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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

*No
removal*

~~Q.A. No.~~ /389/90
~~RAZ No.~~

DATE OF DECISION 11.2.1993

General Workmen's Union Petitioner

Mr. K. V. Sampat Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondent

Mr. N. S. Shevde, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R. C. Bhatt : Member (J)

The Hon'ble Mr. V. Radhakrishnan : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

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General Workmen's Union,

.. Applicant

Vs.

1. Union of India,
The General Manager,
Western Railway,
Churchgate Station,
Fort,
Bombay- 400 001.

2. Divisional Railway Manager,
Western Railway,
Railway Yard,
Pratapnagar,
Vadodara- 390 004.

3. Divisional Mechanical Engineer (Loco),
Railway Yard,
Pratapnagar,
Vadodara- 390 004.

4. Asst. Mechanical Engineer (Loco),
Western Railway,
Railway Yard,
Pratapnagar,
Vadodara- 390 004.

.. Respondents.

O R A L J U D G M E N T

O.A./389/1990

Date: 11.2.1993

Per: Hon'ble Mr. R.C. Bhatt, Member (J)

1. Mr. V.C. Ashar for Mrs. K.V. Sampat, learned advocate for the applicant and Mr. N.S. Shevde, learned advocate for the respondents are present.

2. This application under Section 19 of the Administrative Tribunals Act, 1985, is filed by the General Workmen's Union, a Registered Trade Union for and on behalf of Railway Workmen and also by the concerned workman, Husein Abdul Rahim, being member of that Union

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seeking the relief that the order Annexure A/2, dated 17th June, 1986, passed by the respondent no. 4 be quashed and set aside as it is illegal and the appellate order also dated 13th November, 1986, intimated on 24th May, 1990, by respondent no. 3 also being illegal be quashed and set aside and the respondents ~~not~~ be directed to reinstate the applicant in service with backwages and all the benefits etc.

3. The case of the applicants as pleaded in the application is that the applicants no. 2 was served with a charge sheet dated 28th August, 1985, with a charge of un-authorised absences from duty vide Annexure A/1. The applicants defended that charge before the inquiry officer who gave the finding and ultimately the disciplinary authority namely the respondent no. 4, Asst. Mechanical Engineer (loco), western Railway, Railway Yard, Pratapnagar, Vadodara- 390 004, passed an order dated 17th June, 1986, vide Annexure A/2 removing the applicant from service. The applicant filed an appeal against the order of disciplinary authority on 8th July, 1986, before the respondent no. 3, Divisional Mechanical Engineer (loco). According to the applicant, the respondent no. 3 did not send any reply to this appeal filed by the applicant no. 2, but ultimately addressed the registered letter to the applicant no. 2 on 24th May, 1990, along with the copy of the order dated

13th November, 1986, that the appeal was already disposed of on 13th November, 1986. It is the case of the applicant that the appellate order dated 13th November, 1986, was communicated to the applicant no. 2 only on 24th May, 1990, and therefore, this application is within the period of limitation.

4. The applicant challenges the order of the disciplinary authority as well as the order of the appellate authority. It is alleged in the application that, the respondent no. 4 passed the order of removal of the applicant from service which was illegal. It is also contended that the order of the appellate authority is also bad in law.

5. The respondents have filed reply contending that the applicant had filed representation dated 10th May, 1990, which was been rejected by the respondents. It is contended that the appeal had been rejected by the respondents on 13th November, 1986, and the copy of it had been sent to the applicant through, Loco, Foreman, Godhra. It is contended that the applicant had filed representation dated 22nd Feb. 1989, which was considered as his revision petition and the same was dismissed. It is contended that the application is barred by limitation. It is further contended that the order passed by the disciplinary authority and the appellate authority are legal and proper.

6. The applicant's Secretary, has filed rejoinder

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contended that the appellate authority's order dated 13th November, 1986 was never served on the applicant except with the letter dated 24th August, 1990, vide Annexure A/4.

It is contended that as the appellate order was not communicated to the applicant through loco foreman and hence, the respondents were not legally entitled to treat the representation dated 26th Feb. 1989, as revision petition.

The applicant has controverted the other contentions taken by the respondents in the reply.

