

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 430 OF 1992

~~P.A. No.~~ with

M.A. No. 371 OF 1992

DATE OF DECISION 27-8-1993.

Abdulgani Abdulkarim, Petitioner

Mr. I.S. Suphia, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. N.S. Shevde, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.R. Kolhatkar, Admn. 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 ? ✕

Abdulgani Abdulkarim,
residing at Block No.56-T,
Railway Quarter No.F
Saraspur Railway Colony No.2,
Ahmedabad - 18.

.... Applicant.

(Advocate: Mr. I.S. Supehia)

Versus.

1. Union of India
Notice to be served through
General Manager,
Western Railway,
Churchgate, Bombay.
2. Divisional Commercial Supdnt.,
Ahmedabad Railway Station,
Ahmedabad.
3. Area Superintendent,
Area Superintendent's office,
Western Railway,
Ahmedabad.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 430 OF 1992

with

M.A.No. 371 OF 1992

Date: 27-8-1993.

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

Heard Mr. I.S. Supehia, learned advocate
for the applicant and Mr. N.S. Shevde, learned advocate
for the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
applicant seeking the relief to quash and set aside
the impugned order dated 7th August, 1986 passed by
the Divisional Commercial Superintendent, i.e.,
respondent No. 2 and the order in appeal dated 7th
September, 1987 passed by Area Superintendent, Western

Railway, Ahmedabad, i.e., respondent No.3, and further seeking the relief to direct the respondents to reinstate the applicant in service with full backwages. ^{O.A} This is filed before the Registry on 22nd April, 1992. The impugned appellate order is dated 7th September, 1987, therefore, the applicant filed M.A. 371/92 for condoning the delay in filing this application. The respondents have filed reply to this M.A resisting the application for condonation of delay. The applicant has filed rejoinder.

3. We have heard the learned advocates at length. The applicant in the application for condonation of delay has averred that the applicant was relieved from the service by order dated 22nd June, 1985 on the ground that as he was in unauthorised occupation, he would not be taken back on duty till he vacated the railway quarter. According to him, he challenged the said order by filing Special Civil Application No. 3707/85 before the High Court of Gujarat in which the High Court had directed the respondents to allow the applicant to discharge his duties by way of an interim relief but the respondents removed the applicant from service by the order dated 7th August, 1986, therefore, this applicant filed an application for contempt in December 1986 being Misc. Civil Application No. 23/87 which was heard by the Division Bench on 26th April, 1991. It is averred by the applicant that the Division Bench disposed of the said Contempt Application with observation that as the

main Special Civil Application was pending, the applicant could avail the remedy under order 39(2)(a) of the Civil Procedure Code, 1908. The applicant had filed departmental appeal against the order of removal and was awaiting for a decision of the appellate authority, but during the final hearing of the Contempt Application which was heard on 26th April, 1991, it was brought to the notice of the High Court that the authority had taken decision on 7th September, 1987. According to the applicant's learned advocate, it was only on 26th April, 1991 that the applicant's learnt from the affidavit-in-reply of the respondents in Contempt Application that the authority had taken decision in departmental appeal on 7th September, 1987. The applicant has averred in the application that the said decision was never communicated to the applicant, but after the contempt application was disposed of on 26th April, 1991, his counsel advised him to obtain the copy of the appellate order to take appropriate legal action and ultimately he was able to procure it on 3rd April, 1992. The applicant has therefore, averred in the application that there is no delay in filing this O.A but if it is held technically that the application is filed but there is 3½ years of delay, the same be condoned for the reasons mentioned in the application.

4. The respondents in the reply have contended that during the pendency of this Special Civil Application filed in the High Court, the applicant had filed

departmental appeal on 24th January, 1987 against the order of removal, but the respondents have denied that during the final hearing of the contempt application it was brought to the notice of the High Court that the authority had taken a decision in the appellate proceedings. They have denied that the decision of the appellate authority was never communicated to the applicant. They have contended that the copy of the appellate authorities' order was communicated to the applicant vide letter dated 7th September, 1987 on 8th September, 1987 and the applicant has also issued acknowledgement on that day in token of having received the said letter dated 7th September, 1987, a copy of which is produced at Annexure R-1.

5. The learned advocate for the applicant submitted that the applicant is an illiterate person and though he has signed Annexure R-1, the writing of Ann. R-1 was in English and he was not able to know the contents of that writing. The acknowledgement Annexure R-1 which bears the signature of the applicant in Gujarati shows that he has acknowledged the receipt of the letter mentioned therein. The applicant in his rejoinder has stated that he did not understand the contents of Ann. R-1 and his signature had been obtained by some official on the said paper without informing him as to what was written therein. He has mentioned in rejoinder that no order was served by the respondents authority at the time of obtaining signature on the said

document. He has contended that the respondents have taken advantage of his illiteracy to create a false opinion before the Tribunal. He has stated that the order passed by the appellate authority was never communicated to him as alleged.

6. We have considered ^{all the} averments made in his application and also the rejoinder and we have considered the reply filed by the respondents. The document Annexure R-1 dated 8th September, 1987 shows the signature of the applicant. The writing though is in English, it shows that the document mentioned therein dated 7th September, 1987 was received by him. If the applicant was not able to understand what was written in it he could have

consulted someone or could have written to the respondents as to what was that writing. He could have asked the respondents to explain him as to what was the order, but we do not believe him that the copy of the order was not served on him or that the respondents have taken advantage of his illiteracy. He is not an illiterate person because he has signed the document Annexure R-1 in Gujarati. It is not possible to believe that the applicant would not have enquired about the contents of Ann. R-1 for such a long time and it is not possible to believe him that he came to know for the first time only on 26th April, 1991 that the appellate authority has passed the order on 7th September 1987. The allegation that the respondents have taken

advantage of his illiteracy by obtaining signature of Annexure R-1 is not at all believable. There is no question of taking advantage of his illiteracy because when a document was given to a party, an acknowledgment has to be taken ^{from him about it} / and that is done in his case. The applicant was absolutely negligent ^{and} / careless in not making an enquiry above what was written in Annexure R-1. If he was little vigilant he could have known what the document Annexure R-1 contained, but he was absolutely careless and negligent and he has made out a case about his illiteracy and he has wrongly found fault with the respondents by stating that the respondents had taken advantage of his illiteracy. We have also considered the decision ^{annexed with rejoinder given by the} High Court on 13th June, 1983 in the case of Ram Bhagwan Ahir V/s. State of Gujarat. The learned advocate for the applicant submitted that if there is delay in filing this application, the applicant may not be entitled to backwages but he would be entitled to be reinstated in service. This submission is on the basis that the orders passed by the respondents are illegal. In the instant case, the applicant had to file an application under section 21 of the Administrative Tribunals Act, 1985 within one year from the date of the communication of the order on him and it is communicated to him on 8th September, 1987 as appears from the documents Annexure R-1. There is a

delay of more than 3½ years in this case and as observed above, there is not only no inaction on the part of the applicant, there is gross negligence on the part of the applicant in not enquiring about the contents of Ann.R-1 and we find absolutely no sufficient reason to condone the delay in filing the application, hence M.A.371/92 is dismissed. In view of the dismissal of M.A. 371/92 D.A also deserves to be dismissed. Hence we pass the following order.

