

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

~~Q.A. No.~~

198

T.A. No. 503/87

DATE OF DECISION 6.4.1992

Petitioner

N K Chowdhari

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. P R PAI

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U C Srivastava, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESOT ROAD; BOMBAY-1

TR. A. NO. 503/87

Narayan Kachroo Chowdhari
Residing at Kachroo;
Taluka Kalyan; Dist. Thane

..Applicant

V/s.

1. Union of India
through General Manager
Central Railway
Bombay V T
2. Divisional Electrical Engineer
(Traction Rolling Stock)
Central Railway; Kalyan
3. Assistant Electrical Engineer
(Traction Rolling Stock)
Central Railway; Kalyan

..Respondents

CORAM: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. D V Gangal
Advocate
for the applicant

Mr. P R Pai
Counsel
for the respondents

ORAL JUDGMENT: DATED: 6.4.1992
(PER: U C Srivastava, Vice Chairman)

The applicant joined the Railway service as Khalashi in 1961 and was promoted to the post of fitter in the year 1972. He was convicted for an offence of culpable homicide not amounting to murder punishable under section 304 (Part II) of Indian Penal Code and was sentenced to rigorous imprisonment for five years and to pay a fine of Rs.500 and in default to further undergo imprisonment of three months, vide Session's Judgment dated 26.5.1977. The applicant did not give any information to the Railway Administration regarding his arrest although he remained in jail for several days.

It was thereafter the applicant was dismissed from service on 3.1.88 in view of the conviction by the criminal court. The applicant filed a departmental appeal against the same. As the departmental appeal was not disposed of he filed a writ petition before the High Court and the High Court directed the appellate authority to dispose of the appeal. The appellate authority thereafter disposed of the appeal dismissing the same. After dismissal the applicant challenged the dismissal order.

Learned counsel for the applicant contended that it was obligatory on the part of respondents to issue a show cause notice under Constitution of India Article 311 and no show cause notice was issued as such it was violative of Constitution of India. Even under Railway Board instruction dated 31.5.1976 a show cause notice has to be issued. In this connection a reference has been made to the case of UNION OF INDIA AND ANOTHER v. TULSIRAM PATEL, AIR 1985 SC 1416 wherein the case of CHALLAPPAN AIR 1975 SC 2216 was considered. where in it was held that an order passed by way of penalty the same amounts to removal from service and the provisions of Article 311 are attracted. In this case without considering the provisions of Article 311 the dismissal orders are passed and as such the application deserves to be allowed. The dismissal order dated 3.1.1981 and the Appellate order dated 21.5.1985 are quashed. However, it is open for the Disciplinary Authority to pass appropriate order after giving notice to the applicant who was not working all these years and who is responsible for the delay. No order as to costs.