

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

NO
Memorandum

(8)

O.A. No.
~~XXXXXX~~

286 of 1989

DATE OF DECISION 15.04.1993.

Shri L.N.Godhra Petitioner

Shri Y.V.Shah Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri N.S.Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B.Patel : Vice Chairman

The Hon'ble Mr. V.Radhakrishnan : Member (A)

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 ?

(9)

Shri L.N. Godhra
 Hindu Inhabitant Aged 40 years
 Serving As Fireman Loco Shed.
 Baroda

Applicant.

Advocate Shri Y.V. Shah

Versus

1. Union of India
 Through the General Manager
 W.Rly Chruchgate,
 Head Quarters Office,
 Bombay 400 001.
2. The Divisional Rly. Manager
 W. Rly. Rly. Yard, Pratapnagar,
 PO; Vadodara. Pin 390004
3. Sr. Divisional Mechanical Engineer
 Loco Pratapnagar, W. Rly Rly. Yard, Respondents.
 Vadodara Pin 390004.

Advocate Shri N.S. Shevde

ORAL JUDGEMENT

In

O.A. 286/ 1989

Dated.15-4-1993

Per Hon'ble Shri N.B. Patel

Vice Chairman

The applicant, who was working as Fireman Grade C, challenges the validity of the order dated 17th October 1984, whereby he is removed from service and which order is confirmed by the appellate order (Annexure A-1) dated 18th May 1989.

2. The charge against the applicant was that he had remained unauthorisedly absent from duty for a period of about four months from 26-2-1982 to 23-6-1982. The applicant did not contest the fact that he had remained away from duty for the said period, but his plea was that he was prevented by reason of sickness from attending to his duty for the aforesaid period. It was his version that he was treated by some private Doctor for his sickness, but the Railway Doctor did not accept the certificate of the private Medical Practitioner.

3. The first contention which was urged before us by Shri Shah against the validity of the removal order and the appellate order was that the copy of the inquiry officer's report was not furnished by the Disciplinary Authority to the applicant while giving him an opportunity of showing cause as to why the inquiry officer's report should not be accepted. However, after some discussion at the Bar, Shri Shah did not press this contention.

4. The second contention urged before us was that the appellate order suffers from non-application of mind at least on the question as to what would be the appropriate punishment to be awarded to the applicant for the delinquency committed by him. It was submitted by Shri Shah that the applicant had put in 20 years' service without blemish and he was prevented from attending to his duty for a period of about four months for reasons beyond his control, namely, his sickness. In the appeal preferred by the applicant against the removal order,

he had pleaded that the penalty of removal from service was extremely harsh in the circumstances, in view of the fact that he had put in long and loyal service and that the lapse committed by him had arisen because of circumstances beyond his control, namely, his sickness, and that the removal from service would mean economic ruination for himself and his family. We find from the order of the Appellate Authority, i.e. the respondent no. 2, that he has not referred to this plea of the applicant advanced in mitigation of the seriousness of the lapse committed by him. If the ~~Appellate~~ Appellate Authority had considered this vital and relevant aspect, we would not have interfered with the order of punishment passed by the Disciplinary Authority and confirmed by him. However, since the appellate authority has not at all referred to, much less considered and decided, the plea of the applicant that he was prevented by reason of sickness from attending his duties, we find that the charge levelled by Shri Shah that the order suffers from non-application of mind is well-founded. Apart from this, considering the circumstances of the case, we feel that the punishment of removal from service, which is awarded to the applicant, is harsh and disproportionate. We are told that, in the present application, the applicant has even pleaded that he may be permitted to retire voluntarily from service. We are inclined to think that the Appellate Authority was required to give anxious consideration to all the circumstances mentioned by the applicant for awarding him lesser punishment and also to his plea that he may be permitted to retire voluntarily.

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If the applicant had put in sufficient qualifying service to entitle him to some pensionary benefit, the Appellate Authority could also have considered whether the punishment of compulsory retirement from service would not have met the ends of justice in this case.

5. For the reasons mentioned above, we have no hesitation in quashing and setting aside the order Annexure-A/1 passed by the respondent no.2 confirming removal of the applicant from service. We direct the respondent no.2 to reconsider the appeal of the applicant in the light of the observations made above and in accordance with law. We direct the respondent no.2 to re-hear and decide the appeal of the applicant within two months from the receipt of copy of this judgment. Application is allowed accordingly. No order as to costs.

Copy of the order to be sent to the respondent no.2 within 10 days hereof.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice Chairman

AS