

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~NEW DEXX~~O.A. No. 496
~~TAxxNo.~~

1987

DATE OF DECISION 23-4-1990Shri Guria Valji

Petitioner

Shri J.M.Jadav

Advocate for the Petitioner(s)

VERSUS

Union of India & Ors

Respondent

Shri R.M.Vin

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Trivedi

: Vice Chairman

The Hon'ble Mr. N.Dharmadan

: Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Shri Gurai Valji,
Ex.Fitter,
C/o.Vijay Guria
East Railway Yard,
Quarter No. 519,
Near W.Railway Running Room,
Valsad.

... Applicant

Versus

1. General Manager,
Western Railway,
Churchgate,
Bombay.
2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central.

... Respondents

Coram : Hon'ble Mr. P.H.Trivedi : Vice Chairman
Hon'ble Mr. N. Dharmadan : Judicial Member

ORAL ORDER

Date : 23-04-1990

Per : Hon'ble Mr.P.H.Trivedi : Vice Chairman

Neither the petitioner nor his advocate present.

The petitioner has been removed from service on 21.5.1983 and he has vacated his quarter on 3.12.1984. The inquiry which resulted in his removal from service was made on ^{which} the charges were based upon misconduct for not vacating the quarters. The appeal of the petitioner has been rejected. The case is barred by limitation although the question was allowed to be argued after admission of the petition. There is no doubt that both in terms of the date of vacating the quarter and in terms of the disposal of the appeal dated 3.3.1984, the case is barred by limitation. The petitioner's petition dated 18.11.1986 to review the impugned order of punishment on grounds of mercy is awaiting disposal as intimated by letter dated 2.7.1987. It is seen that the petitioner has perhaps by now already retired as he has made a statement in his representation dated August, 1986 that he was to retire

in next month.

The petitioner has not been allowed 1/3 of the pensionary benefits, in view of the petitioner being a member of the scheduled caste and the charges against him which were inquired into were only for non vacating of the quarter which, if at all, is a misconduct only on technical grounds. There is a good case for the respondent to consider the petitioner being allowed full pensionary benefits without any deduction on account of the punishment of the removal having been imposed upon him. It is observed that the competent authorities should address themselves to this question and take a sympathetic decision in the background of the facts of this case, in disposing of this review petition which is awaiting decision.

With this observation we do not find any good ground for interfering with the impugned orders. No order as to costs.


(N.Dharmadan)
Judicial Member


(P.H.Trivedi)
Vice Chairman

a.a.bhatt.

Sr. No. Justice (CAT) 4101 / HC

Dated: 9. 1. 2001

Submitted: Hon'ble Vice Chairman &
Hon'ble Mr. V. Radhakrishnan, Member (A)
Hon'ble Mr. P.C. Kannan, Member (J)
Hon'ble Mr. A.S. Sanghvi, Member (J)

Certified Copy of order dated 20.10.2000 in CA/
Spl. C.A. No. 10603 of 99 passed by the
Supreme Court/ High Court against the Judgment/ Oral Order
passed by this Tribunal in OA/496/87 is placed for perused
please.

4
9/1/01

S.O. (J)

D.R. (J)

Dated 9. 1. 2001

Hon'ble Vice Chairman

Submitted: Hon'ble Vice Chairman &

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

Hon'ble Mr. G.C. Divatkar Member (J) in CA/
Certified Copy of order dated 20.10.2000 in CA/
against the Judgment/ Oral Order
passed by this Tribunal in OA/496/87 is placed for perused
please.

Dated 9. 1. 2001

Hon'ble Vice Chairman

Submitted: Hon'ble Vice Chairman & Hon'ble Member (A)

Hon'ble Member (A) is placed for perused

*Strike off whichever is not applicable.

Copy to: Mr. _____ Adv. Respondent.

Encl: 1) Copy of order dtd. _____ 2) Copy of the Petition.

SEAL
CENTRAL ADMINISTRATIVE TRIBUNAL
REGISTRAR

- day of _____

Given under my hand and the seal of this Tribunal, this

should not be taken against you.

why such action is deemed fit under the Contempt of Courts Act, 1971
be adjourned unless otherwise ordered by the Tribunal, and show cause
at _____ and on subsequent dates to which the proceedings may
a duly authorized advocate on day of _____

You are hereby required to appear in person or through
for action being taken under the Contempt of Courts Act, 1971.