7. The applicants have filed written arguments

in this case. So far the question of limitation is concerned, the applicants had filed M.A./128/91, during the pendency of this original Application asking the respondents to produce the documentary evidence to establish that the appellate order dated 13th November, 1986, was served on the applicant through Loco Foreman, Western Railway, Godhra, because, according to applicant such order was not served on him. The order was passed by this Tribunal on 23rd April, 1991, in the M.A./128/91 directing the respondents to get the said documents at the time of hearing. The respondents have not produced the said documents either

on
on 6th November, 1992, ~~and~~ 28th Jan. 1993, at the *time*
hearing. Today, the learned advocate Mr. Shevde, for the
respondents submits that, the respondents are not able to
trace the documents to show that the appellate order dated
13th November, 1986, was served to the applicant through

Loco Foreman, Godhra.

8. Therefore, the question arises that when the respondents contended in the reply that the appellate order was served on the applicant through Loco Foreman, Godhra, then they should be in possession of that documentary evidence, and therefore, the respondents were bound to produce that evidence to show that appellate order was served through Loco Foreman, Godhra. The respondents have not produced that evidence before us inspite of our direction in M.A./128/91 filed by the applicant. Therefore, the adverse inference ~~cannot~~ be drawn against the respondents that had they produced the said documents, the same would have gone against them, otherwise, there was no reason not to produce it. No reasons are assigned why ~~xxx~~ the respondents are not able to trace these documents which would support the respondents. However, as observed above such important document is not produced therefore, we hold that the respondents have failed to establish that the appellate order was served to the applicant through Loco Foreman Godhra, and we believe the applicant that the appellate order was received only with a letter dated 24th May, 1990, vide Annexure A/4. The Original Application is filed on 27th June, 1990, which was within the period of limitation from that date and hence, we hold that the application is not barred by limitation but it is within the time. The

learned advocate Mr. Shevde, for the respondents submitted that the letter Annexure A/4, dated 24th May, 1990, issued by the respondent no. 2 shows that, the applicants' representation dated 22nd Feb. 1989, was considered as the revision petition and it was held that the penalty was correctly imposed. The respondents have not produced the order passed by the competent authority regarding the dismissal of revision petition. However, apart from that fact, when there is no evidence produced by the respondents to show that the appellate order was served to the applicant before letter Annexure A/4, dated 24th May, 1990, the rejection of the representation of the applicant dated 10th May, 1990, referred to in Annexure A/4 has no legal effect. The contention taken by the respondents that the representation of the applicant dated 22nd Feb. 1986, was considered as revision petition and was rejected has no legal effect because the applicant for the first time had received the appellate order only when letter dated 24th May, 1990, vide Annexure A/4, was received. In our opinion, the applicant has legal right to file representation of ~~revision~~ ^{then} revision against the appellate order and ~~there~~ the respondents can dispose of the said representation considering it as revision but not before the appellate

order was served to the applicant.

9. The learned advocate for the applicants submitted that, this Tribunal should decide the matter on merits. We do not agree with him in view of Section 20 of the Administrative Tribunals Act, 1985, which shows that the applicant has to exhaust departmental remedies before approaching this Tribunal. Hence, the applicant should file the representation before the competent authority against the appellate order which would be considered by authority competent to decide it according to law. It will be open to the applicant to file representation to the competent authority within 15 days from today. The competent authority of the respondents should consider it condoning the delay in filing it because the matter is decided by us today, and we have accepted the applicant's allegation that, he had received the copy of the appellate order only with the letter Annexure A/4, dated 24th May, 1990, and not before that date and therefore, he should be given an opportunity to file the representation or revision to exhaust that remedy before approaching this Tribunal.

10. Hence, we pass the following order:

The application is partly allowed. The applicant to file representation/ revision before the

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competent authority of the respondents challenging the appellate order dated 13th November, 1986, by the respondents no. 3 within 15 days from today. The competent authority of the respondents then to dispose ~~of~~ the said representation/revision within four months from the receipt of this Judgment as per the Rules applicable to the applicant and to intimate him the result. If the applicant feels aggrieved by order that may be passed by competent authority, ^{would be in} it open to him to approach this Tribunal according to Rules. No order as to costs. The application is disposed of.

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(V. Radhakrishnan)
Member (A)

R.C. Bhatt
(R.C. Bhatt)
Member (J)

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