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

Tr. Applications No.9/88 and 487/87.

1. Shri Bhimrao F.Patil (applicant in Tr.9/88)
2. Shri Dayashankar Tiwari (applicant in Tr.484/87)

V/s.

1. The Union of India, Respondents in Tr.9/88 and
2. The Chief Security Officer, 487/87.
Western Railway, Bombay.
3. The Dy. Chief Security Officer, |
Western Railway, Bombay.
4. The Assistant Security Officer, |
Western Railway, Bombay. | Respondents in Tr.487/87.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:

Shri G.K.Masand,
advocate for
applicant No.1 and
Shri S.R.Atre, for applicant No.2.
Shri A.L.Kasturey
advocate for the
respondents in
both the cases..

Oral Judgment:-

(Per Shri M.B.Mujumdar, Member(J))

Dated: 21.6.1989.

We are hearing and deciding both these applications by a common judgment as the issues to be decided are similar. Both the applicants were previously working as Rakshaks and they were governed by the Railway Protection Force Act, 1957.

2. Shri B.F.Patil, the applicant in Tr. Application No.9/88 was charge sheeted on 4.12.1978. After holding a departmental inquiry he was removed from service by order dt. 25.4.1980. His appeal against that order was rejected on 23.7.1980. He challenged these orders by filing writ petition No.1489/83 in the High Court of Judicature at Bombay on 22.7.1981. By order dated 28.1.1988 the petition is transferred to this Tribunal. The respondents have filed Misc. Petition No.640/88 for

re-transferring the petition to the High Court.

3. Three charges were framed against Shri D.S.Tiwari, the applicant in Tr.487/87. The Inquiry Officer held that the first two charges were proved but the third charge was not proved. The Disciplinary Authority agreed with these findings and imposed the penalty of removal from service on the applicant. The appeal preferred against that order was rejected by the Appellate Authority on 16.2.1983. The applicant had also filed a Revision Petition against that order but it was also rejected on 28.5.1983. The applicant had filed writ petition No.2851/84 in the High Court of Judicature at Bombay on 19.6.1984 and by order dt.17.9.1987 the petition is transferred to this Tribunal. The respondents have filed Misc. Petition No.491/89 for re-transferring the petition to the High Court.

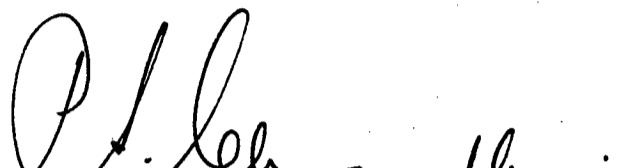
4. We have just now heard Shri G.K.Masand and Shri S.R.Atre, learned advocates for the applicants and Shri A.L.Kasturey, learned advocate for the respondents in both the cases. All of them submitted that this Tribunal will have no jurisdiction to hear the petitions and hence the petitions should be sent back to the High Court.

5. We may point out that the applicants were governed by the Railway Protection Force Act, 1957. Section 3 of the Act was amended by the Railway Protection Force (Amendment) Act, 1985 which came into force from 20.9.1985. By the amendment the Railway Protection Force has been made an armed force of the Union. According to section 2(a) of the Administrative Tribunals Act, 1985 the provisions of the Act are not to apply to members of the armed forces of the Union. It is true that in both the cases the applicants were removed from service prior

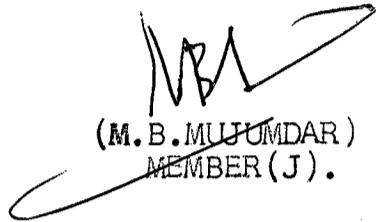
to the coming into force of the Railway Protection Force (Amendment) Act, 1985. But if they succeed in their petitions they shall have to be reinstated as members of an armed force of the Union and hence in our opinion this Tribunal will have no jurisdiction to decide the petition.

6. The Allahabad Bench of this Tribunal has taken the same view in Krishan Pandey v. Union of India, 1987(3) SLR 171. After going through the application in that case we find that the applicant in that case was removed from service by order dt. 30.6.1982 and his appeal was rejected on 1.1.1983, i.e. both the orders were passed before the coming into force of the Railway Protection Force (Amendment) Act, 1985. In another case, viz. Anand Thakur v. Union of India, 1987(3) SLR 820, decided by the Principal Bench of this Tribunal comprising of Mr. Justice K. Madhava Reddy, the then Chairman and Mr. Kaushal Kumar, Administrative Member, the same view is taken. Of course, the applicant in that case was a member of the Central Industrial Security Force constituted under the Central Industrial Security Force Act, 1968. He was removed from service by order dated 26.5.1983. Section 3 of that Act was amended by the Central Industrial Security Force (Amendment) Act, 1983 and the amendment came into force from 15.6.1983, i.e. after the applicant was removed from service. This force was made into an armed force of the Union by this amendment. Of course, in that case the penalty was confirmed on appeal only on 17.7.1984 i.e. after the amendment came into force. The Principal Bench has held that this Tribunal will have no jurisdiction to entertain the grievance of the applicant and hence his application was returned for presentation to such Court as may have jurisdiction in this behalf.

7. We are bound by the above decisions of this Tribunal. Hence we allow Misc. Petitions No.640/88 and 491/89 and direct that Tr. Applications No.9/88 and 487/87 be re-transmitted to the High Court of Judicature at Bombay.



(P.S.CHAUDHURI)
MEMBER (A)



(M.B.MUJUMDAR)
MEMBER (J).