ORDER

M.A. 371/92 is dismissed and hence O.A. 430/92 is not admitted and is dismissed.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

R.C. Bhatt

(R.C. Bhatt)
Member (J)

vtc.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Application No. 20A/430/92 with 20A/371/92 of 199

Transrer Application No. _____ Old writ Pet. No.

C E R T I F I C A T E

Certified that no further action is required to be taken
and the case is ift for consignment to the Record Room (Decided).

Dated : 30/03/93

Countersigned :

Section Officer/Court Officer

^{128L}
Sign. of the Dealing Assistant.

INDEX SHEET

NAMES OF THE PARTIES Abdulgani, Abdulkasim

U. of T. & O.R.

SR.NO.	DESCRIPTION OF DOCUMENTS	PAGE
1.	Application.	1 to 14.
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3.	Reply to MA	19 to 22
4.	Rejoinder to MA	23 to 25
5.	Judgment dtd. 28/07/93.	

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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

Submitted: C.A.T./JUDICIAL SECTION.

Original Petition No: 430

of 1992

Miscellaneous Petition No:

of

Shri Abdulgani Abdulkarim Petitioner(s)

Versus.

Wai Gan Respondent(s).

This application has been submitted to the Tribunal by
Shri Dr. Thakur

Under Section 13 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant ^{Advocate} may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

S.O.(J):

D.B.(J):

KNP181191

1. Question of limitation arises
MA filed
2. Full size envelope not
supplied.
Envelopes received
today do
22/10/92

7/5/92

Amor
S/S

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

APPLICANT(S)

Abdulgani Abdulkarim

RESPONDENT(S)

WAT & CoPARTICULARS TO BE EXAMINEDENDORSEMENT AS TO
RESULT OF EXAMINATION.

1. Is the application competent ? *yes*
2. (A) Is the application in the prescribed form ? *yes*
- (B) Is the application in paper book form ? *yes*
- (C) Have prescribed number complete sets of the application been filed ? *yes*
3. Is the application in time ? *yes*
If not, by how many days is it beyond time ? *yes*
Has sufficient cause for not making the application in time stated ? *yes*
4. Has the document of authorisation/ Vakalat Namah been filed ? *yes*
5. Is the application accompanied by D.D./I.P.O. for Rs. 50/- ? Number of D.D./I.P.O. to be recorded. *D.D. no 801 222601*
6. Has the copy/copies of the order(s) against which the application is made, been filed ? *yes*
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? *yes*
- (b) Have the documents referred to in (a) above duly attested and numbered accordingly ? *yes*
- (c) Are the documents referred to in (a) above neatly typed in double space ? *yes*
8. Has the index of documents has been filed and has the paging been done properly ? *yes*

PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT OF
EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application ? *yes*
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ? *m*
11. Are the application/duplicate copy/copies signed. ? *yes*
12. Are extra copies of the application with annexures filed ? *yes*
- (a) Identical with the Original.
- (b) Defective.
- (c) Wanting in Annexures
- No. _____ Page NOs. _____ ?
- (d) Distinctly Typed ?
13. Have full size envelopes bearing full address of the respondents been filed ? *no*
14. Are the given addressed, the registered addressed ? *yes*
15. Do the names of the parties stated in the copies, tally with Name(s) those indicated in the application ? *yes*
16. Are the translations certified to be true or supported by an affidavit affirming that they are true ? *yes*
17. Are the facts for the cases mentioned under item No 6 of the application ? *yes*
- (a) Concise ?
- (b) Under Distinct heads ?
- (c) Numbered consecutively ?
- (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for, stated with reasons ? *yes*

KNP30192.

checked
Blister

CAST / 153 / 92
dt. 22 / 4 / 92

(1)

Home 801 222601

Before the Central Administrative Tribunal,

Ahmedabad.

Original Application No. 430 / 92

Applicant : Abdulgani Abdulkarim

Vs.

Respondents : Union of India and
others.

INDEX:

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4.	'A2'	Copy of the order dated 7-9-87 passed by the Appellate Authority.	23

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1/9

Before the Central Administrative Tribunal. Ahmedabad.

Original Application No. 430/92

Applicant : Abdulgani Abdulkarim

Vs.

Respondents : Union of India & Ors.

Details of Application:

1. Particulars of the applicant:

- i) Name of the applicant : Abdulgani Abdulkarim
- ii) Name of the father : Abdulkarim
- iii) Designation & Office : Divisional Commercial
in which employed. Superintendent, Ahmedabad
Railway Station, Ahmedabad.
- iv) Office Address : Divisional Commercial
Superintendent, Ahmedabad
Railway Station, Ahmedabad.
- v) Address for the service: Abdulgani Abdulkarim
of all notices. Block No.56-T,
Railway Quarter No.F,
Saraspur Railway Colony
No.2, Ahmedabad-18.

2. Particulars of the respondents:

2

- 2 -

- 1) Name and Designation : (1) Union of India
of the respondents Notice to be served
through General Manager,
Western Railway,
Churchgate, Bombay.
- (2) Divisional Commercial &
Superintendent,
Ahmedabad Railway Station,
Ahmedabad.
- (3) Area Superintendent,
Area Superintendent's office,
Western Railway,
Ahmedabad.

- 2) Office address of the : ----- As above-----
respondents.
- 3) Address for the service: ----- As above -----
of all notices.

3. Particulars of the order against which the application is made:

The application is against the following order:

- (i) Order No. : E 308/1/178/85
- (ii) Date : 7-9-87
- (ii) Passed by : Area Superintendent,
Ahmedabad.
- (iii) Subject, in brief : Removal from service.

...3/-

3 (3)

- 3 -

4. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants the redressal is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

The applicant further declares that the application is within the limitation, as prescribed under sec.21 of the Administrative Tribunals Act, 1985.

