

NO
Stoppage of increments.

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

(12)

O.A. No. 456 of 1988.
~~Case No.~~

DATE OF DECISION 14.8.1991

Ismail Kasam Sidiki Petitioner

Mr. M.D. Rana Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

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

CORAM :

The Hon'ble Mr. M.M. Singh Member (A)

The Hon'ble Mr. S. Santhana Krishnan... .. Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *ys*
2. To be referred to the Reporter or not?
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?

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Ismail Kasam Sidiki,
Opp. Railway Station,
Bahauddin Building,
Block No. 9,
Junagadh.
(Advocate - Mr. M.D. Rana)

.. Applicant

Versus

1. Union of India,
Through:
General Manager, W.Rly.,
Churfchgate,
Bombay - 400 020.

2. Divisional Mechanical Engineer,
Western Railway,
Bhavnagarpara,
Bhavnagar.

(Advocate - Mr. R.M. Vin)

.. Respondents

O.A. No. 456 of 1991

ORAL - ORDER

Dated : 14.8.1991

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

This Original Application under section 19 of the Administrative Tribunals Act, 1985, has been filed by the applicant Railway employee against the order dt. 26/31-8.1987 issued by D.M.E., Bhavnagar from the office of D.R.M., Bhavnagar imposing penalty of stoppage of increments for two years in pay scale Rs.950-1500 with future effect.

2. Heard Mr. M.D. Rana, learned counsel for the applicant. Respondents' counsel not present.

3. The memorandum of charges allegedⁿ that the applicant had remained unauthorised absence^t from duty from 31.7.1976 upto 8.3.1982 which is a serious misconduct.

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4. An Inquiry Officer was appointed who, in his report dated 23.2.1987 concluded it with his findings that the applicant is not responsible for remaining absence unauthorisely from 20.4.1981 ^{to} ~~A.N.~~ to 7.3.1982 ^{of absent} AN and that he remained unauthorisely from 31.7.1976 to 20.4.1981. The order of the Disciplinary Authority which is in a printed proforma only mentions the punishment awarded and reason shown is ^{to} serious misconduct. ⁱⁿ In that he remain ^{ed} unauthorise ^{ce} absence from duty from 1.7.1976 after having been releaved from Junagadh to proceeded to Dhasa.

5. The findings of the Inquiry Officer above bring out the fact that the applicant was guilty for absence for a part of the period only for which ~~he~~ was charged and not for other part for which he was also charged. Therefore, ^{we} ⁱⁿ in view of the Inquiry Officer, the charge as framed was not completely proved against the applicant and only charge for a part period of absence was proved. It is not clear from the penalty order whether the officer ^{has} ⁱⁿ inflicted penalty has ~~even~~ taken note of the fact that whole of the charge has not been proved and only part of it is proved. The order merely says about unauthorise absence from 1.7.1976 without mentioning whether the Disciplinary Authority agreed with the findings of the Inquiry Officer or not and in either case why.

6. We noticed that the charge sheet mentions the absence of date from 31.7.1976 and not from 1.7.1976 as mentioned in the penalty order. Also as stated above, the Inquiry Officer came to the conclusion about the applicant found guilty for absence from 31.7.1976 to 20.4.1981 and not from 20.4.1981 to 7.3.1982. The

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Disciplinary Authority not only proceeded on the basis of absence from duty from 31.7.1976 but also appears to have taken no notice of the fact that only part of the charge, was, according to the findings of the Inquiry Officer, proved. In case, the Disciplinary Authority disagreed in any manner with the findings of the Inquiry Officer, the Disciplinary Authority will be required to record its own findings mentioning reasons of disagreement with the findings of the Inquiry Officer. This has also not been done.

7. From the above, we have to hold that the order of the Disciplinary Authority suffers from complete non-application of mind in which even the date ^{was on 4th} on ^{from} which the applicant ^{has} absence has not been correctly recorded, ^{Such} the ~~said~~ order has to be struck ^{down} down.

8. In the reply of the respondents, technical objections have been taken. Learned counsel for the respondents did not remain present during the hearing. The technical objection consists of the applicant having filed a Regular Civil Suit No. 434/85 which was transferred to the Tribunal and registered as T.A./109/87 which was decided finally on 21.6.1988. This Civil Suit was filed against the issue of memorandum of charges and not against final order of the Disciplinary Authority as on 21.6.1988 when the Tribunal disposed it of, the order of the Disciplinary Authority has been passed and the cause of action for filing a suit against the memorandum of charge did not survive and the case was accordingly disposed of. Such a disposal of the case, does not work as resjudicate against filing of Original

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Application against the final order of the Disciplinary Authority. The objection of the respondents on this ground is therefore rejected. Another objection taken is that though the applicant filed appeal application the applicant did not wait for disposal of the appeal application and approached this Tribunal by filing this O.A.. The appeal application was filed on 2.12.1987. The application hereⁱⁿ was filed on 14.6.1988 which is after 6 months of the filing of the appeal application during which period, the appellate authority did not dispose of the appeal application. Section 20 of the Administrative Tribunals Act, 1985 provides for waiting for 6 months only. This objection of the respondents is therefore rejected. In fact by filing of such an application after waiting for the time stipulated under section 20 ~~of~~ the Act, by provision of section 19 sub section⁴ of the Act, the very proceeding under the relevant service rule as to redressal of grievance in relation to the subject matter of the application shall abates. Therefore, the respondents/have no authority to dispose of the appeal application filed under service rules when already the Original Application has been filed. On this ground also the respondents' objection is to be rejected and is rejected.

9. In view of the above, the first relief viz. to quash and set aside the order of the disciplinary authority has merit and has therefore to be allowed.

10. With regard to the second relief seeking direction to Railway Administration to pay all the back wages from 31st July, 1976 to 20.4.1981, no order of denying the applicant such wages has been produced before us much less challenged. In the absence of such an order,

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second relief cannot be considered.

11. The order of the disciplinary authority dated 26/31.8.1987 is hereby set aside as not issued with all consequential benefits under the rules. Respondent - D.M.E., Bhavnagar is directed to implement this order within one month of receipt of the copy of the same.

12. Application is finally disposed of. No order as to costs.


(S Santhna Krishnan)
Member (J)


(M M Singh)
Member (A)

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