

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A. NO.** 478/93  
~~**T.A. NO.**~~

DATE OF DECISION 14/8/95

Kartar Singh Petitioner

Mr. P.K. Handa Advocate for the Petitioner (s)

Versus

Union of India and Others Respondent

Mr. Anil Kothari Advocate for the Respondent (s)

CORAM

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

The Hon'ble Mr. V. Radhakrishnan 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 ?

Kartar Singh  
Garden Khalashi (Removed)  
Quarter No. 71-B,  
Railway Staff College Baroda

Applicant.

Advocate Mr. P.K. Handa

Versus

1. Union of India  
Owing & Represented  
Through Secretary,  
Ministry of Railways  
Railway Board, New Delhi
2. Principal Railway Staff College  
Near Lal Baug, Baroda.
3. The Professor (Personnel Management)  
Railway Staff College, Near Lal Baug,  
Baroda.

Respondents.

Advocate Mr. Anil Kothari

J U D G M E N T

In

Date: 14-8-95

O.A. 478/1993.

Per Hon'ble Shri V. Radhakrishnan

Member (A)

The applicant was working as Garden Khalashi, Railway Staff College, Baroda. He was removed from service by the Disciplinary Authority on grounds of unauthorised absence. This was challenged by him in O.A. 105/93. That O.A. was disposed of with the directions to consider it as review application and the competent authority was directed to use his revisional power under Rule 25 of Railway Servants Disciplinary & Appeal Rules 1968 after considering his case sympathetically. The reviewing authority, the Railway Board rejected the review application of the applicant which was communicated to him by letter dated 10th August 1993. The

applicant has now come before this Tribunal asking for the following reliefs:

" In view of the facts mentioned in para 4 above, the applicant prays for the following reliefs:-

- 1) the applicant prays to the Hon'ble Bench to quash and set aside, Annexure A, A-1, and A-2, and direct the respondent to reinstate the applicant with back-wages and other consequential benefits.
- 2) Any other reliefs which the Hon'ble Bench seems fit,
- 3) Cost of the suit be awarded.

At the time of admission, Mr. Handa, learned Advocate for the applicant, confined his challenges only to the quantum of punishment awarded to the applicant.

2. Mr. Handa contends that the penalty of removal from service imposed on the applicant for unauthorised absence is disproportionate to the gravity of the offence. The applicant has not been found guilty of any serious mis-conduct like moral turpitude or involvement in any vigilance case. He relies on the judgment in *Bhagatram Vs. State of Himachal Pradesh*, AIR 1993 SC 454.

3. The perusal of the charge-sheet reveals that the applicant was charged for absconding from duty on 4 occasions of unauthorised absence for 41 days. He was also charged for habitually remaining absent unauthorisedly and he was served charge-sheets on

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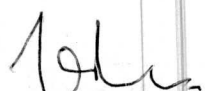
2 occasions i.e. 26.2.1990 and 26.10.1990.


4. The Respondents have filed reply. They have taken the stand that as per judgment of the Hon'ble Supreme Court in Union of India Vs. Parmanand, AIR 1989 page 1185, the Court or Tribunal should not interfere with the findings of the Enquiry Officer or Competent Authority or interfere in the penalty imposed unless they are arbitrary and perverse. They have stated that the reviewing authority has opined that the applicant was guilty of habitual unauthorised absence and he was earlier punished twice and awarded minor penalty. In spite of that the applicant did not improve and had become habitual offender and this exhibited indiscipline and lack of devotion. They have stated that applicant was sanctioned leave on 15 occasions and the applicant's contention that he was not sanctioned leave at any time is without any basis. He was given full opportunity to defend himself in the enquiry. Due to repeated absence of the applicant, he had shown signs of indiscipline and lack of devotion towards duty and hence the punishment of removal from service was justified. Further, in accordance with the decision of the Supreme Court in Parmanand's case the Tribunal has no jurisdiction to interfere with the quantum of punishment. They have stated that leave cannot be claimed as a matter of right and he should have applied for leave before hand. In view of the above Respondents have prayed for rejection of the applicant's case and vacation of the interim relief regarding the quarters.

