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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/01168/2014

Date of Decision: 12.8.2015.
Reserved on: 07.08.2015

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER**
HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER

Subhash Chander (Ex. Tech-III, Emp. No.528570), son of Sh. Kartar Chand, B-IV/13, Sant Nagar Qadian, District Gurdaspur (Punjab).

... Applicant

Versus

1. Union of India through its Secretary, Department of Railway, New Delhi.
2. Rail Coach Factory, Kapurthala through its General Manager.
3. Works Manager / Mfg, Rail Coach Factory, Kapurthala.
4. Chief Works Engineer / Shell, Rail Coach Factory, Kapurthala.
5. Deputy Chief Mechanical Engineer, Rail Coach Factory, Kapurthala.

... Respondents

Present: Mr. Sushil Bhardwaj, counsel for the applicants
Mr. Yogesh Putney, counsel for the respondents

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8 (i) Quash the order dated 17.03.2009 (Annexure A-1), 16.05.2014 (Annexure A-2) and 12.11.2014 (Annexure A-3) passed by respondents no.4, 3 and 2 respectively vide which the applicant has been removed from service and appeal as

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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

DRAFT ORDER IN O.A. NO.060/01168/2014 TITLED "SUBHASH CHANDER VS. UOI & OTHERS", FOR CONSIDERATION PLEASE.

(MRS. RAJWANT SANDHU)
MEMBER (A)

10/8/2015

HON'BLE SH. SANJEEV KAUSHIK, JM

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well as revision preferred by the applicant have been dismissed, being totally wrong, illegal and arbitrary.

(ii) Issue directions to the respondents to reinstate the petitioner with all consequential benefits and the arrear of salary so calculated be released to the petitioner along with interest at the rate of 18% per annum from the date it became till its realization."

2. Averment has been made in the OA that the applicant was appointed as Technician-III in Rail Coach Factory, Kapurthala in Sport Quota on 21.05.1998. Mother of the applicant met with an accident and was admitted in hospital. The applicant proceeded on leave on 17.05.2008 and thereafter he sent an applicant for extension of the leave. He was advised to report for duty but he could not join because of the poor condition of his mother. Disciplinary proceedings were initiated against him behind his back. He was not served in the matter and was ordered to be removed from service vide order dated 18.03.2009 (Annexure A-1). Order of removal was also not served upon him. When he came to know about this order, he filed appeal before the appellate authority on 24.01.2014 (Annexure A-2) but the same had been dismissed by respondent no.3 vide order dated 16.05.2014 as being time barred (Annexure A-3). Revision petition filed before the revisionary was also dismissed vide order dated 12.11.2014 (Annexure A-4).

3. In the grounds for relief it has, inter-alia, been stated as follows:-

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i) Perusal of the impugned orders reveals that the order of removal from service has been passed in violation of fundamental rules of principle of natural justice. The order is totally non-speaking. The order of removal itself states that the entire disciplinary proceedings have been conducted behind the back of the petitioner without associating him. No effort has been made by the respondents / management to effect service upon the petitioner. As per the contents of the removal order, the correspondence was made on the last known address of the petitioner but once a report has come from the postal department that the petitioner was not residing at the given address in that eventuality it was incumbent upon the authority concerned to serve the petitioner by the other mode of service i.e. by way of publication in the newspaper having wide circulation in the area but surprisingly no such effort has been made by the respondents before finalizing the disciplinary proceedings against the petitioner and before passing the order of removal from service. Thus, the impugned order does not satisfy the test of principle of natural justice as the same has been passed in violation of fundamental rules of principle of natural justice.

ii) The appeal as well as the revision filed by the petitioner have been dismissed primarily on the ground of limitation least bothering the contents of the appeal as well as revision filed by the petitioner. The petitioner while filing the appeal has specifically stated that he was not served in the disciplinary proceedings and further the order of removal has never been conveyed to him. In order to ascertain the substance of the averments made in the appeal it was incumbent upon the appellate authority to call for the record of the disciplinary proceedings to find out whether the petitioner has been served in the disciplinary proceedings or not and further whether the order of removal was ever conveyed and served to the petitioner. In the absence of any finding on this it can be safely presumed that the order of removal was not conveyed to the petitioner. Thus, the question of limitation in the present case would not come in the way because limitation is a mixed question of law and facts and the limitation would start from the date of knowledge not from the date of order. The petitioner filed appeal when he came to know about the order of removal. Moreover, the technicality of law cannot become a hindrance and obstacle in administration of justice

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and justice should not be thrown at the threshold of the technicality.