And whereas a petition has been registered against you

in case No. _____ dated _____

that you have not complied with the directions of this Tribunal issued

is made by _____ whereas information is laid/ a petition is filed/motion

To

(here mention the name and address of the person to whom
notice is being sent).

In Re.

NO: CAT/ _____
Date: _____
R.P.A.D.
B.D.Patel House
Nr.S.P.Coldony,
Ahmedabad-14.

Place: 5th Floor

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BE NCH.

(See rule 8 (i) (b))

Form No. III

CONTEmPT PETITION (CIVIL/CRIMINAL)*

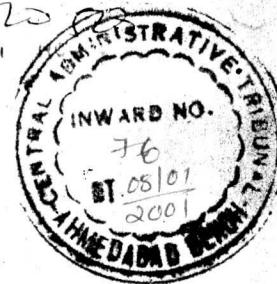
URGENT/TIME LIMIT

34767-20
Decree Despatch

Date

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 10603 OF 1999
(Under Article(s) 227 of the Constitution of India)



1. UNION OF INDIA & ORS.

PETITIONERS

VS

1. GURIA VELJI

Respondent

To

1. UNION OF INDIA

2. DIVISIONAL RAIL MANAGER (ESTT)

THRO GENERAL MANAGER
H.Q.OFFICE WESTERN RLY.
CHURCH GATE
MUMBAY

DIVISIONAL OFFICE
BOMBAY CENTRAL DIVISION
CHURCH GATE WESTERN RLY.
BOMBAY

3. GENERAL MANAGER
WESTERN RLY.
CHURCH GATE
BOMBAY

4. THE PRESIDING OFFICER
LABOUR COURT,
SURAT.
REF: SPL. RECOVERY APPLN. NO
4/92

✓ (S) Central Admin. Tribunal
OPP. Sardarpatel
Stadium
Ahmedabad.

Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 30/12/1999 praying to grant the players and etc...

And whereas upon the Court ordered 'Rule' to issue on 05/10/2000

And Whereas Upon hearing

MRS. BIDDHI D. TALATI for the Petitioner no. 1
NOTICE UNSERVED for the Petitioner no. 2
MS. M. AHUJA for the Respondent no. 1

Court passed the following order

COMD: PRADIP KUMAR SARKAR, J.
DATE : 05/10/2000

C.L.V. JUDGEMENT

Judged
Prd
08-10-2001

→ SP
PG
812/2001

1. Heard learned counsel m/s. S.D.Talati
Concl.....2

6
3
Directed to refund the amount to the petitioner
immediately.

(COPY OF THE CAV JUDGEMENT IS ATTACHED HEREWITH)

AND WHEREAS UPON HEARING THE NOTE FOR SPEAKING TO MINUTES
DATED 11.10.2000 BY THE ADVOCATE MR. S.D.TALATI FOR THE
PETITIONER, THE HONOURABLE COURT HAS BEEN PLEASED TO PASS
THE FOLLOWING ORDER :

CORAM. PRADIP KUMAR SARKAR, J.
DATE : 20/10/2000

"I have heard learned Central government Standing
Counsel the judgement dated
5.10.2000 stands modified."

(COPY OF THE ORAL ORDER IS ATTACHED HEREWITH)

WITNESS DEVADATTA MADHAV DHARMADHİKARI, Esquire Chief Justice at Ahmedabad
aforesaid this 05th day of Oct, 2000.

By the Court

SDT 16/12/2000
For Deputy Registrar
This day of NOV 2000

NOTE : This Writ should be returned
duly certified within 2 weeks.

