

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.3/87

Shri K.Gopinath,  
C/o.G.S.Walia,  
Advocate High Court,  
89/10, Western Railway Colony,  
Matunga Road,  
Bombay - 400 019.

... Applicant

Vs

1. Union of India, through  
General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.

2. Sr.Commandant(RPF),  
Bombay Central,  
Bombay - 400 008.

... Respondents

Coram: Hon'ble Vice-Chairman B.C.Gadgil  
Hon'ble Member(A) L.H.A.Rego

Appearances:

1. Mr.G.S.Walia  
Advocate for the  
applicant.

2. Mr.A.L.Kasturey,  
Advocate for the  
respondents.

ORAL JUDGMENT  
(Per: B.C.Gadgil, Vice-Chairman)

Date: 9-11-1987.

The applicant who was working as a Daftary in the Railway Protection Force has filed this application challenging his removal from service with effect from 29-8-1986. This penalty was imposed after holding a departmental enquiry.

2. When the matter was called out for hearing today Mr.Walia, on instructions from the applicant who is present in the Court, made a statement that the applicant intends to restrict the scope of the application only to the quantum of penalty. In view of this statement, it is not necessary for us to go into the various contentions that

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have been raised in the application. Suffice it to say, that the applicant was removed from service for his unauthorised absence from 11-10-1984.


3. The applicant was initially working as a Sainik in the Railway Protection Force, Bombay from 19-12-1958. As he sustained some accidental leg injury, he was declared medically unfit for duty in this post and was absorbed as Khalasi from 3.12.1971 on compassionate grounds. He was later promoted as Daftary from 23.3.1972. Mr. Walia pointed out that owing to leg injury of his client which was causing him no little discomfort and to the illness of his aged mother at ~~the relevant time~~, he could not attend duty regularly. Mr. Walia submitted that he was pressing these extenuating circumstances for the limited purpose of requesting the Tribunal to consider, as to whether the penalty of removal from service imposed on the applicant was disproportionate to the nature of his misconduct. Mr. Kasturey, Counsel for the respondents contended that even prior to 11-10-1984 applicant used to remain absent from duty and that this would be a circumstance to suggest that the applicant was negligent in performing his duties. In our opinion it will not be proper to take into account the earlier absence while deciding the quantum of penalty. This is so, because, the applicant had no opportunity to plead and prove the reasons for such absence prior to 11-10-1984. Thus the only reason for removing the applicant from service, is his unauthorised absence for over a year or so, from 11.10.1984. Taking into account the above submissions made by Mr. Walia and also after considering the nature of misconduct of the applicant, we think that it is a fit case, where the penalty of removal from service is reduced to that of compulsory <sup>retirement</sup> ~~compulsory~~.

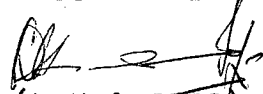
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4. However, before passing any final order Mr.Kasturey drew our attention to the fact that the applicant has kept in his possession the railway quarters that were allotted to him and that he has not yet vacated the same. Mr.Walia on instructions from his client states that the applicant is ready to give an undertaking to the Tribunal, that he would vacate the quarters on or before 11-12-1987 and that the applicant is ready to pay whatever amount payable by way of rental under the Railway Rules for occupation of these quarters. Mr.Walia has produced the said undertaking and it is taken on record. In view of this undertaking we do not think that Mr.Kasturey can have any grievance about the quarters. However, to make the matter more clear we intend to direct that the pensionary benefits arising out of the compulsory retirement should not be paid to the applicant until he vacates the quarters in question. Hence we pass the following order.

5. The application partly succeeds. The misconduct alleged against the applicant is held proved. However, the penalty of his removal from service from 29-8-86, is reduced to that of compulsory retirement with effect from that date. The respondents are directed to pay to the applicant all the pensionary benefits (as are permissible under the rules). However, it is further directed that such benefits should not be paid until the applicant vacates the quarters that are in his possession. We hereby make a record that the applicant has given an undertaking to the Tribunal that he would vacate the quarters on or before 11-12-1987.

6. Parties to bear their own costs of this application.

  
(B.C.GADGIL)  
Vice-Chairman

  
(L.H.A.REGO) 9-12-87  
Member(A)