from dealing with the petitioner on compassionate and humanitarian grounds. The petitioner is at liberty to move the respondent in an appropriate manner for this purpose and the respondent may exercise his discretion without holding any technical ground like limitation to bar consideration of the application of the petitioner is so made".

It seems that the petitioner has preferred an appeal under the assumption that he was filing a ^{of course} statutory appeal without seeking any condonation of delay wherein he has repeated his all grounds challenging the validity of initial order of removal from service dated 28/9/1981. The competent authority in terms of the observations made by the Tribunal seems to have considered the representations made in the appeal filed by the petitioner and has rejected the same. Having regard to all the facts and circumstances of the case we ^{are} clearly of the opinion that the petitioner has no right to re-agitate the same grounds and application is clearly barred by resjudicata and there are no valid grounds to interfere with the order dated 24.3.1988.

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SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil/~~SM~~) No(s) 14350/89

(From the judgment and order dated 25.4.89 of the ~~High Court~~ Central
Admnv. Tribunal, Ahmedabad Bench in DA No. 545/88

Kishordan B. Gadhvi

Petitioner (s)

Versus

The Union of India & Anr.
(with appln for stay)

350899
Respondent (s)

Date 11.11.91

This/these petition (s) was/were called on for hearing today.

CORAM:

Hon'ble Mr. Justice K.N. Singh
Hon'ble Mr. Justice S. Mohan
Hon'ble Mr. Justice

Certified to be true copy
[Signature]
Assistant Registrar (Judl.)
..... 12 1991
Supreme Court of India

For the petitioner (s) Mr. TN Singh, Adv.
Mr. B. M. Sharma, Adv. 2

For the respondent (s) *[Signature]*

UPON hearing counsel the Court made the following
ORDER

Pursuant to the notice issued by this Court dated 27.11.89,
the respondent-authorities have already modified the impugned
order of removal from service and substituted the same by an
order of compulsory retirement. In this view, the petition is
rendered infructuous and is accordingly disposed of.

[Signature]
(SUNITA TALWAR)
COURT MASTER

[Signature]
(VINOD KUMAR)
COURT MASTER

12/11/91