

In The Central Administrative Tribunal
Calcutta Bench

DA No.984 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Basudeb Bhattacharjee Applicant

- VS -

- 1) Union of India, through the General Manager, S.E. Rly., Garden Reach, Calcutta.
- 2) The Chief Mechanical Engineer, S.E. Rly., Garden Reach, Calcutta.
- 3) Chief Rolling Stock Engineer, Garden Reach, Calcutta.
- 4) The Sr. Mechanical Engineer(C&W), S.E. Rly., Garden Reach Road, Calcutta.
- 5) The Sr. Personnel Officer(E&H), S.E. Rly., Garden Reach Road, Calcutta.

..... Respondents

For the Applicant : Mr. B.C. Sinha, Advocate
Dr.(Ms.) S. Sinha, Advocate

For the Respondents : Ms. S. Banerjee, Advocate

Heard on : 8-2-2000

Date of Order : 15/03/2000

ORDER

G.S. MAINGI, AM

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by Sri Basudeb Bhattacharjee who was removed from service as Senior Clerk of Carriage and Wagon Section, Office of the Chief Rolling Stock Engineer, South Eastern Railway, Calcutta. The present application is directed against the order dated 16.3.94 passed by the competent appellate authority who had converted the ^{from punishment} service of the applicant ^{from}

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into compulsory retirement w.e.f. 26.3.1985.

2. The applicant had joined as Junior Clerk in South-Eastern Railway on 1.12.1956 from which post he was promoted to the post of Senior Clerk on 1-2-1983. The applicant was issued a charge sheet ^{on 13.1.84} which had three articles of charges. The main charge against the applicant was that during the period from July '83 to November '83 he had not attended, connected and/or disposed of as many as 161 official papers as per list attached with the charge-sheet. An Inquiry Officer was appointed in this case and the applicant did not cooperate with the conduct of the inquiry. Although he was still in service of the Railway he kept on avoiding the inquiry. As a result of non-cooperative attitude on the part of the applicant the disciplinary authority removed him from service w.e.f. 26.3.85. And it was intimated that against the order of removal from service he can avail of the assistance of any other railway servant for presenting his case before the appellate authority who is the Chief Rolling Stock Engineer of S.E. Railway. The applicant, instead of doing so, ^{he} approached this Tribunal and his appeal etc. became time barred vide D.R.646 of 1987 which was decided on 10.11.93 by a Division Bench of this Tribunal. Thereafter, the applicant filed an appeal before the Competent Appellate Authority; though he wasted a lot of time in pursuance of the matter. The Appellate Authority issued an elaborate speaking order in this case in 1994 i.e. 17.2.94 (Annexure-EI to the application). While reducing the penalty from removal from service to compulsory retirement the Appellate Authority stated that on consideration of appeal and on purely mercy grounds he reduced the punishment from removal to compulsory retirement. There is no provision of mercy petition or mercy benefit ^{after} under the Railway Servant (Disciplinary & Appeal) Rules. But despite the non-cooperative attitude of the applicant the Appellate Authority reduced the punishment. The applicant moved a contempt petition also in this case which was, however, rejected.

3. The respondents filed a reply to the application and they have stated clearly in paragraph 3 of their reply that the cause of action in regard to the order dated 26.3.85 is hopelessly barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. The Applicant himself also stated in paragraph 3 of the application regarding limitation that he was filing the application late and it may be condoned by this Tribunal from 15.3.95 till 14.8.95 and the period from 14.8.95 to 15.7.96 as during the said period he was confined to bed due to his illness. He has also produced a copy of the medical certificate issued to him by ~~one~~ Dr. S. Bhattacharya on 15.7.96 and he stated that the applicant was under his treatment from 15.3.95 to 15.7.96 as he was suffering from infective hepatitis followed by AC Low Back pain due to sacralisation prostrate. In fact he knew that certificate from a specialist from the competent hospital is required. But he has not chosen to do so. It is clearly admitted that ~~there~~ ^{he} is late in filing of the application.

4. The case was listed for hearing ^{on} 8.2.2000 when the Ld. Counsel Mr. B.C. Sinha leading Dr. (MS) S. Sinha appeared on behalf of the applicant and Ld. Counsel Mr. S. Banerjee appeared on behalf of the respondents. The arguments of the case were same like the applicant claimed the following reliefs:

- i) quashing the memorandum of chargesheet.
- ii) Quashing the compulsory retirement on and from 26.3.85.
- iii) Treat the normal retirement from 31.12.91 and all consequential pecuniary relief for entire period from 26.3.85 till the normal retirement date 31.12.91. Salary for working month upto 26.3.85 which is not yet paid to him by the respondents should also be paid.

iv) To give incidental interest.

5. The Appellate Authority has discussed in detail on account of which the applicant had been punished from time to time in paragraphs 2.1, 2.2, 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.3, 2.4, 2.4.1 and 2.5 and he reduced the penalty from removal from service to compulsory retirement.

6. In our view the present applicant all through avoided the employer and he does not deserve any more relaxation in the punishment and it is not possible for us to interfere in the punishment awarded to him. The Hon'ble Supreme Court had considered as to what extent the Administrative Tribunal, while exercising the power of jurisdiction, can interfere in a dispute case and it is held that the Administrative Tribunal cannot act as an Appellate Court. It is observed in a case reported in 1998(1)SCSLJ 74 (SC) (Union of India & Urs. VS- V.K. Sravastava as also in a case reported in 1998(1)SCSLJ 78(SC) (Union of India & Urs. VS- A.N.Rao.) It has been mentioned in the reply by the respondents that after reducing the punishment from removal from service to compulsory retirement applicant was directed to collect the necessary form etc. and approach the Railway authorities. But applicant has not done so. ~~The referee, applicant was ordered compulsory retirement.~~ *G.S.*

In view of the above discussion, we do not find any merit in the application of the applicant and the same is, therefore, dismissed without passing any order as to costs.

G. S. Maingi
15.3.2004
(G.S. Maingi)
Member(A)

D. Purkaystha
(D. Purkaystha)
Member(J)

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