5. The applicant is a Group 'D' official who had put in 29 years of service. As already stated, the charges relate to absence from duty on 5 occasions and unauthorised absence for 41 days starting from period August 1990 to January 1991. A mention is also made that he was punished twice for unauthorised absence. It is seen from Annexure R-3 that leave has been sanctioned by the Respondent on many occasions as for example 31st August, 1990, 25th September, 1990, 1st October, 1990, 31st October, 1990, 1-2-6-20-26-30 November, 1990, 1-3-8-December, 1990 3rd January, 1991. Once the leave has been sanctioned by the Competent Authority, it is not clear as to how these periods have been treated as unauthorised absence. If we take out the period for which leave were sanctioned the unauthorised periods of absence come to about 12 occasions between August 1990 and January 1991. The applicant has stated that he always applied for leave which was regretted. Even assuming that he had absented without information on 12 or so occasions, the penalty of removal from service by the disciplinary authority and the confirmation of the same by the appellate authority and the reviewing authority appears to be done without application of mind. This Bench has already mentioned in the judgment in O.A.105/93 some of the above observations in the matter and remanded it to Railway Board for decision as reviewing authority but it appears from the decision conveyed by letter dated 5-8-1993, Annexure R-1 that the authority has rejected the case of the applicant by using the routine workings like "indiscipline and lack of devotion" which was used earlier by the disciplinary and appellate authorities. We regret to point out that the

competent authority has not properly applied its mind to the observations made by this Tribunal in the judgment dated 27-4-1993. We are quite aware that the Tribunals should not interfere with the quantum of punishment imposed by the administrative authorities except when it is arbitrary and perverse. The facts and circumstances of this case, however, compels us to interfere in the matter when a competent authority removes Group 'D' official for the crime of unauthorised absence of a few days when the applicant had put in 29 years of service with the Respondent. This action of the Respondent could be termed to be perverse and we feel that it is one of the exceptions of the general Rule of non interference with the action of the administrative authorities. In case the respondent felt that the applicant was not fit to continue in his service, they could have imposed a punishment of compulsory retirement which would have served the same purpose of dispensing with his service and at the same time taken care of keeping alive 29 years of service put in by him and he would have earned the retirement benefits for his and his family's existence. Non consideration of the punishment of compulsory retirement betrays lack of application of mind especially when the action to remove him from service would deprive him of retirement benefits and wipe out 29 years of service put in by him.

6. Accordingly, due to reasons stated above we have no option but to interfere with the order passed by the Respondents in the interest of justice. Hence, the order dated 4-8-1993 of the Railway Board conveyed by letter dated 10th August 1993, Annexure A, is quashed and set aside. The case is remanded to the Railway Board for review of the quantum of punishment in the light of the observations made by us above within a period of three months from the date of receipt of a copy of this order. The interim orders to continue until the decision is taken by the respondents. No order as to costs.

  
(V. Radhakrishnan)  
Member (A)

  
(N.B. Patel)  
Vice Chairman.

\*AS.

Date

Office Report

ORDER

4-1-1996.

M.A. 865/95 in O.A. 478/93.

As a special case time is granted up to  
28-2-1996. No further time will be given  
M.A. stands disposed of accordingly.



(V. Radhakrishnan)  
Member (A)

\*AS.

S.13/96

Central Administrative Tribunal  
Ahmedabad Bench.  
Inward No. 2269  
Date 02.04.96

Section-IX

D.No. 268/96/Sec. IX  
Supreme Court of India,  
New Delhi.

Dated:- 13/3/96  
14

Recd  
Amherst  
02.4.96  
D.A. [Signature]

From:-

Section Officer,  
Supreme Court of India,  
New Delhi.

To:-

The Registrar,  
Central Administrative Tribunal,  
Ahmedabad Bench, Ahmedabad.

2005

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 5444 of 1996  
(Petition under Article 136 of the Constitution of India,  
from the Judgment and Order dated 14/8/95  
of the Central Administrative Tribunal, Ahmedabad  
Bench in D.A.No.478/93).

Union of India & Drs.

..Petitioner(s)

-Versus-

Kartar Singh

..Respondent(s)

Sir,

I am directed to inform you that the Petition  
above-mentioned filed in the Supreme Court was listed  
before the Court on 26/2/96 when the  
Court was pleased to pass the following Order:-

"Delay condoned.  
In the particular facts and the circumstance of  
this case we are not inclined to interfere under  
Article 136 of the Constitution of India though  
it is true that there is some room for  
complaining against the impugned order on behalf  
of the Union of India. The special leave  
petition is dismissed accordingly."

For Personal Precedence  
① Hon'ble vice chairman. 79/5 [Signature]  
Section Officer  
② Hon'ble Mr. V. Radhakrishnan, (S) [Signature]  
③ Hon'ble Mr. C. Ramamohan, (S) [Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

Application No. CA/478/93

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 : 21.08.95

Countersign :

*S*  
21/8/95

Section Officer.

*ccid*

Signature of the Dealing  
Assistant

