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

% *Date of Judgment : 4th December, 2019*

+ W.P.(C) 12771/2019

SHRI S.L. CHOUDHARY Petitioner

Through Ms. Deepali Gupta, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through Mr. Jagjit Singh, Senior Standing
Counsel with Mr. Preet Singh and Mr.
Vipin Chaudhary, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM.APPL 52206/2019(Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. Mr. Jagjit Singh, learned counsel for the respondents, enters appearance on an advance copy.
4. With the consent of the parties, the writ petition is set down for final hearing and disposal at the admission stage itself.

5. The petitioner herein had filed O.A. No.1483/2013 before the Central Administrative Tribunal (the 'Tribunal') with a prayer to direct all the respondents to jointly decide the pending grievances of the applicant and quash speaking order dated 27.08.2012 passed by the General Manager, Central Railway, Mumbai on the ground that it was illegal, *mala fide* and without any basis. This OA stands dismissed by the Tribunal by the impugned order dated 28.09.2018, which has led to the filing of the present writ petition.
6. Brief facts which are required to be noticed for disposal of the present writ petition are that the petitioner was initially appointed as a Commercial Clerk on 02.12.1974 and was subsequently promoted in the year 1983 to the post of Enquiry-cum-Reservation Clerk at Raja Ki Mandi Railway Station, Agra.
7. On 02.04.1986 the penalty of removal from service was imposed upon the petitioner under Rules 16(vii) to (ix) of Railway Servants (Disciplinary & Appeal) Rules, 1968 by the Office of the Superintendent Agra Area, Agra Cantt. The petitioner preferred an appeal against the removal, which was dismissed on 18.06.1986.
8. Learned counsel for the petitioner submits that the then Hon'ble Minister of State for Railways had addressed a communication dated 02.11.1987 regarding reinstatement of the services of the petitioner. Further, learned counsel for the petitioner places reliance upon communication dated 13.03.1995, which is a D.O. letter in regard to intimation that the petitioner had been reinstated. However, since no action was taken by the respondents on these two communications, the petitioner filed OA. No.1038/2010. The Tribunal disposed of the OA

by an order dated 24.05.2010 with a direction to respondent No.3 to examine the petitioner's pending representation. The representation was not decided, which led to the filing of a second OA. Learned counsel for the petitioner submits that reading of the above-referred two communications would show that the Minister had directed reinstatement of the petitioner.

9. Mr. Jagjit Singh, learned counsel for the respondents, submits that there is no infirmity in the order passed by the Tribunal for the reason that the order of removal passed on 02.04.1986 was not challenged before any Tribunal or Court and the same has attained finality. He submits that the communications sought to be relied upon have no force of law, since if an order is passed after a full inquiry the only option available to the petitioner was to challenge the final order of removal; and by the two alleged communications, the legal process cannot be set to naught. He also submits that the Tribunal has also rightly dismissed the petition on the ground of limitation as the OA is patently barred by limitation.
10. We have heard the learned counsels for the parties.
11. Order dated 02.04.1986, of removal from service passed against the petitioner, reads as under:

“I have carefully considered the Enquiry Report and the findings submitted by the Enquiry Officer/appointed to enquire into the charges framed against you vide Memorandum No.SAA/CX/33/SLC/84 dated 1.10.1984. A copy of the report of Enquiry Officer is enclosed; and I hold you guilty of the article(s) of the charges imputation of misconduct or misbehavior, viz. tempering with the falsification of official records without any justification and levelling malicious charges against another railway employee.

2. I have, therefore, decided to impose upon you the penalty of removal from service. You are, therefore, removed from services with immediate effect.

3. Under Rules 18 & 19 of the Railway Servants (D&A) Rules, 1968, an appeal against these orders lies to Divisional Railway Manager, Jhansi.

4. The appeal shall be preferred in your own name and under your own signatures and presented within 45 days from the date you receive these orders, to the Appellate Authority sending a copy of the same to the undersigned.

5. The appeal shall be complete in itself, shall contain all material statements and arguments on which you rely and shall not contain any disrespectful or improper language.

6. Please acknowledge receipt.

Signature Sd/-
(B.Prasad)

Designation: SUPERINTENDENT AGRA
AGRA CANTT

Encls: Enquiry Report & its
accompaniments in 13 pages.”

12. As per this order, the option of appeal was available to the petitioner within a period of 45 days of receiving the order. The appeal filed against the order also stands rejected. Admittedly however, there has been no challenge to the order of removal.
13. In our view, there is no infirmity in the order passed by the Tribunal. There is no explanation as to why the order of removal was not challenged. Instead, reliance is placed on the above-referred two communications, which, in our view, have no force of law after a full-fledged inquiry was conducted and the petitioner was held guilty of the

charges. Moreover, there is an unexplained delay in approaching the Court from 1986 till the OA No.1483/2013 was filed; and also delay even when the first OA No.1038/2010 was filed in the year 2010.

14. Accordingly, we find no infirmity in the order passed by the Tribunal. There is no merit in the writ petition. The same is accordingly dismissed.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 04, 2019

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