16/3 241120

Se 1063/99

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 10603 of 1999

UNION OF INDIA
Versus
GURIA VELJT

Appearance:

MRS SIDDHI D TALATI for Petitioners
MS SM AHUJA for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of Order: 20/10/2000

ORAL ORDER

I have heard learned Central Government Standing Counsel appearing on behalf of the petitioner. Id. Counsel submitted that there is an error in the judgement dated 5-10-2000. While giving facts of the case, it is submitted by the learned Counsel that the Central Administrative Tribunal did not direct the Railway Administration to consider the case of the petition for the remaining pensionary benefits, but the Tribunal has only observed that the Railway Administration may consider the case of the petition for the remaining pensionary benefits. Accordingly the word "directed" wherever appears after the words "Central Administrative Tribunal" in the judgement of 5-10-2000 shall be substituted with the word "observed". Further, the words "Addl. Central Govt. Standing Counsel" shall be substituted with the words "Central Govt. Standing Counsel." Accordingly, the judgement dated 5-10-2000 stands modified.

20-10-2000

(P.K.Sarkar, J.)

vinod

TRUE COPY

TRUE COPY
16/10/00
ASSISTANT REGISTRAR
TICK DAY OF

10

REGISTRAR
TICK DAY OF

Q

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 10603 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR *Sd/-*

1. Whether Reporters of Local Papers may be allowed :
to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy :
of the judgement?

4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? :

No

UNION OF INDIA
Versus
GURIA VELJI

Appearance:

MRS SIDDHID TALATI for Petitioners
MS SM AHUJA for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: *5/10/2000*

CAV JUDGEMENT

1. Heard learned counsel Mrs. S.D. Talati appearing
on behalf of the petitioners, and learned counsel Ms. SM
Ahuja appearing on behalf of the respondent. Rule,
learned counsel for the respondent waives service of
rule.

2. The Petitioner Union of India (Western Railway)
challenges the correctness of the order passed on
20-1-1996 by the Presiding Officer (Central), Labour

Court, Surat, in Special Recovery Application No. 4 of 1992. The respondent was appointed as a Fitter Gr. III on 11-9-1949 in Western Railway. He was transferred from Valsad to Nandurbar. On his transfer the respondent did not vacate his quarter at Valsad. Due to non vacation of the Railway quarter, Railway authority started a departmental proceeding against him, and in the departmental proceeding charges were proved and the disciplinary authority by an order dated 21-5-1983 terminated the services of the respondent. The respondent, being aggrieved, filed a departmental appeal which was rejected by the appellate authority by an order dated 3-3-1984. Thereafter the respondent filed Revision Application on 4-12-1985, and the reviewing authority dismissed the revision application filed by the respondent. Thereafter the Railway administration by letter dated 17-7-1985 communicated to the respondent about dismissal of the revision application. After termination of the services of the respondent on 21-5-1983, and after disposing of the review application in 1984, the respondent did not take any steps. Subsequently the respondent filed an application before the Central Administrative Tribunal in the year 1987, which was registered as O.A. No. 496 of 1987. The Central Administrative Tribunal by its order dated 23-4-1990 dismissed the petition of the respondent. However, the Tribunal, considering the facts of the case directed the Railway authority to consider the case of the petitioner. The Divisional Railway Manager by his order dated 10-12-1991 informed the Central Administrative Tribunal that the case of the petitioner has been closed after rejection of the review application

filed by the respondent. Being unsuccessful in all the cases filed before the Appellate authority and before the Central Administrative Tribunal, the respondent ultimately filed an application before the Presiding Officer (Central) and Labour Court at Surat for recovery of remaining 1/3 rd. of his pension and pensionary benefits under section 33-C (2) of the Industrial Disputes Act. The Labour Court by its judgment & order dated 20-1-1996 directed the authority to pay an amount of Rs.85,046/- being the difference of pensionary amount. Having felt aggrieved by the order of the Labour Court, the petitioner filed this present petition for quashing the order of the Labour Court. The respondent filed counter affidavit, wherein it has been stated that the Central Administrative Tribunal has passed an order that the offence committed by the respondent is not serious in nature and therefore, directed the Railway administration to consider and pay the balance of 1/3 rd. of pensionary benefits to the respondents. It is also submitted that, since the petitioner did not pay the amount as per the order of the Central Administrative Tribunal, respondent has approached the Labour Court by filing an application under section 33-C (2) of the Industrial Disputes Act; and the Labour Court has correctly directed the petitioner to pay the balance 1/3 rd. pensionary benefits to the respondent. It is also stated that the Pension Rules of the Railway administration do not debar a person from getting full pension even after he is dismissed or removed from the service. Learned Addl. Central Government Standing Counsel Mrs. Talati has submitted that the Labour Court has committed an error in entertaining the application of the respondent field

under section 33-C (2) of the Industrial Disputes Act.

