

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 213 OF 1993
~~TexxxNo.~~

DATE OF DECISION 20.4.1999

Ghela Madhu, **Petitioner**

Mr. B.B. Gogia, **Advocate for the Petitioner [s]**
Versus

Union of India & Ors. **Respondents**

Mr. N.S. Shevde, **Advocate for the Respondent [s]**

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. A.S. Sanghavi, Judicial Member.

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

Ghela Madhu,
Adult,
Occ: Unemployed.

..... Applicant.

(Advocate: Mr. B.B.Gogia)

versus

1. Union of India
Owning and representing
Western Railway, through
General Manager,
Western Railway,
Churchgate, Bombay-20.

2. Divisional Mechanical Engineer-I (D.A)
Western Railway,
Rajkot.

3. Sr.Divisional Mechanical Engineer
Appellate Authority
Western Railway
Rajkot.

..... Respondents.

(Advocate: Mr.N.S. Shevde)

ORAL ORDER

O.A.No. 213/1993

Date: 20.4.1999.

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

we have heard Mr. Gogia and have gone through the
materials on record.

2. The applicant was served with a charge sheet
charging him with unauthorised absence for a period of
234 days and an enquiry was held. The enquiry officer
found the applicant to be unauthorisedly absent despite
grant of liberal leave and that during the period of
absence he had not sent any information nor has he
produced any valid medical certificate. The disciplinary
authority proceeded to inflict the penalty of removal

from service but on appeal the appellate authority reduced the same to compulsory retirement as is seen by its order dated 22.9.92 as at Annexure A-6. The applicant has challenged the orders in the present O.A.

3. Mr. Gogia submits that the penalty of compulsory retirement is unduly harsh keeping in view the nature of the charge against the applicant. The applicant had put in over 29 years of service and he was charged with unauthorised absence for 234 days and as is seen from the enquiry report, part of this period should in fact have been treated as authorised when he was under treatment with a Railway doctor. Mr. Gogia also draws attention to the following statement in the enquiry report just before the finding which says "He was under Railway Doctor sick from 24.4.91 as per S/C No.509159 issued by Sr.DMO Rajkot and when resumed on 13.5.91. The Railway Doctor given a remark on his fit certificate that remained absent from 29.4.91 to 13.5.91, as per his Ans. to Q.No.7".

The counsel submits that the period from 29.4.91 to 13.5.91 has been treated as unauthorised absence even though the applicant was ill during the entire period for the reason that he did not report to the Railway doctor to get the medicine and prescription and on that ground alone the Railway doctor had given a remark on his fitness certificate that he remained absent from 29.4.91 to 13.5.91. It is also Mr. Gogia's contention that the applicant had put in long service of 29 years and he had not come to adverse notice earlier and only

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during this period he had remained absent which was on account of his ill-health. In such a situation he submits that the authority should have taken a lenient view and if at all, given a lesser punishment than compulsory retirement. Mr. Gogia submits that the applicant's date of birth is 31.10.1943 and in the normal course he would have been in service upto 31.10.2003. As such a lesser punishment could have been imposed instead of inflicting the penalty of compulsory retirement.

4. we find from the materials on record that while part of the period referred to in the charge sheet seems to have been spent under the Railway doctor, the fact remains that during sizable period the applicant had remained absent while it is possible that he was sick during the relevant period as stated by Mr.Gogia, it has been brought out that he had not sent intimation to the authority nor did he produce a valid medical certificate to cover this period. In view of this the authority had come to the conclusion that the charge of the unauthorised absence had been established and proceeded to inflict the penalty initially of removal from service which was reduced to compulsory retirement by the appellate authority. It is now well settled that this tribunal can not interfere with the quantum of punishment unless it is shockingly disproportionate as laid down by the Hon'ble Supreme Court in the case of ~~Parmanandak~~ There is however some force in the submission of Mr. Gogia that the applicant had put in

long service and seems to have got into difficulties only during the fag end of his service which resulted in the submission of charge sheet and the issue of the penalty orders.

5. Mr. Gogia now submits that the applicant would like to submit a revision petition where he would highlight the various contentions and particularly request to reduce the quantum of penalty. In that petition the applicant would bring out that his long spell of service without any serious complaint earlier has to be taken note of and that the period of absence as spell out in the charge sheet was due to his ill-health which was beyond his control. We take note of the submission of Mr. Gogia and if the applicant were to submit a revision petition within one month from the date of receipt of a copy of this order the revisional authority who is stated to be the DRM shall dispose of the revision petition on merits without taking the plea of limitation. The revision authority shall also keep in view the long service put in by the applicant while coming to a finding in this regard. The finding of the revision authority should be communicated to the applicant within three months from the date of receipt of a copy of the revision petition. Mr. Gogia submits that in case the revision authority were to dispose of the revision petition without due application of mind he may be granted liberty to approach the tribunal. The applicant may pursue whatever remedies are available to him under the law.

6. With the above direction, the O.A is finally disposed of. No order as to costs.

A. S. Sanghavi
(A.S.Sanghavi)
Member (J)

V. Ramakrishnan
(V.Ramakrishnan)
Vice Chairman

vtc.

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

04/213/93

of 19

Transfer application No.

Old Writ Pet. No.

CERTIFICATE

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

Dated: 13/5/99

Countersigned:

21/5/99

Section Officer/Court Officer.


Signature of the
Dealing Assistant.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE

CA/ 213/93

NAME OF THE PARTIES Mr Chela Mashu
VERSUS

402R

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