6. Facts of the case:

6.1 By way of present petition the applicant begs to challenge the legality and validity of arbitrary and illegal action of the respondents in removing the applicant from service for the alleged misconduct of unauthorised occupation of railway quarter notwithstanding the fact that ~~the~~ no adjudication proceedings have been initiated against the petitioner-applicant under the Public Premises Unauthorised Occupation Act and the applicant is not adjudged as unauthorised occupant till date by the competent authority and, therefore, the charge itself is not sustainable. The applicant begs to challenge the impugned action on the ground that the same is absolutely arbitrary, unjust and in flagrant violation of principles of natural justice inasmuch as before including the punishment the respondent autho-

rities have neither supplied report of inquiry Officer nor the applicant is given any opportunity to make representation against the quantum punishment though the same is mandatory requirement under Rule 6 of the Railway Servants (Disciplinary & Appeal) Rules, 1968.

6.2 The applicant who was appointed as a Parcel Porter in the year 1967 at Ahmedabad Railway Station on a monthly salary of Rs. 75. The applicant was discharging his duties with utmost sincerity and best satisfaction to the respondents from the date of his appointment. The applicant had made an application for allotment of quarter immediately after his appointment and was awaiting for his turn for the allotment. The applicant was allotted railway quarter at Asarwa railway colony on 6-2-70 and started residing there. The applicant submits that however to the great shock and surprise of the applicant without any legitimate reasons the Railway Administration compelled the applicant to vacate the quarter in the year 1974. The applicant had to vacate the quarter under the threat of termination from service.

6.3 The applicant respectfully submits that on 3-6-84 one Ismile I. retired from service of the

respondent railway and, therefore, he vacated the railway quarter. Since the applicant was regularly allotted the quarter in the year 1970 which he was compelled to vacate without any legitimate reasons by railway, the applicant immediately made request to the Administration to permit the applicant to occupy the said quarter as the applicant was compelled to live on footpath with his family in a miserable position. The applicant was ~~terminated~~ permitted to occupy the aforesaid quarter in the year 1984 by the Administration considering the miserable condition of the applicant and his family.

6.4 The applicant respectfully submits that though the applicant was permitted to occupy the quarter by the Railway Administration to the great shock and surprise of the applicant, the applicant was suspended vide an order dated 24-7-84 by the Station Superintendent Ahmedabad. The applicant was, therefore, constrained to move Hon'ble Gujarat High Court by filing the writ petition being Special Civil Application No.5968/84 wherein vide an order dated 1-2-85 on a statement made by the advocate for the respondent authorities inquiry was directed to be completed by 28-2-85. The applicant was accordingly disposed of.

6.5 The applicant submits that however before any inquiry was completed as directed by the Hon'ble High

Court as mentioned hereinabove vide an order dated 22-6-85 the applicant was relieved from the service on the ground that as the applicant was in unauthorised occupation he shall not be taken back on duty till the applicant does vacate the railway quarter. The said order was challenged by the applicant by filing another writ petition before the Hon'ble Gujarat High Court being Special Civil Application No.3707/85 wherein his Lordships G.T.Nanavati, J. vide an order dated 3-12-85 was pleased to grant interim relief directing the respondents to permit the applicant to resume his duties. The said petition is still pending.

6.6 The applicant submits that despite the afore-said interim relief vide an order dated 7-8-86 the applicant was removed from service. Annexed hereto and marked as Annexure 'A' is a copy of the said order dated 7-8-86.

Ann. 'A'

Since the interim relief granted by the Hon'ble High Court vide an order dated 3-12-85 was still in force, the respondent authorities could not have removed the applicant from service as done

...7/-

vide an order dated 7-8-86 which constrained the applicant to file Contempt Application before the Hon'ble High Court being Misc. Civil Application No.23/87 in the month of December 1986. The aforesaid Contempt Application was admitted and thereafter was listed for final hearing in 1990 and ultimately was heard by the Division Bench on 26-4-91. The Hon'ble Division Bench observed ^{as} that/the main petition is pending the applicant cant avail the remedy under order 39(2)(A) of CPC and accordingly contempt petition was withdrawn with the said observation.

Ann. 'A1'

6.7 The applicant submits that it is pertinent to note that during the aforesaid proceedings the applicant had filed Departmental Appeal dated 24-1-87 against the order of removal dated 7-8-86. Annexed hereto and marked as Annexure 'A1' is a copy of the said memo of Departmental Appeal dated 24-1-87. The applicant was awaiting for the order of the appellate authority. It came to the notice ~~that~~ of the applicant in the contempt proceedings before the Hon'ble High Court that the appellate authority had taken decision on the appeal on 7-9-87 which was submitted by the counsel appearing on behalf of the respondents in their affidavit in reply. It is pertinent to note that as such the said decision by the appellate authority was never communicated to the applicant. However, after the contempt petition was disposed of the

8

- 8 -

applicant was advised to obtain a copy of the order passed by the appellate authority so as to take appropriate legal actions. Since the applicant is illiterate and has lost balance of mind on account of loss of job, it was a very difficult task for the applicant to obtain the copy of the order passed by the appellate authority dated 7-9-87. Ultimately with the help of the member of Railway Employee Union the advocate for the applicant could procure the copy of the order dated 7-9-87 on 3-4-92 which is annexed herewith at Ann. 'A2'.

Ann. 'A2'

6.8 The applicant submits that the charge levelled against the applicant was that the applicant had unauthorisedly occupied railway quarter and had, therefore, committed serious misconduct. It is pertinent to note that the chargesheet was issued by Station Superintendent whereas order of punishment is passed by the Divisional Commercial Superintendent. The appointing authority is Divisional Railway Manager thus, the order of punishment is passed by authority other than appointing authority and, therefore, the said order is ex facie without authority and competents. The applicant submits that the applicant is not supplied the copy of the inquiry report at any point of time though the same is necessary. Moreover, the applicant is not given any opportunity of making representation as required

...9/-

under Rule 6 of the Railway Servant (Disciplinary & Appeal) Rule, 1968 which is a mandatory requirement. Thus, the impugned order is passed in flagrant violation of principles of natural justice and the same is vitiated on account of noncompliance of Rule 6 of the Railway Servant (Disciplinary & Appeal) Rules.

6.9 The order passed by the Divisional Commercial Superintendent, dated 7-8-86, in removing the applicant from service is absolutely arbitrary and against the principles of natural justice, inasmuch as, prior to passing the aforesaid order, neither the disciplinary authority has given any show cause notice with regard to the contemplated punishment, nor I have been given any opportunity of hearing. I further submit that the impugned order has been passed by the authority pursuant to an ex parte inquiry proceedings and therefore, the impugned order is ex facie arbitrary, illegal, unjustified and bad in law and, therefore, the same requires to be quashed and set aside.

