

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

NEW BOMBAY BENCH

O.A. No. 598/1987

198
~~xxx~~~~T.A. No.~~
~~xxxxxxx~~DATE OF DECISION 10.03.1988Mr. Riyaz Mohammed PetitionerMr. Mohan Sudame Advocate for the Petitioner(s)
(for Mr. P.C. Marpakwar)
VersusUnion of India & 2 ors. RespondentMr. V.G. Rege Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J G Rajadhyaksha, Member(A)

The Hon'ble Mr. M B Mujumdar, Member(J)

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?

NO

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

O.A. NO. 598/87

Mr. Riyaz Mohammed
s/o. Khan Mohd.
R/o. Near Fattarphod Akhada
Circle No.7/12
Itwari,
Nagpur 440002

Applicant

V/s.

1. Union of India
through General Manager
Central Railway
2. Divisional Railway Manager
South Eastern Railway
through Executive Assistant
Nagpur
3. The Chief Personnel Officer
GRC, Calcutta 700043.

Respondents

Coram : Hon'ble Member(A) J G Rajadhyaksha
Hon'ble Member(J) M B Mujumdar

Appearance:

Mr. Mohan Sudame
(for Mr. P C Marpakwar)
Advocate
for the Applicant

Mr. V G Rege
Counsel
for the Respondents

JUDGMENT

(PER: J G Rajadhyaksha, Member[A])

DATE : 10.03.1988

This matter was fixed to-day for directions before the Registrar. Mr. M. Sudame, advocate for the applicant and Mr. V G Rege, Counsel for the respondents were present when Mr. Sudame objected to any further time being given to the respondents for filing their reply which they have not yet filed. The matter was, therefore, placed before the Tribunal with Mr. Sudame requesting

that it be finally heard and disposed of in the light of the decision given by the Honourable Supreme Court in Civil Writ Petition No. 1085 of 1986. Mr. Rege had requested for an adjournment for filing reply. That request was rejected by us to-day and the matter was finally heard. The applicant who was working as a Tailor, Mahila Samiti/Motibagh, South Eastern Railway, filed this application under section 19 of the Administrative Tribunals Act, 1985. His grievance was the notice of removal given to him on 5.2.86; as also disposal of his appeal dated 6.3.86 by the Divisional Railway Manager and disposal of the revision petition by the Chief Personnel Officer by his order dated 7.7.87 after giving him a personal hearing all going against him the reply to this application has not been filed by the respondents.

We have heard both Mr. Sudame and Mr. Rege. We also perused the records. The removal order dated 5.2.1986 is to be found at page 22 of the compilation. The charges were: rude behaviour with members of the Samiti and misappropriation of Railway money in collusion with one Meshram, Sr. W.I. This order shows that the respondents bypassed the normal procedure of holding a Departmental Enquiry and resorted to Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules 1968, which enables the Disciplinary Authority to dispense with the enquiry on certain grounds. The ground given in this case in paragraph 4 of the order is as follows:

4. "If the normal procedure of removal from service is followed, it is likely that the

evidence may be destroyed and Members of the Mahila Samiti being lady folk may not come up to adduce evidence for fear of threat and harassment. I am, therefore, satisfied in this particular case, it is not reasonably practicable to hold an enquiry in which he can be informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges."

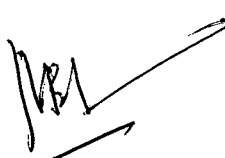
Admittedly, another employee H.J. Meshram who was similarly removed from service without holding a Departmental Enquiry on the same charges, filed a Civil Writ Petition in the Honourable Supreme Court and that Court was pleased to observe that the grounds mentioned in paragraph 6 of the impugned order in that case (which are absolutely on all fours with the grounds mentioned in para 4 of the impugned order before us) were irrelevant and ex-facie inadequate for dispensing with the enquiry. The Supreme Court further observed that that was not a matter where a Departmental Enquiry on the charges levelled against the petitioner was not reasonably practicable. The Civil Writ Petition was, therefore, allowed. The impugned order of removal from service was set aside and the petitioner deemed to have continued in service and entitled to payment of salary and allowances due to him in accordance with the rules. Liberty was granted to the competent authority to institute a proper enquiry and proceed against the petitioner in accordance with the relevant rules by following the normal procedure. Since the matter before

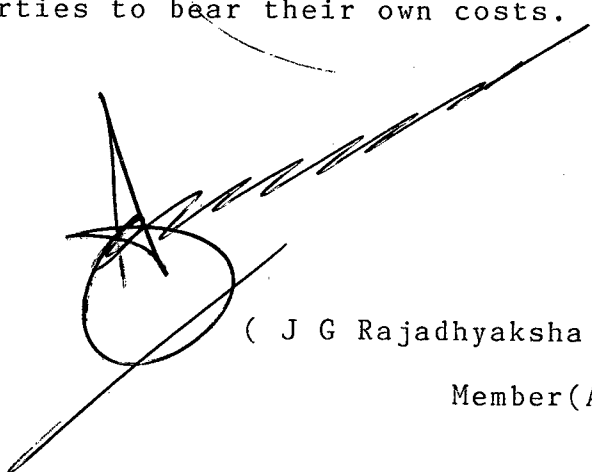
d

us is identical and in fact the petitioner in the Civil Writ Petition and the applicant before us were coaccused in the same proceedings and were proceeded against on the same basis it would be appropriate for us to follow in toto the judgment given by the Honourable the Supreme Court in Civil Writ Petition No. 1085 of 1986.

We, therefore, hold that the grounds mentioned in the removal order (para 4) are altogether irrelevant and ex-facie inadequate for dispensing with the enquiry. The circumstances were not such as would render holding of a regular departmental enquiry reasonably impracticable.

We, therefore, allow the application by setting aside the impugned order of removal dated 5.2.86. We further direct that the petitioner be deemed to have continued in service and will be entitled to payment of salary and other allowances due to him in accordance with the rules. We add that it would be open for the competent authority to institute a proper enquiry and proceed against the applicant in accordance with the relevant rules by following the normal procedure for departmental enquiry. Parties to bear their own costs.


(M B Mujumdar)
Member(J)


(J G Rajadhyaksha)
Member(A)

Delivered in Court today
