Dep. allowed to resume duty 6/9/91

13.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 107 OF 1987.
~~T.A. No.~~

DATE OF DECISION 28-6-1991.

Makod Khodabhai Janjadiya, Petitioner

Mr. M.M. Xavier, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents.

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal. Yes.

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Makod Khodabhai Janjadiya
Adult, Hindu, occupation:Nil
Village Valukad, Post Valukad,
Via Bhudhel. .... Applicant.

(Advocate: Mr.M.M. Xavier)

Versus.

1. The Union of India, owning and representing W.Rly, through its General Manager, Western Rly, Churchgate, Bombay.

2. The Divisional Rly. Manager, Western Railway, Bhavnagar Division, Bhavnagar Para. ..... Respondents.

(Advocate: Mr. R.M. Vin)

J U D G M E N T

O.A.NO. 107 OF 1987

Date: 28-6-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, against the respondents not allowing him to resume duty consequent upon the Gujarat High Court by judgment dated 8.10.1985 setting aside the sentence of imprisonment for life which was awarded to him.

2. The applicant's case is that he was engaged as a Gangman under Assistant Permanent Way Inspector, Bhavnagar Para, on 4.3.1981 as a casual labour and worked upto 8.7.1983 without any break due to which he acquired the rights and privileges of a temporary railway servant. He was arrested on 8.7.1983 and tried in Sessions Case No. 25/84 for offence under section 302 & 452 of I.P.C. on the allegation that he committed the murder of the Assistant Permanent

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Way Inspector, Bhavnagar. He was convicted for life in the Sessions case. He preferred appeal in the Gujarat High Court. He was exonerated by the High Court. On his exoneration he, to quote from his application,

> "approached the concerned authorities that is Permanent Way Inspector, Assistant Permanent Way Inspector and the Assistant Engineer, Bhavnagar Para and requested them to allow the applicant to perform his duties."

But these authorities did not allow him to resume his duties. The applicant therefore made representation and gave legal notice to the respondents. He claims protection of Article 311(2) of the Constitution and Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 to assert that his services could not have been terminated without giving him proper and reasonable opportunity to defend himself. He alleges that his services had not been discontinued on any other ground than his having been arrested and prosecuted for the above murder case. He further alleges that even if his services are terminated on any other ground, the same will be violative of Rule 149 of the Indian Railway Establishment Code, Vol.I and provision of Section 25 F of the Industrial Disputes Act, 1947.

3. The respondents' case in their written reply is that the applicant was daily rated casual labourer without temporary status; that the applicant's engagement was discontinued on 8-7-83 on account of his misconduct; that he filed the application before the Tribunal on 11-3-1987 which is clearly time barred; that even if the time is taken to run from the date of the High Court's judgment on 8-10-85 and its copy received by the applicant on 16.1.1986, the application filed on 11-8-87 (the date in the reply is erroneous. The

application was registered on 11-3-87) filed after one year is also barred by limitation; that there is no application made for condonation of delay due to which the application is not maintainable under section 21(1)(6) of the Central Administrative Tribunals Act (there is no section 21(1)(6) in the Act and the reference may be to 21(1)(a); that the applicant had not put up continuous service of 120/180 days at a spell and therefore never acquired temporary status; that the applicant was discontinued by M.J. Trivedi, Permanent Way Inspector, for his misconduct on 8-7-83 which is before his arrest on 9.7.1983 for the charge of murder of M.J. Trivedi; that circular No.24 dated 7-9-77 of Divisional Office Bhavnagar which contains General Manager's letter dated 28-6-77 which says that when casual labour is discharged on account of his own fault like unauthorised absence, misbehaviour etc. his name should be struck off and if such casual labourer is reengaged at a subsequent date, he should be given fresh seniority from the date of subsequent reengagement; that para 149 of the Indian Railway Establishment Code Vol.I is not applicable to the applicant's case; that as per provisions of para 2505 of the Indian Railway Establishment Manual, no notice is required for termination of casual labourer and their services will be deemed to have been terminated when they absent themselves or on the close of the day; and that the applicant has not completed one years continuous service or even 240 days in the proceedings 12 calendar months and his case therefore does not fall under the purview of Section 25 F of the Industrial Disputes Act.