- iii) The respondents while passing the impugned orders have not taken into consideration the length of service rendered by the petitioner. The petitioner was appointed in May, 1998 and till 19.05.2008 he had rendered about 12 years service. During 12 years of service there was no complaint against the petitioner. His service record was unblemished. Therefore, while passing the order of removal from service the length of service of the petitioner should have been taken into consideration and thus the punishment inflicted upon the petitioner is not commensurate with the nature of the charges levelled against the petitioner.
- iv) The respondents while passing the impugned orders have adopted the pick and choose policy and the petitioner has been subjected to the discrimination. On a similar set of allegations i.e. absence from duty employee no.304536 namely Rajesh Kumar, son of Sh. Surinder Kumar, resident of H.No.84, Mohalla Kang, Samrala, District Ludhiana was removed from service. He preferred an appeal before the appellate authority and the appellate authority while accepting his appeal reduced the penalty and ordered to take him back in service. The copy of the order dated 19.01.2010 is annexed as Annexure A-5.

4. In the written statement filed on behalf of the respondents, it has been stated that the challenge to order of punishment of removal from service dated 17.03.2009 (Annexure A-1) is barred by limitation as envisaged under Section 21 of the Administrative Tribunals Act, 1985. Similarly, the appeal as well as Revision was also barred. However, the Appellate as well as Revisionary Authority examined the time barred appeal and revision on merit also but did not find any reason to differ from the order of the disciplinary authority (Annexure A-1). The rejection

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of the appeal vide order dated 16.05.2014 (Annexure A-3) and rejection of Revision Application vide order dated 12.11.2014 (Annexure A-4) does not extend or revive the limitation to challenge the order of punishment dated 17.03.2009 and there is no application to condone the delay of more than 05 years in impugning the order of punishment dated 17.03.2009 (Annexure A-1). Hence, the O.A. deserves to be dismissed being hopelessly barred by limitation.

5. It is further stated that the reasons which have now been spelled out in the OA for the absence i.e. illness of his mother is an after thought as there is no evidence what so ever regarding mother's illness produced before this Tribunal or before the Appellate or Revisionary Authorities. Period of absence was with effect from 19.05.2008, order of removal from service was passed in March, 2009 after holding enquiry. Appeal was preferred on 21.01.2014. Period of ailment of his mother is not disclosed anywhere. In the Revision Petition dated 08.09.2014, prayer is 'humanitarian grounds'. Plea of sickness of mother is only a contrivance. Absence since 19.05.2008 was already more than 04 years, which is not permissible under Rule 510 of Railway Establishment Code Vol.I and there was clear intention to abandon the job, for his own reasons. G.T. LAD Vs. Chemicals & Fibres of India Ltd., 1979 (1) SCC 590 and AIR 1974 SC 1896 has been cited in this regard. It has also been stated that in the course of disciplinary proceedings at each stage an

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attempt was made to serve the applicant through registered post but each time the letters were returned by the postal authorities with the comments "Iss Naam Ka Aadmi Qadian Nahi Rahta Hai", "Person Left Without Address", "Baar Baar Jaan Te Ghar Na Miliya Lain To Inkari Karde Hun", "Out of Station".

6. No rejoinder has been filed on behalf of the applicant.

7. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant pressed that the applicant was absent due to the adverse family circumstances and disciplinary proceedings had been conducted Ex-parte and penalty imposed was disproportionate to the offence of the applicant.

8. Learned counsel for the respondents stated that the applicant had been absent for more than 5 years when he filed his appeal and there was no ground for his reinstatement. Disciplinary proceedings had been conducted in accordance with the prescribed procedure and the appellate and revisionary authorities had considered the appeal/revision petition on merits also holding that these were time barred. Learned counsel pressed that since the applicant has chosen not to join the inquiry proceedings, he cannot expect any leniency at this stage.

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9. We have given our thoughtful consideration to the matter. From the material on record it is quite clear that the applicant was unauthorizably absent for a long time, he did not join the disciplinary proceedings inspite of adequate opportunity having been allowed in this regard and even his appeal against the order terminating his services was filed four years and ten months after this order has been issued. We conclude that there is no defect in the disciplinary proceedings and hence judicial intervention in the matter is not warranted. The O.A. is rejected.

**(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER**

**(SANJEEV KAUSHIK)
JUDICIAL MEMBER**

Place: Chandigarh
Dated: 12-8-2015

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