

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) 9104 OF 2007

Reserved on : April 02, 2008.

% Date of Decision: April 08, 2008

# Dhan Singh ..... Appellant  
! Through Mr. G.C. Tongaria, Advocate.  
versus

\$ U.O.I. & Ors. .... Respondent

^ Through Ms. Preetika Dwivedi, Adv. for  
Ms. Geetanjali Mohan, Adv.

**CORAM:**

\* **HON'BLE MR. JUSTICE MANMOHAN SARIN**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the digest? No.

### **J U D G M E N T**

**MANMOHAN, J:**

1. The Petitioner has filed the present writ petition under Articles 226 and 227 of the Constitution of India seeking quashing of the orders dated 22<sup>nd</sup> March, 2007 passed in OA No.469/2007 as well as order dated 5<sup>th</sup> July, 2007 passed in RA No.141/2007 and Respondent No.2's order dated 16<sup>th</sup> August, 2001 removing the Petitioner from service.

The Central Administrative Tribunal had dismissed the Petitioner's original OA No.469/2007 primarily on the ground that the arguments advanced by the Petitioner had no substance and further the petition filed by the Petitioner was barred by limitation inasmuch as it had been filed after a lapse of more than six years from the date of order of removal from service.

2. Counsel for the Petitioner in the present proceedings contended that the bar of limitation would not apply as the order removing him from service passed in August, 2001, was a nullity. The counsel contended that the dismissal order was in a printed form and it gave no reasons. Counsel for the Petitioner also relied upon **State of Madhya Pradesh Vs. Syed Qamarali** reported in 1967 SLR 228. In the said judgment it has been held, *"the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under section 7 could be exercised, is totally invalid. The order of dismissal had therefore no legal existence and it was not necessary for the Respondent to have the order set aside by a court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected."*

3. However, we have perused the order removing the Petitioner from service. We find that the printed form states that the reasons for removal of the Petitioner from service are mentioned in the annexure attached. The annexure to the printed form reads as under:-

*"As per record of service the employee is habitual absentee and does not seems to be interested in working with the Railways. His record of service also go to prove that he is uneconomical in the Railways. The charges also proved. The employee also failed to report to the E.O. Report within the stipulated period.*

*He was previously removed from the service but failed to improve when put back in service.*

*This all force me to inflict the following penalty with immediate effect. Removed from service."*

4. From a perusal of the annexure to the printed form, it is apparent that the Petitioner's removal is based on reasons and the said order is, therefore, not a nullity. We also find that the Petitioner had never participated in the Enquiry proceedings despite service and opportunity. Consequently Petitioner's reliance on the aforesaid Supreme Court judgment is clearly misconceived on facts.

5. Learned counsel for the Petitioner then sought to rely upon the Railway Board's circular dated 24<sup>th</sup> September, 2002. In the said circular, the Railway Board has emphasized the need for Disciplinary and Appellate Authority to pass reasoned and speaking orders.

Learned counsel for the Petitioner has contended that since the order removing the Petitioner from service was passed in violation of a mandatory Railway Board's circular, the order removing the Petitioner from service had no existence.

6. We are of the view that the instructions dated 24<sup>th</sup> September, 2002 would offer no assistance to the Petitioner inasmuch as firstly the said Circular is an administrative instruction and it can never have retrospective effect and operation. In any event, even if the Railway Board's circular were to apply then also the situation would not change inasmuch as we have already concluded that the order removing the Petitioner from service is a speaking order and it is based on reasons.

7. Consequently, the present writ petition is dismissed but with no order as to costs.

[MANMOHAN]  
Judge.

[MANMOHAN SARIN]  
Judge.

April 08, 2008.  
vk/jt