

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

*No Removal*

(S)

O.A. No./380/89

~~MAX NO.~~

DATE OF DECISION 05.01.1993

A.K.Limbachia

Petitioner

Mr.D.P.Padhy

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Mr.B.R.Kyada

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan : Vice Chairman

The Hon'ble Mr. R.C.Bhatt : Member (J)

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 ?

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(6)

Amratlal Keshavlal Limbachia,  
aged about 52 years residing at  
Kazivas, Kasba, Mehsana Pin 384 001.  
Serving in Loco-shed, Western Railway,  
Mehsana.

....applicant

(Advocate : Mr.D.P.Padhy)

versus

Union of India, Western Railway,  
through  
The Divisional Rail Manager,  
Western Railway, Rajkot Division,  
Kothi Compound, Rajkot Pin 360 001.

....respondent

(Advocate : Mr.B.R.Kyada)

JUDGMENT

O.A./380/89

Date : 05.1.1993

Per : Hon'ble Mr.N.V.Krishnan  
Vice Chairman

The applicant is an employee  
under the second respondent and he has filed  
this application to set aside the penalty  
imposed on him in the disciplinary proceedings  
which ended in his removal service but was  
modified in appeal to reversion.

(1)

2. The brief facts of the case are as follows :-

2.1. The applicant was issued a memorandum of charges by the memo dated 5.5.78 of the A.M.E.Mehsana, the disciplinary authority. He was removed from service and it is alleged that before the order was served on the applicant, he filed a civil suit in the Civil Court at Mehsana, at Annexure A/2.

2.2. During the pendency of the civil suit, an ~~was~~ appeal (Ann.A/3) against the order of removal was submitted as ~~the~~ directed by the Court.

2.3. It was considered and the ~~u of~~ penalty / removal was reduced by the appellate authority to reduction to the lower post i.e. cleaner, in the scale of

Rs.196-232 for a period of

2 years with future effect.

This decision was conveyed

to the applicant by the memo

dated 2.2.83 of the DRM, Rajkot,

(Annexure A/11.)

2.4. On the establishment of the Central Administrative Tribunal,

the case was transferred to the Tribunal and ~~the~~ registered

as T.A. 728/86. This was disposed off by the order dated 12.11.87

(Annexure A/5) directing the "representation regarding appeal

be filed within 15 days

from~~x~~ the date of is order"

and be disposed of within 4

months.

2.5. Accordingly, the applicant

sent ~~an~~ appeal dated 21.11.87

to the DRM, Rajkot, Annexure A/6.

2.6. A reply was sent to the applicant on 13.1.88 by the Senior Divisional Railway Manager, Rajkot, (Annexure A/7) with reference to his "Review Appeal" dated 21.11.87 as follows :-

" Your appeal dated 'NIL'

has already been considered

by the then Sr.DME(L)/RJT

and in view of which

your present appeal dated

21.11.87 addressed to

Sr.DME(L)/RJT & cannot be

considered.

Please note and

acknowledge."

2.7. The applicant then filed C.A./39/88 in T.A. 728/86 (Ann.A/5) It would appear that before the C.A. was heard, the respondent (DRM, Rajkot) to whom the Ann.A/6

had been addressed by the applicant, disposed of that appeal by an order dated 12.7.88 Annexure A/10. That order reads as follows : -

Your appeal was put up before the Appellate Authority, i.e. Sr.DME/RJT with reference to Judgment given by the CAT in T.A./728/86 the Appellate Authority has passed following orders :-

1." I have gone through the appeal carefully. The employee has attempted to bring out certain new points/ issues which are more as a result of after thought than anything else. He has also tried to analyse the language used in the SF-5, threadbare, to

to prove himself not guilty.

2. It has already been proved beyond doubt that he was guilty of misbehaviour and reasonable opportunity was provided to him during the enquiry. The punishment imposed by the D.A. has already been reviewed once by the Appellate authority and reduced substantially. In my opinion this punishment meets the ends of natural justice. I do not therefore find any reason to reduce it further."

