

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. 80/87

Ved Prakash,
C/o. A.V.Bukhari,
I.A.Saiyed,
Advocates,
Homi House,
35 Police Court Lane,
Fort,
Bombay - 400 001.

.. Applicant

vs.

1. Union of India
through
Film Division,
Ministry of Information &
Broadcasting,
New Delhi.

2. Dy. Directorate General,
Doordarshan,
Mandi House,
New Delhi.

3. Dy. Director General,
Doordarshan Kendra,
Worli,
Bombay.

.. Respondents

Coram:Hon'ble Vice-Chairman Shri B.C.Gadgil

Hon'ble Member(A)Shri P.S.Chaudhuri

Appearances:

1. Mr.I.A.Saiyed,
Advocate for the
applicant.

2. Mr.M.I.Sethna,
Advocate for the
Respondents.

ORAL JUDGMENT

Date: 7-10-1988

(Per B.C.Gadgil, Vice-Chairman)

The applicant who was working as a Producer Gr.II with Doordarshan Bombay is challenging the order dtd. 7-4-1986(Annexure 'A' to the petition) whereunder his contract of service stood terminated with effect from 25-6-1985. From the arguments advanced before us it appears that the applicant was on casual leave from 17-6-85 to 20-6-85.

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The next three days were holidays. He joined duty on 24-6-1985. However, he proceeded on sick leave from 25-6-1985. The contention of the applicant is that he thereafter continued to be sick and therefore he could not join duties even after 7-4-1986.

As against this the respondents allegation is that the applicant was not sick at all and that he unauthorisedly remained absent and that therefore the impugned order was passed.

2. During the course of the arguments Mr.I.A.Saiyed, the learned counsel for the applicant, submitted that even after the impugned order was passed the applicant has been in indifferent health. He told us that even till yesterday the applicant was in a hospital. The grievance of the applicant is that termination of service on the ground of alleged unauthorised absence without holding a departmental enquiry is not permissible. It is true that Mr.M.I.Sethna, the learned counsel for the respondents, urged that the applicant was on contract basis and that what has been done by the department is to terminate the contract with effect from a particular date. We do not intend to go into the controversy as to whether the applicant was in the regular employment of the respondents. At the same time we feel that termination of service (whether contract or otherwise) without holding an enquiry may not be legal. It is on account of this position that we intend to direct the respondents to reinstate the applicant in service.

3. The question would arise as to what should happen of the intervening period. As stated above Mr.Saiyed has frankly stated that the applicant has all the while been sick and ailing. To impress us

of this position Mr.Saiyed has also shown some medical record to show that even till yesterday the applicant was in the Nanavati Hospital. In view of these circumstances we posed a question to ourselves as to whether the applicant would have been able to render duty even if the impugned order would not have been there. What the applicant would have done was that he would have proceeded on leave due/admissible. We take this position into account and hold that this is not a fit case where the applicant should be given any back wages. At the same time we direct the respondents to treat all the period of absence of the applicant as leave due/admissible.

4. Mr.Saiyed argued that the applicant may be given some time to join duties, as he is still not in good health. However, this position cannot be continued indefinitely and it will be necessary for the applicant to join duties on 14th November,1988. We also further direct that if he does not so join on 14th November,1988 the order of reinstatement shall stand automatically cancelled without reference to the Tribunal.

5. Hence we pass the following order:
The respondents are directed to reinstate the applicant in service on 14-11-1988. The applicant should report to the Office of the Director,Doordarshan, Bombay on 14-11-1988 and on such joining the applicant should be assigned the usual duties. The applicant would not be entitled to any back wages inasmuch as, as stated in the earlier paragraphs of this judgment, the applicant was not keeping good health and was not well enough to render any duty. The respondents are

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directed to treat the period upto 13-11-1988 as leave due/admissible under the rules.

6. We make it specifically clear that this order stands automatically cancelled without reference to the Tribunal if the applicant does not join duties on 14-11-1988 as mentioned above.

7. Parties to bear their own costs.

B.C.Gadgil

(B.C.GADGIL)
Vice-Chairman

P.S.Chaudhuri

(P.S.CHAUDHURI)
Member(A)