6.10 The impugned order is passed by the authority in a mechanical manner and the same reflects total non-application of mind, inasmuch as the order does not reveal any reasons for imposing the highest punishment of removal from service. The Disciplinary Authority ought to have passed the order only after justifying

the decision on the basis of cogent material and reasons. However, the impugned order is totally silent and the same is, therefore, arbitrary, unjustified and bad in law.

6.11 The authority below has not discussed anything in the order with regard to the quantum of punishment and the order, therefore, suffers from total non-application of mind. The authority below ought to have appreciated that in my long service career of 17 years, I have never given any cause of complaint to the authority and my entire service career is without any blemish. The authority ought to have appreciated that by no stretch of imagination, the alleged charge can be said a grave misconduct, so as to call for such a drastic punishment of removal from service. The authority has failed to appreciate that by removing me from service, would lead to an economical death and it would be practically impossible to survive in these days of hardship, with a large family to look after. Since the impugned punishment is too harsh and disproportionate looking to the gravity of charges, the same requires to be quashed and set aside.

6.12 The authority below failed to appreciate that the charge levelled against the applicant is not proved by any cogent and direct evidence, and, therefore, the impugned decision based on the same, cannot be sustained in the eyes of law.

6.13 The authority below ought to have appreciated that the impugned order is bad in law, inasmuch as the Inquiry Officer's report is not supplied to the applicant and the the applicant is not given any opportunity to examine the witnesses and, therefore, the inquiry proceedings are defective and contrary to the provisions of law and, therefore, the impugned order, based upon the said proceedings, is unsustainable.

6.14 The impugned order has been passed by the authority, who is neither the Appointing Authority, nor the competent authority to passé the impugned order and hence the same requires to be quashed and set aside.

6.15 The impugned order is unsustainable in the eyes of law, inasmuch as proper machinery is provided under the Eviction of Unauthorised Occupants Act, if it is found that the applicant was in occupation of the quarter unauthorisedly. However, without resorting to the proper machinery, the authority ought not to

have resorted to short cut, by holding the appellant guilty for serious misconduct on the allegation that the applicant had occupied the quarter unauthorisedly. It is submitted that without proper adjudication, as provided under the regular machinery, it is not open to the authority to punish the appellant by holding the appellant guilty for misconduct without following proper procedure under the law.

6.16 That even otherwise, the impugned order requires to be quashed and set aside, as being arbitrary, unjustified, illegal, null and void.

7. Relief sought:-

The applicant prays for the following relief:

- (A) Your Honour be pleased to quash and set aside the impugned order dated 7-8-86 passed by the Divisional Commercial Superintendent and order in appeal dated 7-9-87 passed by Area Superintendent Western Railway, Ahmedabad and further be pleased to direct the respondents to reinstate the applicant with ~~with~~ full back wages and all other consequential benefits;

8. Interim relief, if any:

The applicant prays for following interim relief:-

(B) Your Honour be pleased to direct the respondents not to dispossess the applicant from the railway quarter occupied by him pending the admission, hearing and final disposal of this application;

(C) Your Honour be pleased to grant such other and further reliefs, as are deemed fit, in the interest of justice.

9. Details of remedies exhausted:-

The applicant declares that the applicant has exhausted all the remedies available to him.

10. Matter not pending with any other Court/s, etc.:-

The applicant further declares that the matter regarding this application, which has been made, is not pending in any other court or with any other authority or before any other Bench.

11. Particulars of Postal Order in respect of application fee:

(i) No. of I.P.O.:- 8 01 222601

- (ii) Name of the issuing Post Office. :- *Govt. High Court (P.O)*
- (iii) Date of issue of T.P.O. :- *22-6-92*
- (iv) Post Office at which payable. :-

12. Details of Index:

Index containing the details of documents is enclosed.

13. List of enclosures:-

Annexure 'A' - Impugned order of removal dated 7-8-86 passed by the respondent.

Annexure 'A1' - Copy of memo of Departmental Appeal dated 24-1-87.

Annexure 'A2' - Copy of the order dated 7-9-87 passed by the Appellate Authority.

(Sd/-)
(D. M. Narain) ...15/-
Advocate

Verification:

I, Abdulgani, son of Abdulkarim, age
years, working as Parcel Porter, resident of
Ahmedabad, do hereby verify that the
contents from para 1 to 13 are true to my
personal knowledge and belief and that I
have not suppressed any material
facts.

Place : Ahmedabad

Date : 22-4-92

(Abdulgani Abdulkarim)

Signature of the Applicant.

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A

16

Annexure "A"

Notice of Imposition of Penalty (NIP)
under Rule 6 of the Railway Servants
(Discipline & Appeal) Rules, 1968.

No: E308/1/178/85

Office : ARs ADI
ADI

Date : 7.8.1986.

Through : S.S. ADI

1. You are hereby informed that the following penalty has been awarded to you :

Removal from Service
SS ADI S.F. 5

This has reference to
Emp 795 dt 21.9.84 &
DAR enquiry ADI

2. You are required to acknowledge receipt of this Notice on the form subjoined.

Sd/-
Civil. Commercial Supdt.
W.R. Ahmedabad.

Name : Abdulqani A.

Post : PL Porter ADI

(Binding case enclosed) - (not typed)

Unauthorized occupation of Railway quarter
No. T 56/F on 3.7.1984 after vacating the quarter
by Shri Ismail S., on 26.6.1984 is a clear case of
violation of Service Conduct Rules. This unauthori-
sed occupation is proved during the DAR enquiry
conducted by the SO and TI ADI and report submitted
vide his letter No. T4 dated 22.2.1985. In this
serious misconduct and breach of Service Conduct
Rules, Shri Abdulqani A. Karim is held responsible.
He is, therefore, awarded penalty of Removal from
service.

TRUE COPY
Advocate

Annex- 'A'

17

(11)

From:- Abdulgani Abdulkarim,
Block No.56-T,
Railway Quarter No.F,
Saraspur Railway Colony No.2
AHMEDABAD - 380 018.

January 24, 1987.

To,
The A.R.S.,
Western Railway,
AHMEDABAD.

Dear Sir,

Sub:- Departmental Appeal against the order of
removal from service, dated 7-8-1986,
passed by the Divisional Commercial
Superintendent, Ahmedabad.

1. Being aggrieved by the order of
removal from service, pursuant to the disciplinary
action, passed by the Divisional Commercial Superintendent,
Western Railway, Ahmedabad, dated 7-8-1986, I
crave leave to file this departmental appeal for
your honour's kind consideration.

2. I state that I was appointed in service
as a Parcel Porter at Ahmedabad Station in the
year 1967. I state that immediately after my
appointment, I had applied for railway quarter.
I further state that I was chargesheeted by the
authority for unauthorised occupation of the
railway quarter and it appears that an ex parte
inquiry proceeding has been proceeded against me.

