CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.
T.A.NO. 1181/87 (T)

(15)

Mahmood Ahamad Khan ... Applicant.

Versus

Union of India & Others ... Respondents.

09.10.1990

Hon'ble Mr. Justice K.Nath, V.C.

The judgement under review was passed on 17.5.90 and the respondents were given three month's time from the date of receipt of copy to comply with the directions. It is likely that the time may have expired and in the mean time final orders in compliance of the directions of this Tribunal may have passed.

Issue notice to both the parties to indicate whether or not the compliance of this Tribunal's judgement dated 17.5.90 have been done by the respondents and put up for orders on 06.11.90 in Chambers.

Checked
9/10

Sd/ — Sd/ V.C.

//TRUE COPY//

9/10/90

(Mohd. Umar Khan)
Court Officer,
Central Administrative Tribunal,
Circuit Bench,
LUCKNOW.

Sd/

(C6)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Review Appln.No.398 of 1990 (L)

In

Registration T.A.No.1181 of 1987 (L)
(W.P. No.4588 of 1983)

Mahmood Ahmad Khan .... Applicant

Versus

Union of India & Others .... Respondents

Hon.Mr.Justice K.Nath, V.C.
Hon.Mr. K.J. Raman, A.M.

(By Hon.Mr.Justice K.Nath, V.C.)

This is an application for review of our judgement dated 17.5.90 in the Transfer Application described above. In consequence of a departmental disciplinary enquiry, the applicant was awarded the punishment of a reduction to a lower stage of the time scale from Rs.650/-to Rs.550/- for 5 years with postponing of future increments but without affecting his seniority. The applicant filed an appeal, Annexure-8 to the T.A. against the punishment order and among the various grounds stated in para 4 that no witness in support of the charges stated anything against the applicant that 2 of the 3 witnesses have stated that the applicant was not guilty of negligence and the third witness was dropped by the Department so that it was a no evidence case. In para 5 read with para 7 of the grounds of appeal it was stated that the Inquiry Officer wrongly refused to summon a defence witness Kundan Lal. We quashed an earlier non-speaking appellate order dated 28.6.83 and instead of hearing and disposing of the T.A. on

(C7)

merits, considered it appropriate to direct the Appellate Authority to reconsider the appeal contained in Annexure-8. In paras 11 and 12 of the judgement we observed as follows :-

> " 11. We do not consider it necessary to scrutinize the findings and orders of the disciplinary authority, because his findings and orders are fully open before the appellate authority having regard to the provisions of Rule 22 of the Railway Servants(Discipline & Appeal) Rules, 1968. It is expected that the appellate authority will carefully examine the record of the enquiry file and consider the findings given by the disciplinary authority after due consideration of the points raised by the petitioner in the memo of appeal(Annexure-8) and will pass an order contained in the revision which is known as a "speaking order". This petition deserves to succeed in this light.
>
> 12. The petition is partly allowed and the appellate order dated 28.6.83 contained in Annexure-A9 is quashed. The competent appellate authority shall now consider the petitioner's memo of appeal dated 15.10.82 contained in Annexure-8 and bearing in mind the observations contained in the body of this judgement shall dispose of the appeal by a speaking order within a period of three months from the date of receipt of copy of this judgement."

2. It may be seen immediately that we decided not to scrutinize the finding and orders of the disciplinary authorities as after observing that the findings and orders being fully open before the appellate authority, it was expected that the appllate authority would

carefully examine the record of the enquiry file, consider the findings, give due considerations to the points raised in the memo of appeal, Annexure-8 and will pass a speaking order. Direction was given to the appellate authority to dispose of the appeal bearing in mind the observations contained in the body of the judgement.

3. The Review Application was filed on 18.6.90 on the ground that since after the delivery of the judgement the applicant discovered important documentary evidence namely paras 101 and 102 of the Indian Railway Permanent Way Manual containing the duties of permanent Way Officials/Men and Assistant Engineers. It was further stated that Inquiry Officer had not summoned the necessary witnesses even though demanded by the applicant and that there being no evidence against the applicant, the findings of guilt could not be sustained.