2.8. Finally, when the C.A. was taken up, an order was passed on 21.6.89 dismissing the C.A. (Annexure A/9) and holding that the respondents had kept in mind, the directions issued by the Tribunal in the

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final order dated 12.11.87 in

T.A.728/86 and accordingly, the

C.A. was disposed of.

2.9. It is as a sequel to this order that

this application has been filed

seeking the following reliefs :-

1. The charge-sheet ~~any~~ <sup>may</sup> be declared

as cancelled.

2. The findings of the EO be set

aside.

3. The punishment may be cancelled.

4. The applicant be declared free

from the charges.

5. The punishment be cancelled with

all consequential benefits.

3. The respondents have filed a reply stating

that no relief is due to the applicant. The

case had already been considered earlier and no

new grievance has been brought out. Hence, it is

barred by rejudicata.

4. We have heard the learned counsel, for the

parties and carefully perused the records.

5. It is seen that the civil suit  
*by*  
was filed ~~as~~ against the punishment / removal.  
  
There was an appeal also preferred against  
this penalty. The applicant states that the  
Civil Court gave him directions to file this  
appeal. Admittedly, that appeal was disposed  
of by the order dated 2.2.83 (Annexure A/11) by  
which the penalty was reduced to reversion to  
the lower post ~~for~~ a period of 2 years with  
future effect. In the ~~x~~ civil suit the  
railways (i.e. the defendants) filed on 7.3.83  
a written statement with a copy to the  
*the*  
applicant. It was stated therein that/original  
penalty of removal which was challenged in  
the suit had been set aside by the appellate  
order and therefore, the cause of action did  
not survive and it should be withdrawn or  
dismissed.

6. It would have been possible for the  
civil courts to pass the final order in the  
civil suit on these facts. But, this case  
was not disposed of and it was pending when  
the Central Administrative Tribunal /set up ~~was~~

and hence it was received on transfer.

7. We have not perused the original records of T.A. 728/86. It is also clear from the order of the Tribunal dated 12.11.87 in that T.A. (Annexure A/5) that / Bench, did not, perhaps, go through the records of the T.A. and ~~to~~ chose to rely on the counsel, of the parties, as can be seen from the extract of the Tribunal's order (Annexure A/5) reproduced below :-

Mr. Kyada states that the petitioner has not ~~has~~ <sup>not</sup> ~~extracted~~ <sup>has</sup> his remedy regarding appeal and that the respondent authorities are (sic) prepared to ~~to~~ <sup>the</sup> appeal. We direct that the representation regarding appeal be filed within 15 days from the date of ~~xxxxxx~~ <sup>the</sup> and this order, be disposed of within 4 months.

It was made to appear that the applicant had not exhausted the remedy of appeal and that the respondents <sup>we</sup> are prepared to hear that appeal. It is for this reason

that direction was issued that a representation regarding the appeal be filed.

6. However, we notice that an appeal had been filed earlier and disposed of on 3.2.83 about which the applicant was fully aware. In the circumstances, if the applicant had any grievance against the appellate order, he should have sought for further relief in 1983 from the civil court or from some other Court.

7. Merely, because a direction was given by this Tribunal on the basis of submissions made by the counsel for the parties, which are at variance with the facts, and a further order was passed at Annexure A/10 i.e. 12.7.88 the applicant will not get a right to agitate further before this Tribunal against Ann.A/20 order for further reduction.

8. It is clear that if the applicant had any grievance and he wanted any further relief the starting point for reckoning limitation was the appellate order dated 2.2.83 (Ann.A/11) and he could have asked for further <sup>u</sup> by amending the <sup>u relief</sup> civil suit or taking <sup>u fresh</sup> ~~first~~ proceedings. In

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(16)

either case, it is clear that this has become a stale matter. The applicant has no right to get any further relief in the special circumstances, of this case. The application is therefore dismissed.. No order as to costs.

*Renu*  
(R.C.BHATT)

MEMBER (J)

*Ver/ 5/1/93*  
(N.V.KRISHNAN)

VICE CHAIRMAN

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