

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 672 of 1993.
~~T.A. No.~~

DATE OF DECISION 23.12.1993.

Shri Islamudin A. Petitioner

Shri J.D.Ajmera Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri 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)

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 ?
- 18/0

: 2 :

Shri Islamudin A.
Morbi Colony,
Block No. M/11/B,
Surendranagar.

...Applicant.

(Advocate : Mr. **J.D.Ajmera**)

Versus

1. Union of India,
Notice to be served through,
General Manager,
W.Rly, Churchgate,
Bombay - 400 020.
2. Divisional Rly. Manager ,
Kothi Compound,
Rajkot.
3. Asstt. Commercial Supdt.,
Western Railway,
Divisional Rly. Office,
Rajkot.

..Respondents.

ORAL JUDGMENT

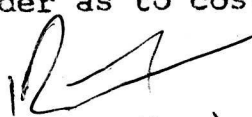
O.A.NO. 672 OF 1993.


Date : 23.12.1993.

Per : Hon'ble Mr.N.B.Patel : Vice Chairman

Mr.B.R.Kyada files appearance. The applicant and
Mr.J.D.Ajmera are not present. Dismissed for default.

No order as to costs.


(K.Ramamoorthy)
Member (A)


(N.B.Patel)
Vice Chairman

AIT

M.A. 96/94 in O.A. 672/93

Date	Office Report	Order
15-2-94		<p>other As the learned Member of the Bench is not available, the matter is adjourned to 4-3-94.</p> <p>R K. RAMAMOORTHY MEMBER [A]</p>
4-3-94		<p><u>M.A. 96/94 IN O.A. 672/93</u></p> <p>On copy of the M.A. being furnished to Mr. Kyada, he waives service. Heard. M.A. allowed. Order dismissing O.A. 672/93 set aside and the said O.A. restored to file.</p> <p><u>O.A. 672/93</u></p> <p>Adjourned to 11-3-94.</p> <p>L (K. Ramamoorthy) Member (A)</p> <p>7 (N.B. Patel) Vice Chairman</p> <p>AS</p>

SP/512 A.D. mi PP/3A.A.M

Date	Office Report	Order
11-3-94	<p>11-3-94</p>	<p>Adjourned to 24-3-94, at the request of Mr. Pathak. May ^{be} shown on admission board.</p> <p><i>R</i> (K. Ramamoorthy) Member (A)</p> <p><i>N</i> (N. B. Patel) Vice Chairman</p> <p>AS*</p>
24-3-94	<p>placed from DCHT - Notice issued on 10-8-88. RPAAD for Res. No. 483 are received</p> <p><i>Mr. R. V. K. S. L.</i></p>	<p><u>Admitted.</u> Notice returnable on 27-4-1994 requiring the respondents to file reply. The applicant may file rejoinder before the office within two weeks after the filing of the reply. The matter may be fixed for final hearing in due course but not before the end of July, 1994.</p> <p><i>R</i> (K. Ramamoorthy) Member (A)</p> <p><i>N</i> (N. B. Patel) Vice Chairman</p> <p>AS*</p> <p>Mr. Shevde has entered appearance for the respondents in place of Mr. Kyada. Adjourned to 30.9.99. Mr. Pathak has filed a leave note.</p> <p><i>N</i> (V. Ramakrishnan) Vice Chairman</p> <p>vtc.</p>

DATE OFFICE REPORT O R D E R

30.9.99

Place it before Special Bench on 11.10.99.

(A.S. Sanghavi)
Member (J)(V. Ramakrishnan)
Vice Chairman

pmr

11.10.99

Mr. pathak prays for a short adjournment.

Adjourned to 29.11.1999.

(A.S. Sanghavi)
Member (J)(V. Ramakrishnan)
Vice Chairman

vtc.

29-11-99

Mr. Pathak files leave note. Adjourned to

6-1-2000.

(A.S. SANGHAVI)
MEMBER (J)(V. RAMAKRISHNAN)
VICE CHAIRMAN

SS

6.1.2000

Adjourned to 4.2.2000.

(A.S. Sanghvi)
Member (J)(V. Ramakrishnan)
Vice Chairman

Pt

4.2.2000

None present for the parties. Adjourned

to 28.2.2000.

(A.S. Sanghavi)
Member (J)

vtc.

28.2.2000

seen resolution of the Bar Association that the lawyers are abstaining from work today as a mark of respect to the memory of Hon'ble Justice Mr.M.Srinivasan Judge of the Hon'ble Supreme Court, who expired on Friday. Adjourned to 28.3.2000.

(A.S.Sanghavi)
Member (J)

(V.Ramakrishnan)
Vice Chairman

vtc.

