

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 358 of 1993 with M.A. NO. 429 of 1993

~~Exhibit No. 1~~

DATE OF DECISION 4-8-1995

Babuam R

Shri Sukhram Verma

Petitioner

Mr. R.R. Tripathy

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

Mr. B.R. Kyada

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

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 Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

/No

Baburam

Shri Sukhram Verma,
Residing at:
Post Bchildi,
Taluka Deesa,
Dist. Banaskantha-385 530.

..... Applicant

(Advocate : Mr. R.R. Tripathy)

Versus

1. Union of India through
The General Manager,
Western Railway,
Churchgate,
Bombay.

2. Divl. Railway Manager,
Ajmer Division,
Western Railway,
Ajmer (Rajasthan).

3. Divl. Mechanical Engineer (Sr.)
Ajmer Division,
Western Railway,
Ajmer (Rajasthan).

4. Divl. Assistant Mechanical Engr.,
Western Railway,
Gandhidham.

..... Respondents

(Advocate : B.R. Kyada)

J U D G M E N T

O.A. No.358 of 1993

with

M.A. No. 429 of 1993

Date : 4-8-1995

Per : Hon'ble Mr.K. Ramamoorthy, Member (A)

The present application has been filed against the order of removal passed by the respondents on the applicant vide order dated 3-1-1989. The applicant had been issued with a charge-sheet for a misconduct dated 22-1-1985 on the charge of unauthorised absence for over 5 years, i.e. since 12-6-1981. In the removal order, it has been specifically indicated

that the disciplinary authority has chosen to inflict the punishment after disagreeing with the report of the Inquiry Officer that the charge was not proved. The applicant has challenged the removal on the following three grounds:

- i) The removal order suffered from the infirmity that the applicant had not been given any notice regarding the grounds on which the disciplinary authority has chosen to differ from the findings of the Inquiry Officer and the Inquiry Officer's report itself was not made available to the applicant even with the punishment order as used to be the practice then.
- ii) It is also contended by the applicant that the disciplinary authority had gathered some evidence at the back of the applicant and without there being any reference thereof in the charge-sheet, which, according to the disciplinary authority, revealed that the applicant was carrying on private medical practice.
- iii) Even though the applicant had filed an appeal on 1-2-1989, there had been no reply from the respondents. The applicant further stated that even apart from the appeal, the applicant himself had offered to voluntarily retire from the service vide his notice on 1st December, 1985 and inspite of reminders dated 19-2-1985 and 28-11-85, no action had been taken thereon even.

2. The respondents in their reply have stated that they had not received any appeal memo and the contention regarding appeal seemed to be an after-thought.

3. After going through the averments and the records, it is quite clear that the order of removal at Annexure IV suffers from the certain infirmity regarding non-supply of notice on the grounds which led the disciplinary authority to differ from the Inquiry Officer's report. The fact that the removal order itself has indicated the fact of disagreement with the Inquiry Officer's report can certainly lead to an inference that the report of the Inquiry Officer is in favour of the applicant. The respondents have not chosen to give a copy of this Inquiry Officer's report to the applicant nor have they chosen to bring it on record even before the Tribunal. While it is true that the disciplinary authority has every right to differ from the Inquiry Officer's report for adequate reasons, such a decision can be taken only after giving due notice to the applicant. This has not been done in this case. The additional reasons cited in the removal order about the applicant having started a private practice is also an entirely new ground. Since it is apparent that this ground has also influenced the respondents in inflicting the particular punishment on the applicant, adequate opportunity should have been given to the applicant to explain his conduct in regard to this particular charge. This has also not been done.

4. Under the circumstances, the removal order passed by the respondents vide order dated 3-1-1989 has to be declared illegal and void and is thereby quashed. With the result, the applicant earns a right to be reinstated in service with back wages which may be done within a period of six weeks. It is for the respondents to decide as to whether it would be preferable to even now act on the voluntary retirement notice as given by the applicant on 1-2-85 if the applicant still stands by the said notice or whether to proceed with the inquiry after removing the aforesaid infirmities in the earlier inquiry proceedings.

5. With the above remarks, the application is disposed of and M.A. does not survive. No order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

kvr

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. CA/358/93

Transfer Application 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 : 14.08.95

Countersign :

Section Officer.

S. S.
16/8/95

acc'd

Signature of the Dealing
Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

INDEX - SHEET

CAUSE TITLE

041358193

NAME OF THE PARTIES

Mr. Babucon

VERSUS

4.0.1. & 0.0.