4. The applicant filed an affidavit-in-rejoinder to say that he was not taken on duty on 9.7.1983 on the ground of attending late on duty and that he had worked

upto 8.7.1983. He has also stated that the statement of his engagement produced by the respondents mark him present on 8-7-83 and that he was arrested on 9-7-1983.

5. We have heard the learned counsel for both parties. Learned counsel for the applicant Mr. Xavier submitted that as the applicant was exonerated by the High Court he should have been and should be reinstated in service. He relied on Nagbha Naval Singh & Others Vs. Union of India & Ors. (1987(3)(CAT)SLJ 39). The facts of this case are distinguishable. They involved termination of services of casual labourers who had acquired temporary status and had been served with notice of misconduct and the order of termination was found to have been made on grounds of misconduct. He had no reply to respondents counsel Mr. Vin's submissions that the application is grossly barred by limitation as the service of the applicant was discontinued on 8-7-1983 and the application filed on 11-3-87 and no prayer made to condone the delay. According to Mr. Vin, the applicant's service had already been terminated on 8-7-1983 whereas the offence took place on 9-7-1983 and that his service was not terminated because of the offence.

6. We notice that the original application was admitted by the order of the Bench dated 19-6-1987. The order does not say that the application is admitted subject to limitation. We therefore do not deem it necessary to go into the question of limitation at this juncture with the observation that the respondents' objection on grounds of limitation has substance. We will proceed to decide the case on merits.

7. At the outset, we take note of the fact that

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the service card of the applicant which should be produced in support of the applicant's engagement and duration of it has not been produced by the applicant. No explanation has been tendered in the application or at the time of hearing about the same. In para 6.3 of the application it is stated that "The applicant submits that he was arrested on 8.7.83....." The judgment of the Sessions Court however shows that the alleged offence of murder was committed on 9-7-83. It is therefore unlikely that the applicant could have been arrested on 8.7.83 for the alleged offence which was committed on 9.7.83. No material has been produced by the applicant to contradict the particulars of his engagement furnished by the respondents. These particulars show that on 8.7.83 the applicant's services were discontinued due to misconduct and unsatisfactory work. No material has been produced by the applicant to dispute this. Para 6.2 of the application states that "The applicant has worked as a Gangman for the period from 4.3.81 to 8.7.83 without any break....." This claim is not supported by the details of engagement of the applicant furnished by the respondents. The applicant is shown to have been engaged in spells and not continuously from 4.3.1981 to 8.7.1983. The applicant has claimed entitlement to all the rights and privileges admissible to a temporary railway servant without clarifying in the application, rejoinder and at the time of final hearing how or producing any material in support of the claim. The part of the respondents' reply that action could be taken to terminate the service of a casual labourer in terms of circular dated 7.9.79 has also not been controverted by the applicant. The respondents have produced extract from Railway Servants (Discipline & Appeal)

Rules, 1968 in which Rule 3(1)(c) says that the Rules do not supply to any person in casual employment of railway. The applicant's claim to protection of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 is not therefore tenable as he has not produced material to show that his status is higher than of casual labourer.(Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 lays down the procedure for imposing major penalties. Major and minor penalties are laid down in rule 6 of these rules. Discontinuation of engagement of a casual labourer due to misconduct and unsatisfactory work does not figure in the list of the minor and major penalties Section 25 (F) of the Industrial Disputes Act prohibits retrenchment of a workman who has been in continuous service of one year without one months' notice, payment of compensation, etc. However, as stated above, the applicant has not produced his service card or any other material to show that he had been in continuous service of one year. Regarding rule 149 of the Indian Railway Establishment Code, Vol.I, no such rule has been found in Fifth Edition - 1985 of the Code which is a Government publication. Rule 149 with its caption 'Termination of service and periods of notice" is seen to exist in 1957 edition of the Code to which we would hesitate to refer to apply to the applicant's case as the rule no longer exists. Before the 1985 edition is said to have been brought out 1971 edition of the Code. However, we are not told about the edition in which the rule 149 appeared and on which the applicant relies upon and whether, with 8.7.83 as the date of the discontinuation of the applicant, the rule 149 in any old edition(s) of the Code would apply to the case of the applicant. Article 311(2) of the Constitution lays down procedure which must be followed

before an order of dismissal, removal or reduction in rank of a member of the Civil Service can be made. The applicant has not been dismissed, removed or reduced in rank by the respondents.