28-3-2000

Mr.Pathak and Mr.Shevde are stated to be busy in the IIInd Court. Adjourned to 25-4-2000.

(A.S.Sanghavi)
Member (J)

(V.Ramakrishnan)
Vice Chairman

ss

25.04.2000

Mr. Shevde prays for time. Adjourned to 26.06.2000

(A.S.Sanghavi)
Member (J)

(V. Ramakrishnan)
Vice Chairman

mb

26.06.2000

Mr. Pathak is not present. Adjourned to

12.07.2000.

(A.S.Sanghavi)
Member (J)

(V.Ramakrishnan)
Vice Chairman

mb

12.07.2000









Mr. Pathak has prayed for an adjournment.








Adjourned to 04.08.2000.

(A.S. Sanghavi)
Member (J)

(V. Ramakrishnan)
Vice Chairman

Mb

तारीख DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
4.8.2000		At the request of both counsel, adjourned to 21.8.2000.
21.8.2000		<div> <div>  (P.C. Kannan) Member (J) </div> <div>  (V. Ramakrishnan) Vice Chairman </div> </div> ab Division Bench matter. Adjourned to 5.9.2000.
05.09.2000		<div> <div>  (A.S. Sanghavi) Member (J) </div> <div>  (V. Ramakrishnan) Vice Chairman </div> </div> vtc. Mr. Pathak is not present. Adjourned to 25.09.2000.
25.9.2000		<div> <div>  (P.C. Kannan) Member (J) </div> <div>  (V. Ramakrishnan) Vice Chairman </div> </div> Mb Adjourned to 28.9.2000.
28-9-2000		<div> <div>  (P.C. Kannan) Member (J) </div> <div>  (V. Ramakrishnan) Vice Chairman </div> </div> pmr Adjourned to 5-10-2000.

<div>तारीख</div> <div>DATE</div>	<div>कार्यालय रिपोर्ट</div> <div>OFFICE REPORT</div>	<div>आदेश</div> <div>ORDER</div>
5.10.2000		<p>Adjourned to 13.10.2000.</p> <p> </p> <p>(A.S. Sanghavi) (V. Ramakrishnan) Member (J) Vice Chairman</p> <p>pmr</p>
13.10.2000		<p>Mr. Shevde has filed a sick note.</p> <p>Mr. Pathak not present. Adjourned to 6.11.2000.</p> <p> </p> <p>(P.C. Kannan) (V. Ramakrishnan) Member (J) Vice Chairman</p> <p>ab</p>
6.11.2000		<p>Mr. Pathak for the applicant not present. Division Bench matter. Adjourned to 17.11.2000.</p> <p></p> <p>(A.S. Sanghavi) Member (J)</p> <p>vtc.</p>
17.11.2000		<p>Mr. Shevde has filed a sick note.</p> <p>Adjourned to 24.11.2000.</p> <p> </p> <p>(P.C. Kannan) (V. Ramakrishnan) Member (J) Vice Chairman</p> <p>vtc.</p>

Date

Office Report

O R D E R

24/11/2000

Adjourned to 27/11/2000.

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

R
(V. RAMAKRISHNAN)
Vice Chairman

MB

27.11.2000

Part-heard matter. Adjourned to

29.11.2000.

PC
(P.C. Kannan)
Member (J)

VR
(V. Ramakrishnan)
Vice Chairman

ab

29.11.2000

Mr. P.H. Pathak not present. Part
heard matter. Adjourned to 7.12.2000.

PC
(P.C. Kannan)
Member (J)

R
(V. Ramakrishnan)
Vice Chairman

mv

7-12-2000

~~Heard on~~ MA/718/2000. ~~MA/718/2000~~

~~and~~ taken on record. Mr. Pathak says
he wants to file a reply to the MA. Adjourned
to 1.1.2001.

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

VR
(V. Ramakrishnan)
Vice Chairman

pmr

Date Office Report

O R D E R

1.1.2001

Adjourned to 4.1.2001.

DN
(P.C.Kannan)

Member (J)

W
(V.Ramakrishnan)

Vice Chairman

mv

4.1.2001

M.A 718/2000

M.A 718/2000 is allowed and amended reply, taken as a part of the reply to the respondent.

Mr. Pathak prays for further time to file rejoinder to the amended reply as it is a 1993 matter and has to be disposed off.

Adjourned to 19.1.2001.

DN
(P.C.Kannan)

Member (J)

W
(V.Ramakrishnan)

Vice Chairman

mv

19.1.2001

Division Bench matter. Adjourned to

12.2.2001.

