

Discharge application

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 134/91

XXX
1991

~~TA No.~~

DATE OF DECISION 30-7-1991

Shri Anthony Sebastian Petitioner

Mr. B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. B.R. Kyada Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R.C. Bhatt : Judicial Member

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.

Shri Anthony Sebastian
C/o. Shri Sebastian,
Chowkidar,
Office of PWI, Western Railway,
HAPA, Jamnagar District.

: Applicant

(Advocate: Mr.B.B.Gogia)

Versus

1. Union of India,
Through:
General Manager,
Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager,
Bombay Central Division,
Western Railway,
Bombay Central.
3. Divisional Railway Manager,
Rajkot Division,
Western Railway,
Kothi Compound,
Rajkot.

: Respondents

(Advocate: Mr.B.R.Kyada)

O R D E R

O.A.No.134/91

Date: 30-7-91

Per: Hon'ble Mr. R.C.Bhatt,

Judicial Member

1. This Original Application under Section 19 of the Administrative Tribunals Act, 1985, is filed by a casual labourer praying that the action of the respondents - Western Railway, informing him on 5th September, 1989 orally that he was treated as having been terminated be declared as illegal, ineffective, null and void and the respondents be directed to treat the applicant in continuous service and he be reinstated with continuity of service and other consequential benefits including backwages.
2. The first question which arises at the time of admission is whether the application is barred under Section 21 of the Administrative Tribunals Act, 1985. This application under Section 19 of the Administrative Tribunals Act is filed on 19.2.1991. The case of the applicant is that

while working as a casual labour under Permanent Way Inspector, Western Railway, Andheri, he fell sick and was not on employment from 21.5.1986 till 5th September, 1989, that when he reported for duty under the PWI, Andheri, he was not permitted to discharge his duties. It is alleged in the application that the applicant was orally advised that his services were dispensed with due to his long absence from the duty. According to the applicant he had made representation on 8th November, 1990 to which there was no response and then he sent notice dated 31.12.1990 through his advocate to which also there was no response. He has alleged that he had earned temporary status by operation of law having completed six months continuous service. He has produced his service card at Annexure A/1.

3. Examining the applicant's service card Annexure A/1, it is clear that he had worked lastly from 21.4.1986 to 26.4.1986 and the endorsement at the end of the service card shows that "left service from 27.4.86 with his own". Therefore, the averment made in the application that he was not in employment on 21st May, 1986 is not correct. He has also averred in the application para-4 (ii) that after 21st May, 1986 he requested for leave from the Permanent Way Inspector, Andheri and he came to Jamnagar to meet his parents and that he fell sick and he had to undergo medical treatment for about 3 years. The service card shows that he was in job upto 26th April, 1986. It is stated by the applicant in his application that he had not informed the PWI about his sickness. There is also no documentary evidence on record to show that he had requested for leave on 21st May, 1986 or thereafter to PWI, Andheri. The service card shows that he was not in service from 27th April, 1986 ^{also} and he had left with his own. The service card shows that he received the service card Annexure A/1 from the respondent's Officer on 5th July, 1989. The applicant's case is that he

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he reported to the PWI, Andheri on 5th September, 1989 and requested him to permit him to discharge his duty and to take him on duty. He has alleged that he gave his service card to the PWI who put remark "left service from 27-4-1986 with his own" and the said permanent way Inspector advised the applicant orally that his name has been struck off from the muster roll and he was deemed to have been terminated from service.

4. The facts of this case very clearly show that applicant worked lastly on 26th April, 1986 and then he did not report to the PWI, Andheri till according to the applicant on 5th September, 1989. He has also admitted in his application that he had not informed the respondents that he was sick till that date. As observed above, there is no evidence produced by the applicant that he had asked for leave to PWI, Andheri on 21st May, 1986 or thereafter. Therefore, it is not possible to believe the applicant that he had asked for leave on 21st May, 1986 or thereafter or that he was not able to report for about three years as he was ill. The service card produced by him should be relied that he had left with his own from 27th April, 1986. The applicant ought to have informed the respondents that he was sick if he was really sick. The report does not show that he had taken leave from PWI, Andheri for going to Jamnagar on 21st May, 1986 as per his averment but that averment also is not correct because his service card shows that he had worked upto 26th April, 1986. The endorsement on the service card by the officer concerned shows date of 5th July, 1989 meaning thereby that on 5th July, 1989 applicant was in possession of the service card which bears the endorsement "left service from 26th April, 1986 with his own". Therefore, under section 21 of the Administrative Tribunals Act, 1985 the applicant ought to have filed this application within

one year from 5th September, 1989 as per Section 21 (a) of the Act. The applicant has averred in the application that he had made representation on 8th November, 1990 which was followed by the notice to the respondents dated 30th November, 1990. It is not shown that the applicant was entitled to make such representation under the relevant service rules applicable to him namely under the Railway Establishment Code. Moreover, even the representation referred to him in his application is dated 8th November, 1990, meaning thereby even according to him, the said representation was made more than a year after the last endorsement was made in the service card. Such representation cannot save the limitation under Section 21 of the Act. The applicant was bound to make this application under Section 19 of the Act latest by 5th July, 1990 but he has made this application as latest as 19-2-91 and hence, the application is barred under Section 21 of the Act.

5. The result is that the application is not admitted as barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and the same is rejected.

Raghul

(R.C.Bhatt)
Judicial Member

M. M. Singh
30/7/81
(M.M.Singh)
Administrative Member