

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.21/98

Wednesday, this the 21st day of January, 1998.

CORAM:

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

R Gopalakrishna Pillai,
Ex. YM/SRR, 'Rasmi',
Nedungothur, Shornoor.

- Applicant

By Advocate Mr John Joseph

Vs

1. Union of India through the
General Manager,
Southern Railway,
Madras-3.
 2. The Railway Board through the
Secretary, Railway Board,
Rail Bhawan, New Delhi.
 3. The Chief Operations Manager,
Southern Railway, Madras-3.
 4. The Senior Divisional
Operations Manager,
Southern Railway,
Palghat.
 5. Joshua Prem Singh,
Divisional Safety Officer,
Southern Railway, Palghat.
- Respondents

By Advocate Mrs Sumathi Dandapani(for R.1 to 4)

The application having been heard on 21.1.98 the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

The applicant after completion of a departmental disciplinary proceedings was awarded a penalty of removal from

service which he challenged in O.A.530/88. The Tribunal directed the appellate authority to re-consider the appeal after giving the applicant a personal hearing. The appellate authority on a reconsideration of the appeal after giving the applicant a personal hearing, passed the order dated 30.11.89 A-17 modifying the penalty to one of compulsory retirement. A revision filed by the applicant against this order was rejected by order dated 10.9.90(A-19). Aggrieved by this, the applicant approached this Tribunal by filing O.A.895/90. This Tribunal vide order dated 9.1.92 (A-25) without going into the other grounds, set aside the order of penalty only on the short ground that the applicant was denied reasonable opportunity to defend himself by not giving him an opportunity to make a representation against the acceptability of the enquiry report, following the ruling of the Apex Court in Union of India Vs Mohd. Ramzan Khan and others, AIR 1991 SC 471. The Tribunal directed reinstatement of the applicant, of course, granting liberty to the Railways to proceed further with the disciplinary proceedings from the stage of service of a copy of the enquiry report. The Union of India took up the matter before the Hon'ble Supreme Court in SLP No.2397/92 (A-20). In view of the decision of the Supreme Court in Managing Director ECL Vs B Karunakar & others, (1993) 4 SCC 727, the Supreme Court set aside the order of the Tribunal

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allowing the appeal. The applicant moved a review application before the Hon'ble Supreme Court specifically praying for reviewing the order in C.A.2397/97 and that the case may be remanded back to the Tribunal for consideration of other issues raised before it. After considering of the review application, the Apex Court dismissed the R.A. with the following order:

"We have carefully gone through the Review Petition and the connected papers. We find no merit in the Review Petition which is accordingly dismissed."

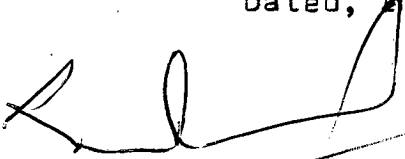
The applicant has filed this O.A. seeking to have the impugned order in the disciplinary proceedings set aside and for direction to the respondents to reinstate the applicant in service with all attendant benefits. It has been alleged in the application that another person involved in the same transaction who was also removed from service pursuant to an enquiry was reinstated in service allowing a Mercy ^{the penalty} Petition and that/in his case was unjustified, arbitrary and discriminatory. It has also been stated that as the grounds alleged by the applicant in O.A.895/90 was not adjudicated by the Tribunal, the applicant should not be deprived of an opportunity to have his grievances considered and adjudicated by the Tribunal.

2. On a careful scrutiny of the application and all the materials appended thereto and on hearing the learned counsel

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on either side, we are of the considered view that the application cannot be admitted now. It is true that several grounds canvassed by the applicant in O.A.895/90 were not adverted to and considered by the Tribunal. The Tribunal set aside the order of penalty solely on the ground that there was a denial of opportunity to the applicant to make a representation in regard to the acceptability or otherwise of the enquiry report following the ruling of the Supreme Court in Mohd. Ramzan Khan's case. However, while allowing the SLP, the Supreme Court set aside the order of the Tribunal but did not send the case back to the Tribunal for fresh disposal on merits on the other grounds. The applicant filed a review petition before the Supreme Court and sought a remand of the case to the Tribunal for fresh disposal on the ground that the other valid grounds raised by him in the O.A. were not adjudicated at all. The Hon'ble Supreme Court after careful reading of the review petition and the connected papers did not find any merit in it and dismissed the review petition. Under these circumstances this Tribunal cannot admit the application and adjudicate the same. Hence the O.A. is rejected under Section 19(3) of the Administrative Tribunals Act. No costs.

Dated, the 21st January, 1998.


(SK GHOSAL)
ADMINISTRATIVE MEMBER


(AV HARIDASAN)
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A17: Order dated Nil passed in the appeal submitted by the applicant.
2. Annexure A19: Order No.P(S) 227/A/182 dated 10.8.90 passed in the Revision Petition submitted by the applicant.
3. Annexure A20: Order dated 9.4.1997 of the Honourable Supreme Court in C.A. No.2397/92.
4. Annexure A25: Order dated 9.1.1992 of this Tribunal in O.A. No.K-895/90.

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