18

-2-

I state that no show cause notice has been issued upon me with regard to the contemplated punishment by the authority. I state that pursuant to the said exparte inquiry proceedings, without giving any notice, I have been removed from service by the Divisional Commercial Superintendent, vide his order dated 7-8-1986.

I state that the aforesaid order has been passed by the authority in flagrant violation of the principles of natural justice, inasmuch as neither I have been given any notice, nor I have been allowed to participate in the inquiry proceedings and I am totally in dark about all the proceedings, which have been conducted by the disciplinary authority. In this set of circumstances, I am filing this departmental appeal for the redressal of grievance and justice, on the following amongst other grounds:-

3.

GROUNDS

- (1) The order passed by the Divisional Commercial Superintendent, dated 7-8-1986, in removing the appellant from service is absolutely arbitrary and against the principles of natural

justice, inasmuch as , prior to passing the aforesaid order , neither the disciplinary authority has given any show cause notice, with regard to the contemplated punishment, nor I have been given any opportunity of hearing. I further submit that the impugned order has been passed by the authority pursuant to an exparte inquiry proceedings and therefore, the impugned order is ex-facie, arbitrary, illegal, unjustified and bad-in-law, and the same, therefore, requires to be quashed and set aside.

- (2) The impugned order is passed by the authority in a mechanical manner and the same reflects total non-application of mind, inasmuch as the order does not reveal any reasons for imposing the highest punishment of removal from service. The Disciplinary Authority ought to have passed the order only after justifying the decision on the basis of cogent material and reasons. However, the impugned order is totally silent and the same is, therefore, arbitrary, unjustified and bad-in-law.

- (3) The authority below has not discussed anything in the order with regard to the

290

-4-

quantum of punishment and the order, therefore, suffers from total non-application of mind. The authority below ought to have appreciated that in my long service career of 17 years, I have never given any cause of complaint to the authority and my entire service career is without any blemish. The authority ought to have appreciated that by no stretch of imagination, the alleged charge can be said a grave misconduct, so as to call for such a drastic punishment of removal from service. The authority has failed to appreciate that by removing me from service, would lead to an economical death and it would be practically impossible to survive in these days of hardship, with a large family to look after. Since the impugned punishment is too harsh and disproportionate looking to the gravity of charges, the same requires to be quashed and set aside.

- (4) The authority below failed to appreciate that the charge levelled against the petitioner is not proved by any cogent and direct evidence, and therefore, the impugned decision, based on

2/13

-5-

the same, cannot be sustained in the eyes of law.

- (50) The authority below ought to have appreciated that the impugned order is bad-in-law, inasmuch as the inquiry officer's report is not supplied to the appellant and the appellant is not given any opportunity to examine the witnesses and therefore, the inquiry proceedings are defective and contrary to the provisions of law and therefore, the impugned order, based upon the said proceedings, is unsustainable.
- (6) The impugned order has been passed by the authority, who is neither the Appointing Authority, nor the competent authority to pass the impugned order and hence, the same requires to be quashed and set aside.
- (7) The impugned order is unsustainable in the eyes of law, inasmuch as proper machinery is provided under the Eviction of Unauthorised Occupants Act, if it is found that the petitioner was in occupation of the quarter unauthorizedly. However, without resorting to the proper machinery, the authority ought not to

22

-6-

have resorted to short cut, by holding the appellant guilty for serious misconduct, on the allegation that the petitioner had occupied the quarter unauthorizedly. It is submitted that without proper adjudication, as provided under the regular machinery, it is not open to the authority to punish the appellant by holding the appellant guilty for misconduct without following proper procedure under the law.

- (8) That even otherwise, the impugned order requires to be quashed and set aside, as being arbitrary, unjustified, illegal, null and void.

4. I request YOUR HONOUR to give personal hearing in the interest of justice, prior to passing any final order.

Thanking you,

Yours faithfully,

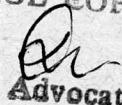
AMMEDABAD

(ABDULGANI ABDULKARIM)

DATED: /1/1987.

A P P E L L A N T

TRUE COPY


Advocate

Annex. A2

23 (14)

WESTERN RAILWAY

No.E.308/1/178/85

Area Supdt.'s Office,
Ahmedabad,
Dt.7.9.1987.

To

Shri Abdulgani Abdulkarim,
ex.Parcel Porter,
Ahmedabad.

Through Ss AD

Sub: D.A.R. Action.

Ref: Your appeal dated 24/27-1-1987.

The appellate authority viz. Area Superintendent has carefully considered your above appeal and decided as under:-

"I have gone through the appeal dt.24/27-1-87 submitted by Shri Abdulgani Abdulkarim, ex.PLP. I had also called him for a personal interview.

I find that his contentions that the enquiry was conducted ex.parte and he was not given opportunity to defend himself are not correct. When he was asked about these facts, he simply mentioned that the appeal has been prepared by his advocate and he does not know anything about what is written in the appeal. He was also asked whether he was willing to vacate the house unauthorisedly occupied by him, he stated that he was not in a position to vacate the house.

His contention that the Enquiry Officer's report was not supplied to him was also wrong as it was sent to him along with the NIP.

In view of his continued adamancy in defying administrative orders to vacate the house unauthorisedly occupied by him which has already been proved, I do not find any reason to change the penalty already imposed on him."

Please acknowledge receipt.

For Area Superintendent,
W.Rly., Ahmedabad.

*Recd. by the
P.O. 8/9/87*

*324
7/9/87*

24/5/87
*Ps. Signature was taken
on two papers - hand
written half sheet on
8/9/87*

TRUE COPY

Advocate

MA/SH/371/1992 dt: 28/9/92
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD.

OA/430/1992

MA/SH/371/1992 IN OA/430/1992

Sh. Abdulgani Abdulkalam

APPLICANT (S)

Sh. D.M. Thakker.

COUNSEL

VERSUS

402 logs.

RESPONDENT (S)

Sh. N.S. Shevale

COUNSEL

Date	Office Report	Orders
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Condone delay
of delay

Adv copy ~~not~~ served
on other side.

12/11/82 PA
31/12/82 PA

Date	Office Report	Orders
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Date	Office Report	Orders
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✓ OA/430/92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD.

MISC. CIVIL APPLICATION NO. 1371/92

IN
ORIGINAL APPLICATION NO. 153/92

Abdulgani Abdulkarim
Block No.56-T,
Railway Quarter No.F,
Saraspur Railway Colony No.2,

Ahmedabad.

.. Applicant

Vs.

