

(1) (3)

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

Review Application No. 628/90

In

T.A. 1137/87

Anwar Ahmad Khan

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. K. Obayya, Adm. Member)

This review application has been filed against the judgment and order dated July 25, 1990 by a Division Bench of this Tribunal, one of which one Member has retired. The applicant filed a writ petition before the High Court challenging the dismissal order, by which by operation of law was transferred. In the writ petition the applicant stated that he received a charge sheet on 12.3.79 while posted at Varanasi and also made a reference of criminal case No. 409 of I.P.C. in which he was released. No other communication regarding the departmental proceedings were received by him and he contended that no notice was sent to him, and he was not afforded any opportunity in accordance with the

(4)  
P

provisions of Railway Servants (Discipline and Appeal) Rules, 1968. While posted at Bhadohi, received a letter dated 19.12.1982 requiring him to be present before the Divisional Commercial Superintendent at the earliest and he presented himself on 20.12.82 but no instructions were given to him. He presented himself on 21 and 22. 12.82 also but no instructions were given to him. On 23.12.82 the judgment in the criminal case was pronounced and he went to the office of Divisional Commercial Superintendent and was served the letter of dismissal.

2. The respondents who did not file any counter affidavit in the High Court, filed reply in this Tribunal stating that after the charge sheet a letter was issued to the applicant on 2.5.79 and the enquiry officer was appointed and he gave due notice to the applicant vide telegram dated 21.9.81 and 16.10.81. The applicant failed to attend the enquiry proceedings. The applicant was called upon to attend the office vide Memo dated 3.12.82 and 16.12.82 and the Station Master Bhadoi directed the petitioner to see the Divisional Commercial Superintendent, Lucknow vide letter dated 19.12.82 but the applicant did not attend the office. The petitioner attended the office on 23.12.82 and then the order dated 23.12.82 passed by the General Northern Railway, Manager, New Delhi was served on the petitioner. The petitioner did not present himself in the concerned section on that date.

3. In the Rejoinder the applicant stated that he submitted his reply on 31.5.79 and the alleged letters and telegrams referred to above were never received by him. However, in his rejoinder or writ petition he did not disclose his place of posting when the said telegrams were said to have been despatched.

4. The Tribunal allowed the writ petition filed by the applicant and quashed the dismissal order dated 23.12.82 and the Tribunal directed that the back wages will <sup>not</sup> be paid to the applicant as the applicant has disentitled himself to back wages as he having participated in the enquiry proceedings despite repeated opportunities and if he would have made appearance and raised objections about the competence of the authority which initiated the proceedings, the department might have examined the position and appreciated the true meaning of the said circular. The application was allowed on the ground that the charge sheet which was issued by the Senior Divisional Commercial Superintendent against the applicant was not invalid, any further proceedings in the disciplinary enquiry proceedings after 10.1.79 or in any case after 3.2.1979 would be illegal and therefore, all the proceedings of enquiry from 12.3.79 when the charge sheet was served upon the applicant after the date of passing the impugned dismissal order would be illegal.

W

The Tribunal in this connection observed that the initiation of the proceedings by the charge sheet dated 1.9.78 must be considered to be saved by circular dated 19.4.74, any further proceedings thereunder could not have been protected after 3.2.79 i.e. even before the charge sheet was served upon the petitioner and consequently, should have 'stopped forthwith' within the meaning of the circular dated 16.10.1973. Thus, the Tribunal allowed the application filed by the applicant on the ground ~~that~~ the chargesheet itself and the Tribunal did not consider it necessary to enter into the question of denial of the reasonable opportunity of applicant to defend himself. In this belated review application, in which delay has not been sufficiently and satisfactorily explained for condonation of delay, for the first time the applicant has come forward with the allegation that when these telegrams were sent he was posted at Safedabad at District Barabanki and not at ~~and not at~~ Dilkusha. As a matter of fact the telegrams were sent to the applicant and the telegram dated 6.10.81 was addressed to the applicant at Lucknow but the applicant made no reference to the letter which was sent to him intimating the appointment of the enquiry officer for which a very clear averment has been made in the written statement. The learned counsel for the applicant states that the order can be recalled. As a matter of fact the writ petition which was merged into the original

application, has already been allowed on the ground of initiation of the proceedings itself. The learned counsel for the applicant contended that as the back wages have been denied on the ground of initial defect the Tribunal has wrongly deprived the applicant back wages on the ground that the applicant did not participate in the the enquiry. From the record it appears that the applicant filed application for Interim relief before a Division Bench of HighCourt but a Single Judge passed the order and directed the respondents to pay wages to the applicant, withthe result that the applicant was getting wages from the month of March, 1985. What the applicant wants is that he should be paid back wages between the years 1980 to 1985. Under law of limitation this claim has become barred by time. The learned counsel for the applicant contended that the back wages has been denied to the applicant onthe the ground that his conduct was not fair and he did not participate in the enquiry. ~~and~~ The applicant nowhere stated in the rejoinder or writ petition that he was posted at Safedabad and not at Dilkusha where the telegrams were sent but strangely he is silent regarding the letter which/sent to him by the enquiry officer. In case the enquiry officer was appointed it was the duty of the applicant to associate with the enquiry and he is silent on this point.

W

The applicant is claiming wages for the period for he did not work. It has been stated that the applicant is not responsible at all, but on the principle of no work no pay he cannot get wages between the period 1982 to 1985, although the applicant has been given all the benefits of seniority and other notional benefits

The application is allowed to the extent that in the last sentence of the judgment the words "he shall not get any back wages from the date of dismissal till the date of reinstatement" may be deleted and the words "that he shall not get any back wages from the date of dismissal till 18.10.85 only beyond which he was directed to draw wages which he has been getting."

shall be substituted.

  
Adm. Member.

  
Vice Chairman.

Lucknow: Dated: 20.5.92.