Learned counsel submitted that the services of the respondent was terminated by an order of the appointing authority on 21-5-1983. The respondent filed departmental appeal which was rejected and ultimately the respondent filed a revision application which was also rejected by the reviewing authority. Learned Addl.

Central Govt. Standing counsel accordingly submitted that, after the decision in the appeal and the review application, the case of the respondent has been closed.

It is also submitted by learned counsel for the petitioner that, according to Rule 309 and 310 of the Pension Rules, it is clearly provided that, in case of an employee who has been dismissed or removed from service, he is not entitled to more than 2/3 rd. pension and pensionary benefits. Learned counsel accordingly submitted that, it is an admitted fact that the respondent was terminated from service in a disciplinary proceeding and the order has reached its finality after the appeal and the revision application was dismissed.

It is also submitted that the Central Administrative Tribunal also dismissed the petition and the respondent respondent by an order dated 23-4-1990 in O.A. No. 496/87. However the Central Administrative Tribunal directed the authorities to consider the review application filed by the respondent. Learned counsel also submitted that, in view of the fact that the review application has already been decided and communicated to the respondent by letter, there is no scope to reopen the case of the respondent. It is further submitted that unless the order of termination is set aside, there is no scope to pay full pensionary benefits to the respondent

under Rule 309 and 310 of the Pension Rules. Learned counsel further submitted that, neither the Railway administration nor Central Administrative Tribunal quashed the order of termination of the respondent, and therefore, according to the Pension Rules he is not entitled to more than 2/3 rd. of the pension and pensionary benefits. Learned counsel also submitted that neither the offence committed by the respondent is of technical nature nor the Central Administrative Tribunal has held in its judgment that the offence committed by the present respondent is technical in nature, and therefore, the Tribunal has directed the Railway administration to consider the case of the respondent and pay him the balance 1/3 rd. pension and pensionary benefits. At this stage, I had examined the order passed by the Central Administrative Tribunal in O.A. No. 496 of 1987 on 23-4-1990. On a perusal of the judgment & order, it does not appear that the Central Administrative Tribunal has directed the Railway administration to pay balance 1/3 rd. pension and pensionary benefits to the respondent. The Central Administrative tribunal dismissed the petition on the ground of limitation. However, Central Administrative Tribunal directed the Railway administration to consider the case of the petition for the remaining pensionary benefits. Therefore, it is evident that the Central Administrative Tribunal did not interfere with the termination order of the respondent.

The next point agitated by the Addl. Central Govt. Standing counsel Mrs. Talati is, that the Labour Court should not have entertained the Special Recovery

Application filed by the respondent. It is submitted that the scope of inquiry and decision under section 33-C (2) of the Industrial Disputes Act is limited to ascertained ^{and} the admissible amount as per the settled position. It is further submitted that the Labour Court has no jurisdiction to interfere with the order of termination while deciding an application under section 33-C (2) of the Industrial Disputes Act. There is sufficient force in the submission of the learned counsel for the petitioner. In the instant case the dispute regarding termination of service of the respondent had not been referred under section 10 of the Industrial Disputes Act. The respondent has filed an application under section 33-C (2) of the Industrial Disputes Act, and therefore, the Labour Court should have considered whether as per Rule 309 and 310 of the Pensionary Rules the respondent is entitled to full pension and pensionary benefits. In an application under section 33-C (2) of the Industrial Disputes Act, there is no scope for the Labour Court to interfere with the order of termination passed by the authority, which has reached its finality. Consequently I am of the view that the Labour Court has exceeded its jurisdiction while deciding the application filed under section 33-C (2) of the Industrial Disputes Act.