1. Union of India
Notice to be served
through the
General Manager,
Western Railway,
Churchgate,
Bombay.

2. Divisional Commercial
Superintendent,
Ahmedabad Railway Station,
Ahmedabad.

3. Area Superintendent,
Area Superintendent's office,
Western Railway,
Ahmedabad.

.. Respondents

Copy served
to
M. S. H. Served
Advocate
appeal to Mr.
D. M. Thakkar
JSCC
21-10-92

1214
31/3

Application for delay condonation:

Most Respectfully Sheweth:

1. The applicant has filed the above application challenging the action of the respondents in removing the applicant from the service for the alleged misconduct of unauthorised occupation of railway quarter.

2. The applicant submits that vide an order dated 22-6-85 the applicant was relieved from the service on the ground that as the applicant was in unauthorised occupation he shall not be taken back on duty till the applicant vacates railway quarter. The said order is challenged by the applicant by filing a writ petition before the Hon'ble Gujarat High Court being Special Civil Application No.3707/85 which is till pending. The Hon'ble High Court vide an order dated 3-12-85 had directed the respondents to discharge his duties despite the aforesaid interim order of the Hon'ble High Court vide an order dated 7-8-86 the applicant was removed from the service. The applicant had, therefore, filed a Contempt Application in the month of December, 1986 which was numbered as Misc. Civil Application No.23/87. The said Contempt Application was admitted and ultimately it was finally heard by the Hon'ble

Division Bench on 26-4-91. The Hon'ble Division Bench disposed of the said matter with observation that as the main petition is pending the applicant can avail the remedy under Order 39(2)(A) of the C.P.C., 1908.

3. The applicant submits that during the pendency of the aforesaid proceedings the applicant had filed a Department Appeal on 24-1-87 against the order of removal dated 7-8-86. The applicant was awaiting for the decision of appellate authority. However, during the final hearing of the Contempt Application which was heard on 26-4-91 it was brought to the notice of the Hon'ble Court that the authority has taken decision on 7-9-87 by the Counsel appearing on behalf of the respondents in their affidavit in reply. It is pertinent to note that as such the decision of the authority was never communicated the applicant. However, after the Contempt Petition was disposed of on 26-4-91 the Counsel for the applicant immediately advised to obtain a copy of the order passed by the appellate authority so as to take appropriate legal action. The applicant submits that the applicant is totally illiterate person who had lost balance of mind on account of loss of job and the distressed situation of his family could not obtain the copy of

the order dated 7-9-87 from the respondents despite repeated approach. Ultimately with the help of the member of Railway Employee Union filed for the application would procure the copy of the order only on 3-4-92. The applicant has thereafter filed the Original Application on 22-4-92.

4. The applicant submits that as mentioned in the forgoing paras the copy of the order passed by the appellate authority dated 7-9-87 ~~from the~~ was not at all served upon the applicant and as the applicant could procure the same on 3-4-92 from the respondent authority as such there is no delay in filing the original application. However, if it is held technically that the application is filed in delay there would be a delay of about 3½ years. The applicant submits that since the delay in question has occurred for the bonafide reasons as mentioned in this application coupled with the fact that the impugned action of removing the applicant from the service is a nullity. the delay in question may be condoned in the interest of justice so as to enable the applicant the chance of challenging the action on merits.

5. The applicant, therefore, prays that:

- (A) Your Honour be pleased to grant this application by condoning the delay in question in the interest of justice;
- (B) Your Honour be pleased to grant such other and further reliefs, as are deemed fit, in the interest of justice.

Ahmedabad.

Dated: 22 -7-92

(D.M. Thakkar)

Advocate for the applicant

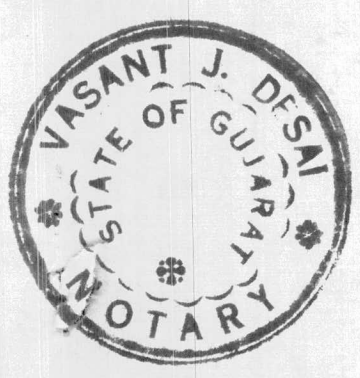
Serial No. 3652/92 19
Book No. 10
Page No. 97
Date 24-7-92
V. G. Desai
Notary

Verification:

I, *Abdulgani Abdulkarim*,
applicant, do hereby state that what is stated
above is true.

solemnly affirmed at *A'bad* on this 24th
day of July, 1992.

અબ્દુલગાની અમી
(Deponent)

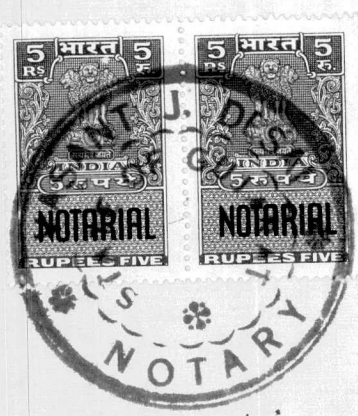


SOLEMNLY AFFIRMED
BEFORE ME

Before me

V. G. Desai
NOTARY

Filed by Mr. *D. M. Thakkar*
Learned Advocate for Petitioners
with second set & *mail*
copies copy served/not served to
other side



By 31/7/92 By Registrar *A. B. ...*
A'bad

Submitted,

The Appl. has not in order & defects indicate below.

1. Adv copy not secured on other side

2. Necessary Verification is not in proper.

Performer

obj. letter have been issued to intur of approval.

WP
28/9

S.O. S. Jey

28/9
DY Reg. _____

Submitted,

In spite of the fact that two remittances requesting the Advocates to remove defects above defects have been issued the defects have not been removed. We may place matter before the Hon'ble Bench for appropriate action.

WP
20/11

S.O. CJ

Phaniraman
20/11/92

DY Reg. _____

Submitted,

Above obj. has been removed and may be given to concerned official for Rxation of date.

WP
22/11

S.O. CJ

Phaniraman
22-X-92

DY Reg. _____
22/11/92

19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL A-T A-HMEDABAD

M.A.NO.371 OF 1992

IN

O.A.STAMP NO.430 OF 1992

Abdul Gani Abdul Karim..... ... Applicant

V/s

Union of India & Ors..... ... Respondents

WRITTEN STATEMENT ON
BEHALF OF RESPONDENTS

The respondents humbly beg to file written statement to the application for condonation of delay as under:-

1. That the undersigned Divisional Personnel Officer, Western Railway, Baroda, is empowered and authorised to file this written statement on behalf of the respondents and the same is being filed under his signatures.
2. Contents of para 1 of the application are not fully true and are not admitted. The averments are misleading and twisted. However, it is not disputed that the applicant has challenged the order of removal passed by the Disciplinary Authority.

Received copy.
24.
18.2.93

Reply filed
by Mrs. S. K. Shinde
Adv. in duplicate,
H.P. Choudhary
Court-2.