DN
(P.C.Kannan)
Member (J)

mv

Due to unfortunate demise of Shri P.C. Kannan released from part-heard. Rejoinder to amendment still not filed. Adjourned to 19.2.2001.

W
(V. Ramakrishnan)
Vice Chairman

sm

2.2.2001

દિનાંક
Date

કાર્યાલય ટિપ્પણી
Office Report

આદેશ
Order

9.3.2001

Mr. Shevde is directed to bring the relevant file which led to the issue of charge-memo dated 26.4.89.

Adjourned to 19th March 2001.

Copy of the order may be given to Mr. Shevde.

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collected by HSI
py
1632W1

(A.S. Sanghavi)
Member(J)

(V. Ramakrishnan)
Vice Chairman

pmr

19.3.2001

Part heard matter. place it before appropriate Bench on 23.3.2001.

(V. Ramakrishnan)
Vice Chairman

vtc.

Adjourned to 3.4.2001.

(A.S. Sanghavi)
Member (J)

(V. Ramakrishnan)
Vice Chairman

sm

Heard both the sides. Judgement reserved.

(A.S. Sanghavi) (V. Ramakrishnan)
M (J) V.C.

3-4-2001

MA/433/86
accept below.




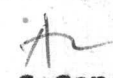





Returning to
recd. section
to day

3/4/2001
16

30/4/2001

Judgement pronounced
to day in open court.

30/4/01

दिनांक Date	कार्यालय रिपोर्ट Office Report	आदेश Order
19.2.2001		Division Bench matter ,adjourned to 20.2.2001.  (V. Ramakrishnan) Vice Chairman sm
20.2.2001		At the request of Mr. Pathak, adjourned to 26.2.2001.  (A.S. Sanghavi) Member (J) vtc.  (V. Ramakrishnan) Vice Chairman
26.2.2001		Adjourned to 27.2.2001.  (A.S. Sanghavi) Member (J) vtc.  (V. Ramakrishnan) Vice Chairman
27.2.2001		Mr. Pathak has filed a sick note today. This is a 1993 matter. Adjourned to 5.3.2001.  (A.S. Sanghavi) Member (J) vtc.  (V. Ramakrishnan) Vice Chairman
5.3-2001		Heard Mr. Shevde. Adjourned to 9.3.2001.  (A.S. Sanghavi) Member (J) sm  (V. Ramakrishnan) Vice Chairman

તારીખ Date	કાર્યાલય ટિપ્પણી Office Report	આદેશ Order
9.3.2001	<p><i>COPY does not collected by N.S.</i></p>	<p>Mr. Shevde is directed to bring the relevant file which led to the issue of charge-memo dated 26.4.89.</p> <p>Adjourned to 19th March 2001.</p> <p>Copy of the order may be given to Mr. Shevde.</p> <p>(A.S. Sanghavi) Member (J)</p> <p>(V. Ramakrishnan) Vice Chairman</p>
19.3.2001		<p>pmr</p> <p>Part heard matter. place it before appropriate Bench on 23.3.2001.</p> <p>(V. Ramakrishnan) Vice Chairman</p>
23.3.2001		<p>vtc.</p> <p>Adjourned to 3.4.2001.</p> <p>(A.S. Sanghavi) Member (J)</p> <p>(V. Ramakrishnan) Vice Chairman</p>
3-4-2001		<p>sm</p> <p>Heard both the sides. Judgement reserved.</p> <p>(A.S. Sanghavi) (V. Ramakrishnan) M (J) V.C.</p>
30/4/2001	<p>Judgement postponed to day in open Court.</p> <p><i>[Signature]</i> 30/4/01</p>	

दिनांक Date	कार्यालय टिप्पणी Office Report	आदेश Order
19.2.2001		Division Bench matter ,adjourned to 20.2.2001. (V. Ramakrishnan) Vice Chairman sm
20.2.2001		At the request of Mr. Pathak, adjourned to 26.2.2001. (A.S.Sanghavi) (V.Ramakrishnan) Member (J) Vice Chairman vtc.
26.2.2001		Adjourned to 27.2.2001. (A.S.Sanghavi) (V.Ramakrishnan) Member (J) Vice Chairman vtc.
27.2.2001		Mr.pathak has filed a sick note today. This is a 1993 matter. Adjourned to 5.3.2001. (A.S.Sanghavi) (V.Ramakrishnan) Member (J) Vice Chairman vtc.
5.3-2001		Heard Mr. Shevde. Adjourned to 9.3.2001. (A.S.sanghavi) (V.Ramakrishnan) Member (J) Vice Chairman sm

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A./672/1993 & OA/18/1995

Date of Decision: 30-4-2001.

