

**CENTRAL ADMINISTRATIVE TRIBUNAL,
PATNA BENCH,**

RA/23/2008 in OA.355/2006

Patna, this the ^{15th} day of ^{September} August, 2008

Coram:

**Hon'ble Mr. Shankar Prasad : Member (A)
Hon'ble Ms. Sadhna Srivastava: Member (J)**

Raj Kishore Prasad,
S/o. Sri Raghunath Prasad,
Resident of Mohalla-
Durgarpur, Gaushala,
P.S.+ District - Katihar,
At present posted as CTT/II
(Chief Travelling Ticket Inspector/II),
Lumding under control of
Senior Divisional Commercial Manager,
Lumding, N.F. (North East-
Frontier), Railway Division, Lumding. : Applicant

(By advocate: Mr. Vikash Jha)

Versus

1. The Chief Personnel Officer,
N.F.Railway, Maligaon (MLG)
Guwahati, Assam.
2. The Chief Vigilance Officer,
N.F.Railway,
Maligaon (MLG),
Guwahati, Assam.
3. The then Enquiry Officer,
(A.K.Sen), Presently posted
as Assistant Personnel Officer,
(APO), at N.F.Railway,
Head Quarter (MLG), Guwahati, Assam.

4. The Senior Divisional Commercial Manager, N.F.Railway, Katihar.
5. The Secretary, Bihar Secondary School Examination Board, Patna.
6. The Joint Secretary, Investigation BSS Examination Board, Patna. : Respondents

(Decision by circulation)

ORDER

Hon'ble Mr. Shankar Prasad : Member (A)

Aggrieved by the order dated 28.5.2008 passed in OA.355/06 the applicant of the OA has filed this review application. It is contended that the learned counsel for the applicant was present from time to time and on 27.5.2008 at the time of granting adjournment, no date was given but the matter was taken up on the next date and orders passed on 28.5.2008. In the absence of the counsel, the case could not have been decided on merit and could only be dismissed for default, as per the decision of the Hon'ble Supreme Court/High Court. It is contended that the OA had been filed as complaint petition, on the basis of which charge sheet was issued to him had not been supplied and as the enquiry was not proceeding.

2. Section 19(1) and Section 20(1) of the AT Act are as under:-

"19(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation:- For the purposes of this sub-section, "order" means an order made-

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any Corporation (or society) owned or controlled by the Government ;or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or Corporation (or Society) referred to in clause (a)."

"20(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances."

3. Rule 14(2) of CAT (Procedure) Rule 1987 provides that the Tribunal should dispose of the OA within six months from the date of its registration.

4. Rule 15 of CAT (Procedure) Rules provides as under:-

"15. Action on application for applicant's default:-

(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where an application has been dismissed for default and the applicant files an application within

thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same:

Provided, however, where the case was disposed of on merits, the decision shall not be reopened except by way of review.

5. The facts remain that the applicant had approached the Tribunal after the issue of charge sheet and before the inquiry had been completed. If there are defects in conduct of the departmental proceedings and the applicant is prejudiced the same can be adjudged only after the inquiry has been concluded and the disciplinary authority has passed an order either exonerating the applicant or inflicting the penalty. Ordinarily an appeal has also to be preferred.

6. The scheme of A.T.Act as per Section 19 and 20 shows that the applicant has to ordinarily approach the Tribunal only after the departmental remedies have been exhausted. Rule 14 casts an obligation for expeditious disposal and Rule 15(1) makes it clear that the Tribunal can dispose of the matter in the absence of lawyer.

7. The Patna Bench, under orders of V.C., cases upto year 2005, are placed on running list and continue to remain on the list from day to day. However, cases of subsequent year i.e. 2006, 2007 & 2008 can be listed A

day to day, if mention by counsel or party is made to that effect. Possibly, a oral mention was made and therefore, the instant case was listed on 28.5.08. Therefore, there was ~~willing~~ ^{nothing} unusual in listing the case on 28.5.08.

8. We had decided the OA not strictly on merits but as having been filed at an early stage.

9. In view of the foregoing discussions, there is no error apparent on the face of record and the RA is fit to be dismissed. It is, however, felt that in order to allay the apprehension in the mind of applicant that we might have expressed an opinion on the merits of this case, we replace the operative portion of the order with the following paragraphs.

"4. We accordingly dispose off the OA with a direction to the Disciplinary Authority to pass orders in accordance with rules within three months of the receipt of the order, if not already passed. If the orders have been passed, they shall be communicated. We make it clear that we have expressed no opinion on the merits of the case. No costs."

10. In view of the foregoing discussions, there is no error apparent on record. There is even otherwise no ~~as~~

need to review it. The RA is fit to be dismissed and is dismissed. The operative portion of the order is clarified as above.


(Sadhna Srivastava)
Member (J)


(Shankar Prasad)
Member (A)

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