Learned counsel for the respondent however submitted that the Central Government Pension Rules do not debar a terminated or dismissed employee from getting full pension. Learned counsel for the respondent submitted that the Central Administrative Tribunal and the Labour Court have correctly decided that the

respondent is entitled to get full pension and pensionary benefits. In this regard it is necessary to see provisions of Rule 309 and 310 of the Pension Rules, which are reproduced below:-

" 309. Removal or dismissal from service - No pensionary benefit may be granted to a Railway servant on whom the penalty of removal or dismissal from service is imposed; but to a Railway servant so removed or dismissed, the authority who removed or dismissed him from service may award compassionate grant(s) corresponding to ordinary gratuity and/or death-cum-retirement gratuity, and/or allowances corresponding to ordinary pension, when he is deserving of special consideration; provided that the compassionate grant(s) and/or allowance awarded to such a Railway servant shall not exceed two-thirds of the pensionary benefits which would have been admissible to him if he had retired on medical certificate.

" 310. Para 309 vests the officer removing or dismissing the railway servant from service with an absolute discretion to grant or not to award any compassionate grant(s) and/or allowances, the only restriction being that, if awarded, it shall not exceed the maximum of two-thirds of the pensionary benefits that would be admissible to the Railway servant concerned on retirement on invalid gratuity/pension. Each case has to be considered on its merits and a conclusion has to

be reached on the question whether there were any such extenuating features in the case as would make the punishment imposed, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question it has been the practice to take into account not only the grounds on which the railway servant was removed or dismissed, but also the kind of service he has rendered. Where it can be legitimately inferred that the Railway servant's service has been dishonest there can seldom be any good case for award of compassionate grant(s) and/or allowances. Poverty is not an essential condition precedent to the award of compassionate grant(s) and/or allowance, but special regard is also occasionally paid to the fact that the Railway servant has a wife and children dependent upon him, though this factor by itself is not, except, perhaps, in the most exceptional circumstances, sufficient for the grant of compassionate grant(s) and/or allowance."

On a bare perusal of the aforesaid provisions, it is evident that in case of removal or dismissal from service of a Railway servant the maximum pension and pensionary benefits available is limited to 2/3 rd. of the full pension. While granting even 2/3 rd. portion of the pension and pensionary benefits the competent authority is required to decide each case. It is therefore evident from the aforesaid provisions of Rule

309 and 310 that 2/3 rd. pension is not automatically admissible to a dismissed or terminated Railway servant. Whether a dismissed or terminated Railway servant will get 2/3 rd. pension or less, that has to be examined and decided by the competent authority. In a grievous nature of an offence the Railway administration can even grant less than 2/3 rd. part of the pension and pensionary benefits. In the instant case it is not disputed that the respondent was dismissed from service in a disciplinary proceeding by an order of the appointing authority on 21-6-1983 and that order of termination reached its finality with the rejection of the appeal and revision filed by the respondent. The petitioner has granted 2/3 rd. of pension and pensionary benefits to the respondent which is the maximum limit under Rule 309 and 310 of the Pension Rules. The Labour Court by its judgment and order dated 20-1-1996 in Special Recovery Application No. 4/92 directed the petitioner to pay the remaining 1/3 rd. pension and pensionary benefits amount to Rs.85,046/- to the respondent. If the aforesaid order of the Labour Court is allowed to stand, then, this will have the effect of quashing the order of termination passed by the Railway administration which reached its finality and also such payment will be in contravention of the provisions of Rule 309 and 310 of the Pension Rules.

Learned counsel for the respondent draws my attention to the provisions of Rule 311, 312 and 314 of the pension Rules. But on a perusal of the aforesaid rules it appears that those rules cannot be applicable in the case of the respondent. Having regard to the facts &

circumstances of the case, I am of the view of that the order of the Presiding Officer (Central) 2nd Labour Court at Surat passed in Special Recovery Application No. 4/92 on 20-1-1996 cannot be allowed to stand. Accordingly the said judgment & award of the Labour Court at Surat is quashed and the petition is accordingly allowed. Rule made absolute. However I make no order as to costs. It appears that the petitioner has deposited a sum of Rs.96,611/- in the Registry of this Court, as per order of this Court on 3-5-2000. The Registry is directed to refund the amount to the petitioner immediately.

Dt: 5.-10-2000

SD-
(P.K. Sarkar, J)

/vgn

TRUE COPY
16.12.2000
ASSISTANT REGISTRAR
THIS DAY OF