Mr. Islamudin A. : Applicant(s)

Mr. P.T.Shaikh

Mr. P.H.Pathak : Advocate for the Applicant(s)

Versus

Union of India & Ors. : Respondents (s)

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

CORAM:

HON'BLE SHRI V.RAMAKRISHNAN : VICE CHAIRMAN

HON'BLE SHRI A.S.SANGHAVI : MEMBER (J)

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? ~

OA/672/1993

Islamudin A.
Morbi Colony
Block No. M/11/B
Surendranagar

Applicant

Advocate: Mr. P.H.Pathak

Versus

1. Union of India
Notice to be served
Through: General Manager
W.Rly., Churchgate
Bombay- 400 020.
2. Divisional Rly. Manager
Kothi Compound
Rajkot.
3. Asstt. Commercial Supdt.
Western Railway
Divisional Rly. Office
Rajkot.

Respondents

Advocate: Mr. N.S.Shevde

OA/18/1995

P.T.Shaikh
Jintan Road
Behind Bal Mandir
Surendranagar

Applicant

Advocate: Mr. P.H.Pathak

Versus

1. Union of India
Notice to be served
Through: General Manager
W.Rly., Churchgate
Bombay- 400 020.
2. Divisional Rly. Manager
Kothi Compound, Rajkot.
3. Asstt.Commercial Supdt.,
Western Railway,
Divisional Rly.Office, Rajkot.

Respondents-

Advocate: Mr. N.S.Shevde.

JUDGEMENT

IN

Dated 30th April 2001

OA/672/93 &
OA/18/95

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

As the issues involved, the reliefs sought for and the grounds urged in support of the O.A. are the same, we propose to dispose of both these O.As by a common order.

2. The applicants have sought the following reliefs:-

A) Allow this application and direct the opponents to pay salary of the applicant for the period between March, 1985 to 24.3.1989.

B) Quash and set aside the charge sheet issued by respondent No.3 and all consequential procedure and impugned order of penalty dt.

15.2.1991 direct the respondents to give annual increment with all other consequential benefits to the applicant;

C) X Pass such other and further orders as may be deemed fit and proper by this Hon.

Tribunal.

We, however, find from the reply statement in OA/18/95 that the applicant in that case was inflicted with the penalty of withholding of increment for one year vide their order dated 20.6.91 (and not 15.2.91).

3. We have heard Mr. P.H.Pathak for the applicant and Mr. N.S.Shevde for the respondents.

5. The applicants joined Railways as Lampman and Box-boy. Later on they became plat-form-porter etc. They were subjected to transfer from Joravarnagar to Bala-road in the case of

applicant in OA/18 672/93 and Lakhtar in the case of applicant in OA/18/95. They filed a Special Civil Application before the High Court and initially the High Court issued an interim order to maintain the status quo. They say

that the S.C.A. came to be transferred to the Hon'ble Tribunal and was numbered as TA/433/86.

The Tribunal by its order dated 24.11.88 set-aside the transfer order of both the

applicants- copy at Annexure- A-2. The applicants state that after the judgement was rendered, it was not complied with and they filed a contempt petition. The Tribunal

disposed of the C.P. by its order dt.19.3.91 holding that there is substantial compliance

as the petitioners were allowed to resume the duties at Joravarnagar on 21.3.89. The applicants say that a copy of memorandum of charge-

sheet alongwith articles of charge were served on them and they were inflicted with the penalty of with-holding of increment for one year without future effect. Aggrieved by this action of the administration the present O.A. has been filed.

5. It is contended that in view of the orders of the Tribunal in TA/433/86 dated 24.11.86 setting aside their transfer orders it is not open to the respondents to initiate the disciplinary proceedings against them and impose penalty. They also claim that they are entitled to salary for the intervening period from March 1985 to March 1989. There is also a reference in the O.A. that the High Court had initially granted status quo in SCA 3413 of 1985.

6. The earlier orders of the High Court were not made available in the O.A. Also in OA/672/93 while the memorandum dated 26.4.89 was enclosed as Annexure A-4 it does not contain the articles of charge and the statement of imputations. However, we find from the reply statement that the charge was unauthorized absence for the period from 6.6.1985. In the case of applicant in OA/18/95 article of charge is enclosed which brings out that the

period of unauthorized absence from duty was from 6.6.85.

The grounds urged in support of the O.As are that in view of the earlier orders of the High Court and the subsequent directions of the Tribunal in TA/433/86 quashing of the transfer orders, the disciplinary proceedings could not have been initiated.

