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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH , BOMBAY.

Original Application No.229/87.

Shri V.S.Kasture.

..... Applicant.

V/s.

The Dy. General Manager (SPC-A) MTCE  
FETEX 100 L Telephone Exchange  
Cooperage Telephone Exchange,  
Building,  
Bombay - 400 021, and Anr.

..... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman.

Appearances:-

Applicant by Shri A.L.Kasturey.  
Respondents by Shri A.I.Bhatkar.

Oral Judgment:-

¶ Per Shri M.S.Deshpande, Vice-Chairman ¶ Dt. 21.12.1993

The applicant has approached this Tribunal with two grievances. One is about the adverse remarks recorded against him for the year 1985-86 and came to be communicated to him by the letter dt. 30.6.1986. The representation made against the adverse remarks on 13.8.1986 was not decided by the respondents at all. The second grievance is about the period of absence from 4.11.1985 to 16.11.1985 as dies non, inspite of the application which the applicant had given for being granted E.L. on 1.11.1985 for a period of one month.

2. The Applicant was working as Junior Telecom Officer. On 23.9.1985 the ADE Installation informed the applicant that he had been marked absent for evening duty 1500 to 2200 hrs. on 22.9.1985, that he failed to attend duty thus causing inconvenience to the relieving Junior Engineer and calling upon him to explain as to why disciplinary action should not be taken against him within

three days from the date of the receipt of the letter. The applicant by his reply dt. 24.9.1985 pointed out that the words (S/R) were not marked against his name   originally and they came to be marked later and this <sup>reply</sup> ~~application~~ was attested by three other officials who stated that the duty chart <sup>which</sup> was displayed upto 1800 hrs did not disclose the words (S/R) and that <sup>they were</sup> ~~it was~~ not there. These three Officers were ~~S/Shri~~ J.R.Gahlot, J.E.Patel and Bashikar. Without investigating into the correctness or otherwise of this, the adverse remarks came to be made against the applicant based on the solitary instance, in the confidential report for the year 1985-86. The Respondents learned counsel pointed out that <sup>in</sup> the chart Ex.II to the reply the words (S/R) appeared after the words "P/Room" against the name of the applicant which was at Sl.No.7. In the face of the statement of the applicant and three others the words "S/R" ~~was~~ not there originally, it is difficult to believe that the words "S/R" which appeared at the fag-end beyond the lines in the column of remarks might have been there originally. In any event, before making the adverse remarks against the applicant on this point, the matter should have been investigated and that was not done. The grievance of the applicant also was that the Reporting Officer had observed his work for a period of less than 3 months and he could not have written the Confidential Report against him. This is an additional circumstance which would be against the Respondents. When the matter came up before me yesterday, the learned counsel for the Respondents sought an adjournment firstly on the ground that the concerned clerk was not present and the matter be taken up late in the day. I was told that the official had not brought the


relevant file regarding the representation and the matter stood adjourned for to day in order to enable the Respondents to produce the file. Shri Bhatkar, the learned counsel for the Respondents stated that the file was not available. This is a very sorry state of affairs and smacks of an attempt to conceal the relevant material from the Tribunal. Having regard to all the circumstances, I find that the adverse remarks passed against the applicant for the year 1985-86 cannot stand and a direction shall have to be issued asking the Respondents to delete those adverse remarks.

3. With regard to the period of dies non the applicant has produced the copy of the application which he had made on 1.11.1985 for grant of E.L. for one month. No order was passed on it. The learned counsel for the Respondents referred to Ex. 'A-9' to the application which is the reply dt. 13.11.1985 in which it was stated that the applicant was absent from duty from 4.11.1985 without permission or sanctioned leave and the period of absence was being recommended to be treated as dies non without prejudice to the disciplinary action that may be initiated. There is no mention that the leave which ~~was~~ was sought by the application dt. 1.11.1985 was being refused and the choice of the words in the letter dt. 13.11.1985 is also significant because it refers to absence without permission or sanctioned leave. It is easy to see that the Respondents must have had the applicant's application for E.L. before them when this letter was written, from the language of used in the letter itself. The application 'Exhibit A-9' dt. 1.11.1985 ~~bears~~ the seal of the Office of the DE STCA Installation, Bandra with the date

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1.11.1985. Shri Bhatkar pointed out that the applicant had appealed against the dies non and that appeal was dismissed by the order at 'Exhibit A-14' passed on 31.3.1986 by the Dy. General Manager, Bombay Telephones. This was done without assigning any reasons and also cannot be supported in view of the factors which have been indicated above. It is therefore, clear that the Respondents were determined to take some action against the applicant despite the fact that there was no material on which the said action could be based. The order dt. 3.12.1985 'Exhibit A-11' which treated the period of absence from 4.11.1985 to 16.11.1985 as dies non shall have therefore to be quashed.

4. In the result, the application is allowed, The adverse remarks recorded against the applicant for the year 1985-86 are directed to be deleted. The order dt. 3.12.1985 regarding the period of absence being treated as dies non and the Appellate Order are quashed and the Respondents are directed to treat this absence as E.L. if that leave is admissible to the applicant or some other leave which may be admissible to the applicant.

  
(M.S. DESHPANDE)  
VICE-CHAIRMAN

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