8. Thus the applicant has failed to substantiate his contentions by required material. We therefore find no merit in his application. The application is hereby dismissed without any order as to costs.

(S.Santhana Krishnan)
Judicial Member

(M.M. Singh) 28/6/91
Admn. Member

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL

AHMEDABAD BENCH

R.A.No. 43 OF 1991

in

O.A. No. 107 OF 1987

~~T.A.No.~~

DATE OF DECISION 2-3-1992

Makod Khodabhai, Petitioner

Mr.M.M. Xavier, Advocate for the Petitioner(~~s~~)

Versus

Union of India & Ors. Respondent s

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

Makod Khodabhai. ..... Applicant.

V/s.

Union of India & Ors. ..... Respondents.

R.A.No. 43/1991

in

O.A.No. 107/1987

Decision by circulation. Date: 2-3-1992.

Per: Hon'ble Mr.M.M.Singh, Member(A).

This review application has been filed by the original applicant to seek review of our decision dated 28.6.1991 in O.A.No.107/1987 by which the O.A. stood dismissed.

2. The review application has been filed for two principal reasons. The first reason consists of averments and allegation that our judgment contains errors apparent on the record inasmuch as we relied on the particulars submitted by the respondents which had shown that the applicant was discontinued due to misconduct and unsatisfactory work but the rejoinder of the applicant and copy of the judgment of the Session Court denying this contention of the respondents have not been adverted to by any observation in our judgment as a result of which a gotup statement of defence of the respondents came to be accepted whereas, to quote from the review application "the contents of the rejoinder remains unchallenged". The second principal reason consists of the allegation that though we, in our judgment, referred to the judgment of the Sessions Court we failed to make any observation as regards the statement of a witness Kantibhai wherein he has deposed that the

applicant was not allowed to join service on 9.7.1983 as he was one of the late comers who were asked to come on the next day and that on this (again to quote from the review application) "vital point and there is a strong case for allowing the review application".

3. A further reason consists of an allegation that we made no observation on merits with regard to Rule 149 of Indian Railway Establishment Code Vol.I which was in vogue on 9.7.1983 and we referred to 1985 edition with our further observation that prior to 1985 edition, 1971 edition existed. In this connection it has been averred in the application that reference to Appendix VII of 1985 edition would have led us to Rule 301 in 1985 edition of the Code which figured as Rule 149 in its 1971 edition.

4. The review application also states that the applicant had submitted a M.A. on 26.3.1991 prior to the date of our judgment of which review is sought. In this application he, according to his averment in the review application, had sought to introduce "vital materials which had come to his knowledge and which could not have learnt by him, inspite of due deligence". It is alleged in the review application that the M.A. and documents though sent prior to our judgment under review were not considered by us. According to the applicant "this can be a sole ground for allowing the review application".

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5. When this R.A. dated 18.9.91 was first submitted on cause list dated 27.11.91, delay in its submission was questioned. An explanation of sorts was submitted which not appearing acceptable, the file was sent back. It came to be resubmitted on 10.12.1991. On 24.12.1991 the concerned was asked to clarify with regard to para-4 of the review application namely, about the applicant having sent a M.A. by registered post about which M.A. no information came to be furnished by the office. The matter came to be resubmitted by the office on Deputy Registrar's(J) note dated 10.1.1992. This note has been recorded on note dated 6.1.1992 of a ministerial functionary, relevant portions of which are reproduced hereunder:

> "The reading of the whole review application by the registry is no where prescribed. We in registry, simply get them registered and place them before the Hon'ble bench with the original files, if they are otherwise in order. Thereafter we carry out the orders of the Hon'ble bench, if any. Hence we did not make a mention of the said M.A.
>
> It is added for the kind information of Hon'ble bench that the said M.A. was received by the office on 8.4.91 and by the registry on 15.4.91. The Hon'ble Bench had passed the following order on 26.3.91.
>
> "Heard counsel for both the parties. Hearing completed. Judgment reserved".
>
> The judgment in the case was pronounced on 28.6.91. The M.A. is still pending for orders....."