4. While this Review Application was still pending, the Appellate Authority passed the order dated 9.11.90. We asked the appellant to file a copy of the appellate order. Accordingly, the applicant filed it on 22.11.90.

5. So far as the consideration of paras 101 and 102 of the Indian Railway Permanent Way Manual is concerned it cannot be said to be a new material; these are instructions which have been in existence since 1967. Ignorance of law is no excuse and therefore it cannot be said that it is a new material for the purposes of hearing of the T.A. Indeed, it does not constitute a documentary evidence concerning the subject matter of the T.A. So far as the question of summonning witness

or of the existence or non existence of evidence in proof of the charges is concerned,this Tribunal had expressly stated that it would not be considering the merits of the case and would be content only with a direction to the appellate authority to hear and dispose of the appeal. The existence of an alternative remedy qua an application under Section 19 of the Administrative Tribunals Act, 1985 has always been a relevant consideration and in a number of cases this Tribunal has been disposing of such applications only with a direction to exhaust the alternative remedy like a Departmental appeal against the order of punishment. It is in the discretion of the Tribunal whether or not to dispose of an application under Section 19 on the merits or only to direct the alternative remedy to be followed. The discretion had been exercised in the judgement under Review. It cannot be said that there any error apparent on the face of the record which could be remedies by a means of a Review Application.

6. Even so, we do notice that the appellate order mainly rests on the preliminary enquiry proceedings of a fact finding Committee; it had not even touched the question of there being evidence or there being no evidence in support of the charges or of the effect of the failure to summon defence witnesses like Kundan Lal. The question of calling the enquiry officer who had ordered removal of caution by order of 9.7.81 was not material because apart from the fact that the derailment

(C10)

which is subject matter of the enquiry occurred one week later, the applicant has not taken any such case in his reply, Annexure-4(to T.A.) to the chargesheet and has not stated that the Inquiry Officer was biased or was himself interested in the result of the enquiry. Nevertheless, the fact remains that the appellate authority has not examined the material points contained in the grounds of appeal. The learned counsel for the applicant has referred to the case of Kishore Kumar Rajak Versus Union of India & Others (1990) 30 ATC 36 where the Patna Bench of this Tribunal quashed the punishment order when the appellate authority did not comply with the directions of the Tribunal given in an earlier Original Application. The learned counsel says that in this situation, it would not be appropriate to direct the appellate authority to reconsider the matter. This contention seems to be outside the scope of the present Review Application and may be raised when a fresh application under Section 19 of the Administrative Tribunals Act, 1985 is filed. Indeed, the decision in the case of Kishore Kumar Rajak Versus Union of India and Others (supra) was rendered in a subsequent Original Application No.285 of 1988 after the appellate authority had failed to comply with the directions given by the Tribunal in the earlier O.A. No.384 of 1987.

7. It is regrettable that the appellate authority should not have appreciated the clear directions given in our judgement under review. When the statute and rules provide alternative remedies and the judicial authorities choose not to decide the petitions of grievance on merits but relegate the employee to the alternative remedy, the Tribunal believes that the

authority dealing with the alternative remedy would bestow its due consideration and thought to the matters in issue and render justice to the employee. If this hope of the Tribunal is shattered by orders of the authority dealing with alternative remedy in an unreasonable and improper manner, the whole purpose of the statute is frustrated. We feel that in view of the circumstances of the case, we might as well have decided the case in the Original Application on the merits instead of directing the appellate authority to rehear and decide the case which had earlier rejected the appeal by bald statement and non speaking order that the punishment imposed was reasonable and, there was no justification to reduce the same. However, the T.A. has been decided and we do not think that we would be acting in accordance with law if we direct the T.A. to be reopened under this Review Application. If the applicant chooses to file a fresh application under Section 19 of the Administrative Tribunals Act, he may request the Bench considering it for admission to dispose of the case expeditiously. So far as the present matters stand the Review Application is not capable of being accepted. With these observations, this Review Application is rejected.

Member (A) Vice Chairman

Dated the_____1991.

RKM