

## NEW BOMBAY BENCH

198

**DATE OF DECISION** 6.6.1990

**Advocate for the Respondent(s)**

**CORAM**

**The Hon'ble Mr. D.K. Agrawal, Member (J)**

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 ?

Dr. C. S. ...

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

(4)

OA.NO. 140/87

Shri George Mathai

.. Applicant

vs.

The General Manager,  
Central Railway, Bombay V.T.  
AND ANOTHER.

.. Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar  
Hon'ble Member (J) Shri D.K.Agrawal

Appearance

Mr. K.R.Jadhav  
Advocate  
for the Applicant

JUDGEMENT

Dated: 6.6.1990

(PER: D.K.Agrawal, Member (J))

This application under Section 19 of the Administrative Tribunals Act, 1985 is directed against the order dated 18.6.1986 passed by the Appellate Authority.

2. Briefly the facts are that the applicant<sup>who</sup> ~~was~~ employed as Welder Gr.II under the Senior Divisional Electrical Engineer (Traction Rolling Stock), Central Railway, Kalyan in the grade of Rs.330-480 remained unauthorisedly absent from 6.12.1983 to 17.6.1986. Therefore the Major penalty chargesheet dated 11.4.1985 was issued to him. The Enquiry Officer issued notice at the residential address of the applicant as per record and further notices had also been displayed on Notice Board at his working place. However, the applicant failed to turn up. The enquiry was therefore conducted ex-parte on 30.7.1985. The Disciplinary Authority i.e. Assistant Electrical Engineer accepted the findings of the Enquiry Officer and imposed a punishment of removal from service vide order dated 6.8.1985. The applicant was accordingly removed from service on 16.8.1985. An appeal

*D.K. Agrawal*

was preferred by the applicant. The Appellate Authority on 18.6.1986 taking lenient view of the matter and with a view to give the employee one more chance to improve reduced the punishment of removal from service and directed his reinstatement in the lower grade of welder i.e. Rs.260-400, treating intervening period from the date of removal to the date of reinstatement as without pay. The applicant thereupon filed the aforesaid application with a prayer that he be directed to <sup>be</sup> reinstated on his original post with full pay and allowances.

3. It is <sup>not</sup> denied that the applicant remained absent from 6.12.1983 to 17.6.1986 for which he was chargesheeted. The absence has been explained by the applicant through a medical certificate which is Annexure 'A' to the application. The said certificate has been issued by Dr. Y.W.Kelkar, Superintendent M.M.S.I., N.M.Mental Hospital, Thane dated 2.6.1986 wherein certifying that the applicant had remained under his treatment for his mental illness from 1.12.1983 onwards. There is no other proof about the illness of the applicant. On the other hand, the proceedings before the Enquiry Officer revealed that as and when notice was sent to the applicant at his residential address, a report was made that he is out of India. No member of his family was present or at least no member of the family received the notice. There is also no proof that the applicant has remained in any hospital or that he was confined at a particular place and not in a position to move about or to present himself before the Enquiry Officer. The certificate referred to above is a very general and vague certificate which does not indicate the applicant's inability to attend to enquiry. The respondents have also challenged the authenticity of the certificate. In any case, we are satisfied on the facts that there is no justified material which disqualify the applicant either from duty or attending

*Dr. K. S. Suresh*

the enquiry proceedings. If so, his absence rather unauthorised absence has been established. Once we come to the conclusion that applicant remained unauthorisedly absent from duty without proper application for leave, the only question is as to the quantum of the punishment to which we are not concerned with a view of the decision in the case of Union of India v. Parma Nanda, (1989) 10 ATC page 30.

4. In view of the above, this petition is liable to be dismissed. The said petition is dismissed with no order as to costs.

*D.K. Agrawal*  
4.6.90.

(D.K. AGRAWAL)

MEMBER (J)

*M.Y. Priolkar*  
6.6.90

(M.Y. PRIOLKAR)

MEMBER (A)