It should not be necessary for us to recall to the Registry and the officials including Deputy

Registrar(J) supervising the work of the Registry - the provisions of Rule 29 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter, the Rules). In the "Additional Powers and duties of Registrar" enumerated is this Rule in its items (i) to (xii) is included an item (ii) which consists of the power and duty "to decide all questions arising out of the scrutiny of the applications before they are registered". It is difficult for us to understand how this statutory power and duty can be discharged unless an application filed has been scrutinised. Scrutiny in our understanding presupposes careful reading of the whole of the application filed. The word 'application' should naturally include all types of applications which can be filed under the provisions of the Administrative Tribunals Act, 1985 (hereinafter, the Act) and the Rules. The manner the Tribunal shall decide applications is laid down in Section 22(2) of the Act and clause (f) of its section 22(3) provides for review of decisions. Rule 17 of the Rules provides for entertaining review petitions. In view of these clear provisions in the Act and the Rules, we would not like to dilate on the subject further but must observe here that the scrutiny and submission of files of matters left much to be desired not only in this matter but also in other matters observations about which came to be recorded in the past also. We hope and wish that such statutory powers and duties are scrupulously discharged.

6. The real nature of the two principal reasons above for filing the review application transpires to be the applicant's disapproval of our appreciation in our judgment of the material in the matter of the O.A. The provisions with regard to review contained in Order XLVII of the Civil Procedure Code do not visualise review on sum total of averments and allegations of the review applicant amounting to saying that the Tribunal's appreciation of evidence being different from that of the review applicant, the review application should be allowed. Such difference in appreciation of material does not amount to "discovery of new and important matter of evidence which, after the exercise of duty diligence was not within his (applicant's) knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error apparent on the basis of the record or for any other sufficient reason....." Appreciation of material is a conscious exercise undertaken for rendering a judgment and therefore cannot be labelled or construed as an error or mistake which is an essential ingredient for invoking the legal provisions of review. When such ingredient is missing, as is, the case herein, a review application will be baseless. The two principal reasons for filing of the review application are thus baseless.

7. With regard to the averments pertaining to Rule 149 of Indian Railway Establishment Code Vol.I above, the applicant substantially puts the obligation of reference to Appendix-VII of 1985 edition on the Bench instead of he or his

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learned counsel discharging the obligation in the original application or at the time of final hearing. The original application alleged that the respondents violated provisions of Rule 149 of the Indian Railway Establishment Code Vol.I without mentioning the edition of the Code the applicant had in view. This point was not clarified for the applicant even at the final hearing. The following therefore entered our judgment with regard to arguments based on Rule 149:

> "Regarding rule 149 of the Indian Railway Establishment Code, Vol.I, no such rule has been found in Fifth Edition - 1985 of the Code which is a Government publication. Rule 149 with its caption 'Termination of service and periods of notice' is seen to exist in 1957 edition of the Code to which we would hesitate to refer to apply to the applicant's case as the rule no longer exists. Before the 1985 edition is said to have been brought out 1971 edition of the Code. However, we are not told about the edition in which the rule 149 appeared and on which the applicant relies upon and whether, with 8.7.83 as the date of the discontinuation of the applicant, the rule 149 in any old edition(s) of the Code would apply to the case of the applicant".

It is clear from the above that the applicant now wants to cast on us the duty, which should have been his or his learned counsel's. Such is not the scope and purpose of review.

8. With regard to the averments and arguments based on M.A., the final hearing in the O.A. was held on 26.3.91 when the judgment was reserved. The M.A. is admittedly dated 26.3.91 stated to be sent by Registered A.D. Obviously, the M.A. could

not have been in the Tribunal office on 26.3.91, the date on which the final hearing completed and judgment was reserved. The applicant was represented by his learned counsel at the time of the final hearing on 26.3.91. If the applicant and his learned counsel wanted to produce further material, they would be required to move an application in that regard for consideration which if allowed, would necessitate, for reasons of natural justice, further opportunity to respondents to reply on additional material. This not happening, such a M.A. even though received after the final hearing and judgment reserved, becomes no valid and acceptable ground for allowing the review application. Section 22(i) of the Act stipulates that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of the Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure. Taking into consideration behind the back of the respondents after the completion of the final hearing material submitted would violate principles of natural justice. The applicant's reasons and arguments based on the M.A. not considered are thus such as deserve to be rejected being completely devoid of legal merit.

..... 9/-

9. In view of the above, we are of the view that the review application has absolutely no merit and has been filed for no sound legal reason. We therefore hereby dismiss it by circulation.

2.3.92

(S.Santhana Krishnan)
Member(J)

(M.M. Singh)
Member(A)