7. We have gone through the case records in TA/433/1986 and we find from the reply statement of the respondents in TA/433 of 1986 that the authorities had to transfer the petitioners from Joravarnagar Railway Station to Mithapur Railway Station. The petitioners filed before the High Court SCA/20741 of 1985 and it was rejected by the Hon'ble High Court on 5th April 1985 with a direction to the petitioners to make a representation against the transfer order. Such a representation was made and it was considered and the applicants were posted at Bala-road and Lakhtar. This was challenged before the High Court again in SCA/3413 of 1985 which on the constitution of this Tribunal came to be transferred to this Tribunal and numbered as TA/433/86. It is thus clear that from 6.6.85 onwards

when they were charged with unauthorized absence, there was no direction by the Hon'ble High Court ordering the respondents to maintain the status quo.

The earlier SCA 2041 of 1985 was rejected by the High Court on 5.4.85 and pursuant to the directions of the High Court after considering the applicant's representation the Railway administration had modified the transfer order and posted them elsewhere. This was challenged in another case SCA/3413/1985 filed on 18th June 1985. No interim direction to maintain the status quo was given in that S.C.A. It is urged that as the Tribunal had quashed their transfer orders from Joravarnagar to Lakhtar and Bala-road in TA 433/1986, The applicants could not have been charged with unauthorised absence. The Tribunal disposed of TA/433 of 1986 by its order dated 24.11.1988- copy at Annexure A-2. While no doubt it quashed the transfer order, in para 4 inter alia it observed as under:-

22
" The respondent authorities might be within their rights in proceeding against the petitioners for indiscipline or misconduct and we have no doubt that after giving them an opportunity to place their case before the authority competent to decide upon such memorandum which might be issued on them, orders which are just and legal would be passed and if the petitioners have

any cause against them, they would be free to pursue it in the proper forum. This is entirely a matter for the respondent authorities to decide for which there are safe guards provided for the petitioners', but for that reason we cannot endorse the attempt on the part of the respondents to harass the petitioners in the name of the interest of administration to physically move them from one station to another even if it is nearby and their hidden motive in doing so cannot be disguised by giving a token promotion which the petitioners want to refuse".

8. It is clear from this that the Tribunal had recognised the right of the authorities to proceed against the petitioners for indiscipline. The Railway authorities issued a charge memo for the period of absence from 6.6.85 onwards. In their reply statement they have brought out that:

" The respondents authority has trifled to give him job which he was holding. The applicants were spared on transfer on 6.6.85 but they refused to ~~adcept~~ accept the transfer memo given by SM JVN in presence of witnesses. Since they have not joined duty at new station they are considered as on ^{un}authorized absence and for which he has been served with SF-5 for remaining unauthorised absent and after completion of all formalities, he has been awarded punishment for withholding of increment for one year without future effect vide NIP No. ~~22k~~ ET/308/88/XI/28 dated 15.2.91".

A penalty was imposed after conducting DAR inquiry by the Disciplinary Authority and the applicants were given all opportunities to present their case before imposition of penalty. It is also stated that after the

penalty was imposed they had not chosen to file an appeal. The Railways also have raised the question of limitation. As regards this aspect we find that ⁱⁿ OA/672/93, M.A. for condonation of delay was allowed. OA/18/95 was filed initially as OA/St/425 of 1991 in October 1991 and was under objection for quite some time.

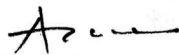
9. From the above, it is evident that at the relevant period from 6.6.85 there was no order of the High Court giving direction for maintaining status quo. The fact that the Tribunal quashed the transéer orders in TA/433 of 1986 did not preclude the respondents from initiating the disciplinary proceedings as the Tribunal in fact had given them liberty to do so. According to the respondents such proceedings were held after issue of charge-sheet and after conducting DAR inquiry by the Disciplinary Authority where the applicant was given all due opportunities to defend their case.

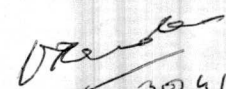
10. In the light of the foregoing discussion we hold that the grounds urged in support of the O.A. are without any merit. There is no reason to quash the charge-sheet or for setting aside the penalty when no infirmity in

the issue of the charge-sheet or in conducting of the disciplinary proceedings has been brought out. The respondents had the right and the jurisdiction to initiate disciplinary proceedings which they had done. The applicants also had chosen not to file an appeal and to exhaust the departmental remedies before approaching the Tribunal. As the applicants were absent from 1985 to 1989, they were not paid salaries. When they had not worked, they are not entitled to pay.

11. The O.As are without merit and are dismissed without any orders as to costs.

A copy of this order may be kept in both the files.


(A.S. Sanghavi)
Member (J)


30/4/2001
(V. Ramakrishnan)
Vice Chairman

pmr