

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Removal

5

O.A. No./380/89

~~PA/NO~~

DATE OF DECISION 05.01.1993

A.K.Limbachia

Petitioner

Mr.D.P.Padhya

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 ? ✓

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)

J U D G M E N T

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.

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 appeal (Ann.A/3) against the order of removal was submitted as directed by the Court.
- 2.3. It was considered and the 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
fromx 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.

...5...

9

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 ~~x~~ 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 substan-

tially. 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

.....8.....

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 ^{may} ~~any~~ 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 *res judicata*.

4. We have heard the learned counsel, for the
parties and carefully perused the records.

Q

5. It is seen that the civil suit was filed ~~xx~~ against the punishment ^{of} 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 applicant. It was stated therein that ^{the} 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 ^{was} /set up ~~xxx~~

and hence it was received on transfer.

7. We have not perused the original records of T.A.728/86. It is ^{however} also clear from the order of the Tribunal dated 12.11.87 in that T.A. (Annexure A/5) that ^{the} 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} ~~extracted~~ his remedy regarding appeal and that the respondent authorities are ^(sic) prepared to ^L appeal. We direct that the representation regarding appeal be filed within 15 days from the date of ~~xxxxxx~~ ^{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 ^{we} 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 ^ureckoning limitation was the appellate order dated 2.2.83 (Ann.A/11) and he could have asked for further ^urelief by amending the ^ufresh ~~first~~ civil suit or taking ~~first~~ proceedings. In

....12....

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.

R.C. Bhatt
(R.C.BHATT)

MEMBER (J)

N.V. Krishnan
5/1/93
(N.V.KRISHNAN)

VICE CHAIRMAN

*SS