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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH : CAMP : NAGPUR

O.A. 84. of 1988

Present: Hon'ble Mr. A.P.Bhattacharya, Judicial Member
Hon'ble Mr. P.S.Chaudhuri, Administrative Member

CHANDRAKANT YADAV

VS

UNION OF INDIA & ORS

For the applicant : Mr. C.S.Puttankar, advocate

For the respondents : Mr. P.S.Lambat, advocate

Date of hearing : 18.1.90 : Date of Judgement : 19.1.90

J U D G E M E N T

A.P.Bhattacharya, A.M.:

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Chandrakant Yadav against the Divisional Railway Manager, Central Railway.


2. From the post of Pointsman the applicant was promoted to the cadre of Assistant Guard in 1977. As a result of a departmental enquiry he was reverted to the post of Pointsman permanently. Challenging that order, the applicant filed an application before the Tribunal at New Bombay. By its order dated 21.4.1987 the Tribunal directed that the applicant should be considered for promotion as per rules. The applicant states that the respondent had disobeyed the said order of the Tribunal and started a fresh enquiry against him on the ground of his unauthorised absence from duty from 13.5.83. After the conclusion of that enquiry, a major penalty of removal from service was imposed on him on 26.10.87. Challenging that order the applicant has filed the instant application claiming his reinstatement to the post of Assistant Guard with all back wages.

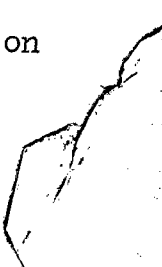
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3. The application has been contested by the respondent. It is the main contention of the respondent that the enquiry in which the penalty of removal from service was imposed on the applicant had no connection with his reversion in rank which was challenged by him before the Tribunal earlier. The respondent contends that from 13.5.83 the applicant was in unauthorised absence and as such a departmental enquiry was started against him. While holding the enquiry, the applicant was given reasonable opportunity to defend his case. As desired by him the Inquiry Officer initially appointed was changed and another Inquiry Officer of gazetted rank was appointed to hold the enquiry. The Inquiry Officer passed a finding of guilt against the applicant. The disciplinary authority agreeing with the said finding imposed the penalty of removal from service on the applicant. It is contended by the respondent that the applicant has no justifiable cause for which this Tribunal can intervene.

4. At the very outset we must say that the application being devoid of merits is liable to fail. In the application the applicant's main challenge against the penalty of removal from service is that in passing that order the disciplinary authority had disobeyed the directions of this Tribunal given in O.A. 132 of 1986 which was filed by this applicant. On going through the materials on record, we are unable to accept his contention.

5. The certified copy of the judgement passed by this Tribunal in O.A..132 of 1986 had been produced before us by the side of the applicant at the time of hearing the case. On going through the judgement we find that in that case the applicant challenged the order of reversion from the post of Assistant Guard to the post of Pointsman, which was passed in connection with a departmental enquiry held against him. The said enquiry was held on the allegation

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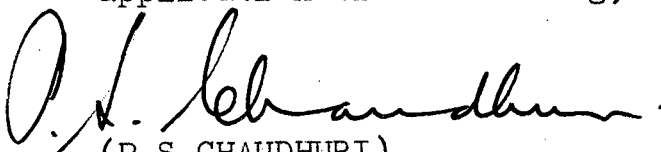
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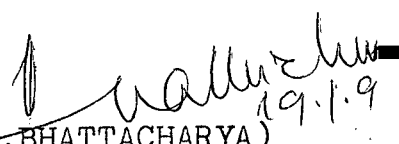
that on 26.3.1982 at about 12.45 hrs. this applicant while working as an Assistant Guard appeared on duty without proper uniform and under influence of liquor. He abused his staff and also abused the Station Master on duty with filthy language. While disposing of that case this Tribunal did not interfere with the findings of the Inquiry Officer and the penalty imposed by the disciplinary authority. While rejecting the application, the Tribunal gave a direction that the applicant might be considered for promotion from his reverted post of Pointsman according to ~~the~~ rules. The applicant contends that in starting a fresh enquiry against him and in not considering him for promotion from the post of Pointsman, his disciplinary authority had disobeyed the direction of the Tribunal. The applicant's contention in that regard cannot at all be accepted. The enquiry in which the penalty of removal from service was imposed on the applicant was started on the basis of altogether a different issue. In that enquiry the allegation against the applicant was that he was in unauthorised absence from 13.5.83. We have already found that the earlier enquiry was started over an incident that had taken place on 26.3.82. So, we are unable to find out any connection between the earlier enquiry and the subsequent one in which the order of removal from service was passed against the applicant. From the materials on record, we find that the order of reversion which was challenged by the applicant in his earlier application was passed on 7.4.83. Against that order the applicant preferred an appeal which was dismissed on 2.7.83 and the mercy petition submitted by him was also dismissed on 2.1.86. It remains unexplained as to why after the imposition of the penalty of reversion the applicant started absenting himself unauthorisedly. It was not such a punishment by imposition of which the relationship of employer and employee between the applicant and the respondent ceased to exist. It was a punishment of some reduction in rank. As the applicant, without any justification started absenting himself unauthorisedly from

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4. 23.5.83 and without intimating his whereabouts for a long time, a fresh enquiry was started against him. An enquiry was held in which he was afforded all reasonable opportunities to defend his case. The Inquiry Officer passed a finding of guilt against him. Agreeing with the said finding, the disciplinary authority imposed the penalty of removal from service on the applicant. We do not find that the applicant has been able to establish any case for which the said penalty can be interfered with by this Tribunal. It was held by the Supreme Court in the case of Union of India -vs- Parama Nanda reported in (1989)10 A.T.C. 30 that the Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It was further held that if an enquiry ^{is} ~~was~~ held consistently with the rules and in accordance with the principles of natural justice and if a penalty ~~was~~ ^{is} imposed, the Tribunal had no power to substitute its own discretion from that of the authority. We have already found that the findings of the Inquiry Officer had not suffered from any infirmity. Considering the facts and circumstances of the case, the disciplinary authority thought it proper to inflict the punishment of removal from service on the applicant. We find no reason to interfere either with the findings of the Inquiry Officer or with the penalty imposed by the disciplinary authority. Such being the position, we are of opinion that this application being devoid of merits shall fail.

6. In view of our findings made above, we dismiss this application without making, however, any order as to costs.


(P.S. CHAUDHURI)
ADMINISTRATIVE MEMBER
19.1.90


(A.P. BHATTACHARYA)
JUDICIAL MEMBER
19.1.90