

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH,CAMP AT NAGPUR.

Original Application No.780/87.

Shri Namdeorao.

..... Applicant.

V/s.

Union of India & Anr.

..... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,  
Hon'ble Shri M.Y.Priolkar, Member(A).

Appearances:-

Applicant by Shri Desai.

Respondents by Shri P.S.Lambat.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 22.7.1993.

Heard Counsel for the parties.

2. The applicant was appointed as a Gangman in 1978 and was given a permanent status in 1981. On the charge that he was continuously absent from 4.6.1983 to 10.1.1985 a departmental inquiry was held against him and he came to be removed from service by the order dt. 25.9.1986. An appeal which was filed against the order of removal was also dismissed.

3. The grievance of the applicant was that he was not given an opportunity of placing his defence. We have perused the inquiry papers. The factum of continuous absence was admitted by the applicant. But his contention was that he was receiving treatment for a mental illness in the Mental Hospital. When he was questioned by the Enquiry Officer he could not produce ~~the~~ certificate of the Mental Hospital, but he was not put <sup>to</sup> further question by the Enquiry Officer whether he wanted to adduce evidence and to examine any witnesses in his defence. In our opinion, that has deprived the applicant of ~~an~~ an opportunity of making out his defence at the stage of the inquiry. In the appeal it does not appear that the Appellate Authority applied

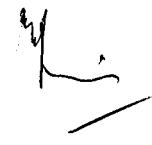
its mind to this position. The Appellate Order appears to have been passed mechanically. Before us the applicant has produced a certificate to show that he attended the Mental Hospital on certain dates between 29.1.1986 to 10.12.1986, and his ~~present~~ condition on 10.12.1986 was found to be normal and that he was fit for duty. What is important is that the applicant had made a statement even at the stage of the inquiry that he would join duties if he was certified to be fit by the Medical Officer.

3. We find that it would have been quite in order, had the Appellate Authority asked the applicant to produce the relevant certificates regarding the plea that the applicant had taken. The Appellate Authority would have been well advised to grant a personal hearing to the applicant in the light of the observations ~~in~~ in Ramchander V/s. Union of India (ATR 1986(2) S.C. 252) and to determine whether in this case the extreme penalty of removal from service was called for.

4. In view of the above circumstances, we set aside the order passed by the Appellate Authority and direct the appellate authority to give a fresh hearing to the applicant. It will be open to the appellate authority to consider his additional certificates or medical evidence which the applicant may choose to place before the appellate authority regarding his mental condition from 4.6.1983 to 10.1.1985. After giving this opportunity and a personal hearing to the applicant the appellate authority should dispose of the appeal before it in accordance with law. The appellate authority will give a notice to the applicant of the date on which

it fixes the case for hearing as directed above and dispose of the appeal within three months from the date of the communication of this order to the appellate authority.

5. The Original Application is disposed of with the above directions, with no order as to costs.

  
(M.Y.PRIOLKAR)  
MEMBER(A)

  
(M.S.DESHPANDE)  
VICE-CHAIRMAN

B.