3. Contents of para 2 of the application are not fully true and are not admitted. It is not admitted that vide order dated 22.6.85 the applicant was relieved from service on the ground that as the applicant is in unauthorised occupation he shall not be taken back on duty till the applicant vacates the quarter. It is submitted that the applicant was charge-sheeted vide No.EMP/795, dated 24.9.84 stating inter alia that the applicant has ^{unauthorisedly} occupied the Railway Quarter No.T56/F ~~unauthorisedly~~ which is vacated by the shunting jamadar Shri Ismail N. on 26.6.84. It is not disputed that the applicant filed Special Civil Application No.3707/85 in the High Court of Gujarat against the impugned action of the respondents. It is not admitted that the Hon'ble High Court vide order dated 3.12.85 has directed the respondents to discharge the duties of the applicant but despite of the aforesaid interim order of the Hon'ble High Court, the applicant was removed from the service vide order dated 7.8.86. It is submitted that the Hon'ble High Court of Gujarat passed an order dated 3.12.85 to the effect that by way of interim relief, the respondents are directed to permit the applicant to resume his duties. The respondents rely on the said order as and when necessary. It is not disputed that the applicant filed Misc. Civil Application No.23/87 in Special Civil Application No.3707/85 & under the Contempt of Court Act for the

was alleged contempt of the Order dated 3.12.85. It is not disputed that the said contempt application MCA No.23/87 was decided by the Hon'ble High Court on 26.4.91 with a observation ~~direction~~ that the applicant may avail of remedy under Order 39 (2) (A) of the Code of Civil Procedure Code.

Accordingly, the said contempt application was disposed of. It is submitted that the respondents had not committed any contempt of the Hon'ble High Court by flouting the order dated 3.12.85. The respondents had filed an Affidavit in reply to the said contempt application stating correct facts.

4. Contents of para 3 are not fully true and are not admitted. It is not disputed that during the pendency of the aforesaid Writ Petition the applicant filed a departmental appeal dated 24.1.87 against the order of removal dated 7.8.86. It is denied that the applicant was thereafter awaiting for the decision of the Appellate Authority but during the final hearing of the Contempt Application, it was brought to the notice of the Hon'ble High Court that the authority has taken a decision on 7.9.86 in the aforesaid appeal filed by the applicant. It is denied that the decision of the Appellate Authority was never communicated to the applicant. It is denied that after the disposal of the contempt application on 26.4.91 the counsel for the applicant immediately advised the

applicant to obtain a copy of the order passed by the Appellate Authority so as to take appropriate legal action. It is denied that the applicant is totally illiterate person who had lost balance of mind on account of loss of job and ^{under} the distressed situation of his family could not obtain copy of the order dated 7.9.87 from the respondents despite repeated approaches as alleged. It is denied that the applicant could procure the copy of the said order only on 3.4.92. It is submitted that the copy of the Appellate Authority's order was communicated to the applicant vide letter dated 7.9.87 on 8.9.87 and the applicant has also issued acknowledgement on that day in token of having received ^{2erox copy of his acknowledgement is produced herewith} letter No.E 308/1/178/85, dated 7.9.87. Hence the ^{as Ann-A/10} averments of the applicant that the copy of the Appellate Authority's order is not served on him is denied by the respondents.

5. Contents of para 4 are not fully true and are not admitted. As stated herein above, the order of the Appellate Authority was communicated to the applicant vide letter dated 7.9.87 on 8.9.87. It is denied that the applicant could procure a copy of said order only on 3.4.92 from the respondent authority and as such there is no delay in filing the original application. It is denied that there is a delay of about 3½ years in filing

81

: 5 :

the present original application. It is submitted that there is delay of more than three years and seven months in filing the present original application from the date of accrual of cause of action to the applicant. It is denied that the delay in question has occurred due to bonafide reasons mentioned by the applicant in the present Misc. Application coupled with the fact that the impugned action of removing the applicant from the service is a nullity and the delay in question deserves to be condoned in the interest of justice so as to enable the applicant to take a chance of challenging the action on merit. It is submitted that the orders which are challenged as nullity are also required to be challenged within the period of limitation from the date of accrual of cause of action. It is submitted that the applicant has not explained the period of delay and has not shown any sufficient cause for condoning delay in filing the present original application and hence the same deserves to be rejected.

6. The applicant is not entitled to any of the relief claimed in para 5 of the application.

In view of what is stated above, the applicant's application for condonation of delay in filing the original application may be dismissed with costs.
~~costs.~~

: 6 :

VERIFICATION.


I, B.N.Meena, age about 35 years, son of
Shri R.N.Meena, working as Divisional Personnel Officer,
Western Railway, Baroda and residing at Baroda do hereby
state that what is stated above is true to my knowledge
and the information received from the record of the case
and I believe the same to be true. I have not suppressed
any material facts.

Baroda

Dated: .1.1993

1.2.93

18.2.93


Divisional Personnel Officer,
Western Railway, Baroda.


Adm. for Reg

र. र. व. र.

तुरत गाड़ी संदेश U. T. M.

(121) 77 बी TTB Annexure 1

8-9-87 तत्काल ध्यान देकर उत्तर भेजिए
For IMMEDIATE ATTENTION and REPLY

From Abdulgair Abdul Karim
To Ex. No. 121
Address
Place

विभागीय अनुदेश समस्त सेवा पंजी ग्राहकों को तुरत गाड़ी से सेवा प्राप्त
SERVICE INSTRUCTIONS TO BE FORWARDED BY FASTEST
AVAILABLE PASSENGER SERVICE

WRP. IX. 2, 20/1 3/3 12-83, 4/40 Bus X 200.

Sub: DCS ADI E - 308/1/128/55-87-9-87

4. No. 1
I herewith acknowledge the receipt of the
above letter issued to me

Yours faithfully


X. सज्जदगानी

(इस संदेश को आगे पृष्ठ भाग पर लिखें Carry forward this message on reverse.)

(क. प. उ. प. ट. ओ.)

22

12



.. Applicant.

.. Respondents.

I, Abdulgani Abdulkarim, the applicant herein,
on solemn affirmation state as under:-

Best copy
125
100
7-383

Friedrich
Ludwig
Eckstein
Horn Co.
member

Real Rev1
H-8 82
5:10 PM

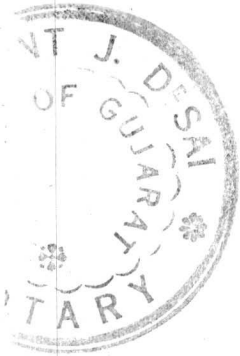
2. I state the averments and contentions of Paragraphs No.1 & 2 of the reply are of formal nature and therefore, I do not deal with the same. However, I categorically deny the assertions made in Para.2 to the effect that the averments made in the main application are misleading and twisty.

