

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

+ **W.P. (C.) No. 1971/2010**

% **Date of Decision: 19.05.2010**

YATINDRA NATH RAI PETITIONER
Through Petitioner in person.

Versus

UOI & ORS. RESPONDENTS
Through Nemo

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. By this writ petition filed under Article 226 of the Constitution of India the petitioner has assailed the orders dated 02.12.2008 and dated 22.01.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as Tribunal) dismissing the OA No. 2601/2008 and Review Application No. 11/2009 respectively. He has also challenged the order dated 02.09.1993 passed by the respondents removing him from service.

2. It is a matter of record that the Original Application was filed by petitioner after 15 years. The same has been dismissed by the Tribunal by making the following observations:

4. Having heard the learned counsel representing the applicant and examining the records of the case, we find no merit whatsoever in this Application. The applicant as per his own showing, was dismissed from service sequel to a regular departmental enquiry against him. The applicant, as per records, intentionally did not appear before the enquiry officer. The disciplinary authority passed order dated 23.8.1993 dismissing him from service, which was converted into order of removal from service by the appellate authority on the entreaties made by the applicant. We have gone through the judgment passed by the court acquitting the applicant. The applicant was given benefit of doubt. It is too well settled that whereas, a criminal charge has to be proved beyond shadow of reasonable doubt, the charge in a departmental enquiry can be proved on preponderance of evidence. If the applicant had been acquitted by giving him the benefit of doubt in the criminal case, it would be no ground to set aside the order of dismissal which came to be passed after holding a departmental enquiry against the applicant, wherein the charge levelled against him was established. Further, the applicant has chosen not to place on record either the report of the enquiry officer, or the order passed by the disciplinary authority, or for that matter, even the order passed by the appellate authority, and has yet sought reinstatement. The orders referred to above have not even been challenged, and surely, unless these orders are to be challenged and set aside, the applicant cannot be reinstated in service. Still further, present Application seeking reinstatement has been filed after 15 years of passing of the order of removal from service.

5. Finding no merit in this Application, we dismiss the same in limine.

3. The petitioner who was given enough opportunity to engage a counsel and had been taking adjournments for doing the needful finally insisted to argue the matter himself and accordingly he was heard.

4. It appears that after his acquittal in the criminal proceedings on 14.08.2006 the petitioner who was not taking any steps to assail the order of removal passed against him in departmental proceedings as far back as in 1993 and approached the Tribunal after 15 years.

5. While admitting that he was suspended from duty with effect from 07.05.1983 and was proceeded departmentally on the same charges, the petitioner has denied having received a copy of the charge-sheet, the order of dismissal/removal and has submitted that even the order of removal dated 02.09.1993 was received by him only when he filed an application under RTI Act on 24.01.2008.

6. However, no explanation has been given by the petitioner in having remained silent from 07.02.1993 till filing of the Original Application in 2008 which as stated above has been dismissed by the Tribunal.

7. The respondents who contested the petition had taken a stand that order of suspending the petitioner from duty was passed after conducting a preliminary enquiry, despite being aware of the holding of a departmental enquiry by the respondents the petitioner failed to participate during the course of enquiry. In fact, he intentionally and deliberately did not appear before the enquiry officer Shri K.L. Bhadwan and flatly refused to defend his case. He also failed to get his statement recorded and cross-examine the witnesses, namely, the dealing clerks and A.S. Personnel branch P7 DRM Office, New Delhi.

8. It was further submitted that the Enquiry Officer recorded statement of dealing clerks Smt. Pooja & A.S. Personnel branch and after perusal of the document found that the charges leveled against the petitioner were established. The enquiry officer then submitted his report along with his findings before the Disciplinary Authority Shri D.R. Sethi with all relevant documents, who after considering the whole facts and circumstances of the case imposed a penalty of dismissal from service vide order dated 23.08.1993. It is further stated that the petitioner was served with the penalty imposition order by way of registered post on 02.09.1993 at his residential address. However, the same was returned back unserved by the postal authorities despite repeated efforts which were made to serve him. Knowing about his fate the petitioner approached the appellate authority and on his verbal request the punishment of dismissal was reduced to removal from service vide order dated 02.09.1993. In these circumstances, there was no occasion for the respondents to grant any monetary benefit to the petitioner.

9. We have heard the petitioner who have appeared in person. It is true that the petitioner has been acquitted of the offences alleged to have been committed by him under Section 3 of RP (UP) Act, 1966 which case was registered vide FIR No. 35/1982. However, as observed by the Tribunal the said judgment passed by the criminal Court is based upon giving benefit of doubt to the petitioner and, therefore, it

cannot wipe away the departmental action taken by the respondents against the petitioner. The stand of the petitioner that he was not served with the charge-sheet or with the enquiry report cannot be accepted inasmuch as he had not taken care of to find out about the proceedings or to participate in the proceedings for a period of more than 15 years since the order of removal had been passed. It cannot be presumed that the petitioner was not aware of the proceedings inasmuch as if that would have been the position, there was no reason for the petitioner not to have approached the department for his wages etc. The very fact that the petitioner is not getting any wages right from 1993 it can be safely presumed that he has been fully aware of the consequences. It is only when he was acquitted in the criminal proceedings that he wanted his reinstatement and he approached. The order of removal in departmental proceedings cannot be allowed to the petitioner as the acquittal of the petitioner is not based upon a clean acquittal but is based upon giving him benefit of doubt as observed by the Tribunal.

10. The very fact that the petitioner approached the Tribunal after 15 years is sufficient to dismiss his petition as there seems to be no reason to condone the delay in approaching the Tribunal.

11. Thus, in the present case the Tribunal was justified in dismissing his petition which was filed after a period of 15 years and does not call for any interference by this Court under Article 226 of the Constitution

of India. Accordingly, the writ petition is dismissed with no orders as to cost.

12. All the pending applications are also disposed of.

MOOL CHAND GARG, J.

MAY 19, 2010
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ANIL KUMAR, J.