

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 84 of 1993
T.A.NO.

DATE OF DECISION 2.2.1999

Bijal Govind Petitioner

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

Union of India & others Respondent

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

CORAM

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

The Hon'ble Mr. P.C. Kannan, 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 ?

Bijal Govind aged about
45 years, Occupation
Unemployed
Address: Gangman of No.35
PWI(W) Rajkot
(Advocate Mr.B.B.Gogia)

.. Applicant

Versus

1. Union of India
Owning and representing
Western Railway
Through: General Manager
Western Railway
Churchgate, BOMBAY.
2. The divisional Engineer (W)
Western Railway
Rajkot.
3. Asstt. Engineer (W)
Western Railway
Rajkot
(Advocate Mr. N.S.Shevde)

.. .. Respondents

ORAL ORDER
O.A. No. 84 of 1993

Dt. 2.2.99

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

We have heard Mr. Gogia for the applicant and Mr. Shevde for the
Respondents.

2. The applicant was a regular Gangman, who was inflicted with the
penalty of removal from service by an order dt. 10.8.92 as at Annexure A/6.

He filed an appeal to the appellate authority dt. 14.9.92 (Annexure A/7).

The appellate authority has rejected the appeal vide his order dt. 21.12.92 (Annexure A/8). In the present OA both the disciplinary authority's order and Appellate authority's orders are challenged.

3. Mr. Gogia submits that the applicant was sick during the period from October, 1990 to April, 1992 and after recovery from the ailment he contacted Railway Hospital and he reported for duty on 7.5.92. From 7.5.92 he had worked till the orders removing him from service. He says that no regular enquiry was held and a cursory report was given by the Inquiry Officer, stating that he was absent during the period and on that basis he was inflicted with the penalty of removal from service. Mr. Gogia draws attention to the various Court rulings, copies of which are enclosed in the OA where the Gujarat High Court held that the penalty of removal from service is a very harsh punishment and should be sparingly used only in fit cases. He draws attention to the decision of 1992 (2) GLS page 311 Varshin Bhagwan v/s state of Gujarat to the effect that the Government servant who was absent from duty without permission did not deserve a harsh and severe punishment of dismissal. He says that this position has been reiterated in various other decisions of the Gujarat High Court. Mr. Gogia further

submits that the applicant in his appeal in September, 1992 had pleaded as follows:

“Still however, if any mistake is taken place in observation of rules, I may be excused and in these hard days instead of snatching bread from my children and wife, kindly excuse me and arrange to take me back on duty.”

Mr. Gogia says that the applicant had thus requested to take a lenient view in his case and that the fact that he was absent from October, 1990 to April, 1992 is not such a grave misconduct which would warrant removal from service. He also draws attention to Rule 22 of the Railway Servants (Discipline and Appeal) rules as per which the appellate authority has to consider the appeal specifically as to whether the penalty imposed is adequate, inadequate or severe. The appellate authority, however, in the order of December, 1992 has not gone into this aspect at all and held that the period of absence is long and the plea for ignorance of rule is not acceptable and has rejected the appeal. While upholding the penalty of removal from service the appellate authority, according to Mr. Gogia had not gone into the details specifically the prayer of the applicant that he may be taken on duty. He says that the orders of the appellate authority are bald and cryptic and cannot be sustained.

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4. Mr. Shevde for the Railways says that the enquiry was held as per rules and the authorities were satisfied with the conduct of the same. It is a fact that the employee was absent during the relevant period, which is not disputed by the applicant himself. He also says that as regards the quantum of penalty, the matter is now well settled with the ruling of hon'ble Supreme Court in the case of Parma Nanda.

5. We have carefully considered the submissions of both counsel. Even if the employee has admitted that he was absent from duty during the relevant period but on account of his sickness the question of penalty has to be considered. We take note of the submissions of Mr. Shevde that the Tribunal cannot interfere regarding the quantum of penalty. However, we find that the applicant had specifically requested for taking him back on duty and this would imply with a lesser punishment. The appellate order reads as follows:

"I have carefully gone through entire case, period of absence is very long i.e 1 ½ years and plea of ignorance of rules is not acceptable.

The appeal is rejected and penalty imposed is upheld."

There is nothing in this order to show that the aspect of lesser punishment has been kept in view by him. Mr. Gogia has contended that the applicant

was sick and remained absent for some period and he may be given a lesser punishment. The appellate authority has not adhered to ~~the~~ Rule 22 of the Railway Servants (Discipline and Appeal) Rules, which requires consideration of the quantum of penalty as to whether it is severe. We also take note of the submission of Mr. Gogia that the Hon'ble Gujarat High Court has held that the penalty of removal from service should be sparingly used and only in rare cases. We find from the reply statement that the applicant was engaged as a substitute on 28.4.70 and was granted Temporary status on 28.10.70. He would have been regularised thereafter, though the date of regularisation is not mentioned. There is nothing to show that the applicant had come to adverse notice during the period from October, 1970 to 1990 when he remained absent. These aspects are material, which should have been taken into account by the appellate authority while taking a view as to the penalty is adequate or severe ^{or} ~~as~~ the penalty of removal from service ^{of} virtually wipes out over 20 years of service.

6. In the circumstances, we quash the order of the appellate authority dt.21.12.92 and remand back the matter to the appellate authority to issue a speaking order, particularly in regard to the question of penalty imposed on the applicant. Mr. Gogia requests that the applicant may be given personal hearing. If the applicant sends such a request the same shall be granted

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and the applicant may be given a personal hearing when he can raise various issues. The entire exercise should be completed by the appellate authority (Respondent No.2) within 4 months from the receipt of copy of the order.

7. With the above direction the O.A. is finally disposed of. No costs.



(P.C. Kannan)
Member (J)



(V. Ramakrishnan)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

CA/84/93

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: 17/02/99

Countersigned.

Section Officer/Court Officer.

Arrival
17/2/99
19.11.99

Signature of the Dealing
Assistant

CAUSE TITLE

VERSUS

4-0-5 202

[illegible]