3. I state that the averments and the details of different proceedings given in Para.3 of the reply are is a matter of record and therefore, it does not required to be dealt with by me. I crave leave to rely upon the original records as and when it is necessary during the course of hearing.

4. I state that the averments as contained in Para.4 of the reply are disputed and denied by me as these are not true. I categorically state that I have not received the copy of the order passed by the Appellate authority as alleged in the said paragraph vide letter dated 7.9.1987. I state that I am illiterate person and I do not understand, read or speak English language. I state that from the annexure produced at R-1 alongwith the reply by the respondents is written in English and I do not understand the contents thereof. I state that from the said document it appears that my signature appears to have been obtained by some official on the said paper without informing me as to what is written therein. I state that no order was served by the respondent authorities

at the time of obtaining signature on the said document. I state that the respondent authorities have taken advantage of my illiteracy as it transpires from the said documents and now, the same is sought to be used against me to create a false impression before this Hon'ble Tribunal. I categorically state that the copy of the order passed by the appellate authority was never served upon me as alleged.

5. I state that the impugned action of the respondents in removing me from service is nullity in as much as it is settled law that the charge of unauthorised occupation of quarter does not constitute any misconduct as per the Conduct Rules and therefore, no such disciplinary action could have been taken against me for the alleged misconduct and there, the disciplinary authority could not have inflicted any such punishment upon me. I state that therefore, the impugned action of removing me from service is nullity and in that case, the objection of delay cannot be sustained. I state that as a matter of fact, there is no delay in view of the facts and circumstances mentioned in the application. I state that in view of the peculiar facts and circumstances of the case, it is necessary to decide the original application merits so as to render substantial justice by condoning the delay, if it is held that there is delay in filing the application.



28

: 4 :

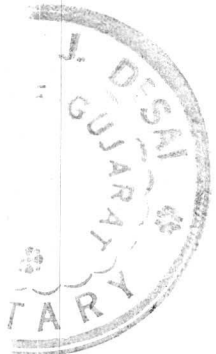
I state that in view of the above facts and circumstances, it is necessary in the interest of justice to allow the application for delay condonation.

Ahmedabad,

Date: 1 / 3 / 1993.

અવધુલગામીએ

(DEPONENT)



S. NO. 1445 / 1993
SOLEMNLY AFFIRMED
BEFORE ME
V. J. Desai
NOTARY
D/ 1-3-1993



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

Special Civil Application No.4798 of 1982.

(Under Article 226 of the Constitution of India).

Ram Bhagwan Ahir.

...Petitioner.

Versus.

The State Government of
Gujarat.

...Respondent.

Application praying to issue a writ of
mandamus or certiorari or any other appropriate
writ order or direction quashing and setting
aside the order of termination dated 16.8.77 passed
by Deputy Conservator of Forest, Bhavnagar, in
No.B/13/MHK/2409/1977 (vide Annexure D) and..etc..

Mr. M.D. Rana, Advocate for the petitioner:

Mr. M.A.Panchal, Asstt.Govt.Pleader instructed by

Mr. P.S. Patel, Advocate of M/s. Ambubhai & Diwanji
for the respondents.

...

Coram: R.C.Mankad, J.
(13.6.1983)

Oral Judgment:-

Petitioner has invoked the jurisdiction of
this Court under Article 226 of the Constitution of

Filed by Mr.
I.S. Supriya
Adv. for the
applicant in one
copy only.
H.P. Gholkar
17/8/83

...2/...

India to challenge the order Annexure 'D' dated August 16, 1977, passed by the Deputy Conservator of Forests, Bhavnagar, by which he was removed from service.

Petitioner was appointed as Chowkidar or watchman ("vidia") by an order dated June 5, 1975 passed by the Deputy Conservator of Forests, Bhavnagar. Forest Officer Mahavirsinh Ratansinh, while he was on petrol duty on July 28, 1977, found cattle grazing in the government land in the reserved forest area. When the petitioner and two other persons were asked to drive away the cattle, petitioner and two other persons assaulted the Forest Officer. Petitioner and two others were, therefore, prosecuted for offences punishable under section 332 read with section 114 of the Indian Penal Code and section 26 of the Forest Act in the Court of the Judicial Magistrate, First Class, Savarkundla. The learned Magistrate, however, by his judgment and order dated April 29, 1978, acquitted the petitioner and other two accused.

However, before the learned Magistrate acquitted the petitioner as aforesaid, the Deputy Conservator of Forests Bhavnagar by his impugned order Annexure 'D' removed the petitioner from service on the ground that he had failed to protect the government land and that he had also caused loss to the government by allowing the cattle to graze on the land. Admittedly no show cause notice was given to the petitioner before the impugned

...3/...

...3/...

order was passed. In other words, no opportunity whatsoever was given to the petitioner to show cause against the proposed action of removal from service. As pointed out above, the impugned order states the ground on which the petitioner was removed from service.

There is therefore, no doubt that the impugned order casts stigma on the petitioner. It is well settled that such an order could not have been passed without giving opportunity of being heard to the petitioner, Since no show cause notice was issued to the petitioner on that ground alone, the impugned order is liable to be struck ~~k~~down. Ordinarily, it would have been open to the concerned authority to initiate disciplinary proceedings against the petitioner, but the question of initiating such proceedings would not arise in view of the fact that the petitioner has been acquitted by the learned Magistrate. Since the order passed by the Deputy Conservator of Forests is illegal and void, petitioner must be reinstated in service.

Petitioner was removed from service by an order dated August 16, 1977 and he has approached this Court by way of this petition~~ex~~ on September 21, 1982. There is no explanation for delay in filing the petition and it would therefore, appear that petitioner himself is responsible for the delay. As held by a Division Bench of this Court in Kiritkumar D. Vyas-Vs-State, 23(2) Guj.L.R.79, having regard to the fact that the petitioner himself is responsible for delay in approaching this

...4/...

...4/1...

Court, he shall not be entitled to back wages for the period preceding the date of institution of the petition. In other words, petitioner will be entitled to back wages only from September 21, 1982 the date on which this petition was instituted.

In the result, the petition is allowed. The impugned order Annexure 'D' dated August 16, 1977 removing the petitioner from service is quashed and set aside. Respondents are directed to reinstate the petitioner in service within 4 weeks from to-day. Petitioner will be entitled to back wages with effect from September 21, 1982 till the date he is reinstated. He shall be treated as in continuous service with all the benefits except back wages to the extent stated above as if the impugned order was not passed.

Rule made absolute with costs.