

(14)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.135/87

Prabhakar Waghoo Bagul,  
Behind Co-operative Bank,  
At & Post: Kasara,  
Dist. Thane.

.. Applicant

vs.

1. The Senior Divisional Engineer  
(North East),  
Central Railway,  
Bombay V.T. 400 001.

2. The Assistant Engineer(Track),  
Central Railway,  
Kalyan,  
Dist.Thane.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman  
Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.D.V.Gangal  
Advocate for the  
Applicant.

2. Mr.J.G.Sawant,  
Advocate for the  
Respondents.

ORAL JUDGMENT:

Date: 3-6-1991

(Per U.C.Srivastava, Vice Chairman)

Before the case started learned counsel for the applicant, on instructions, stated that in case the applicant gets back the service and will be deemed to continue in service the applicant will not claim any salary from the date he absented himself upto now or any other monetary benefits.

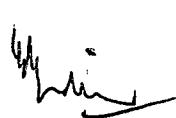
2. The applicant who was a Gangman was chargesheeted for remaining absent unauthorisedly between 7-1-1984 to 31-12-1984. The applicant's case is that ~~he~~ on or about 7th January, 1984 one Mangal Janu who was a keyman picked up a quarrel and he was assaulted by the said Mangal Janu. The applicant reported the matter to Permanent Way Inspector and thereafter he also addressed a letter to the administration on 3.9.1984 about the threat to his

life and requested that he may be transferred. The applicant also stated that he also forwarded a representation dtd. 18th July, 1984 requesting that he may be transferred as there was threat to his life. It was stated that not only the applicant was assaulted by another gangman Mangal Janu but also goondas from outside also assaulted Permanent Way Inspector Ramchandran. He continued to make representation.

3. On 31-12-1984 he was issued with a chargesheet and enquiry started. In the enquiry the applicant accepted the charges and requested that his case may be considered sympathetically and arrangements may be made to transfer him to Igatpuri. The Inquiry Officer while submitting his report also made recommendation that he appears to be a simple and poor man. The Disciplinary Authority removed him from service and his appeal against this order is also dismissed. The railway administration admitted that there are no complaint that Ramchandran, PWI has assaulted. As far as the complaint of the applicant is concerned there appears to be no denial. As far as the Vasind PWI is concerned it is stated that he was not posted at that particular station when the incident took place. From the written statement it appears that Mangal Janu also made a complaint to the PWI Vasind on 14-10-1983 and that the applicant had gone to him and threatened him. Both of them were called by the PWI and ordered them to work peacefully. The respondents also stated that the applicant lodged a complaint on 3.9.1984 of an incident of 7.1.1984.

4. From the above facts it appears some incident took place. However, action of the applicant remaining absent himself from duty cannot be appreciated or cannot be justified. Even if a complaint was made and no action is taken he should have seen that some action is taken by approaching higher authorities instead of sitting idle at his home because of threat to his life.

5. However, from the facts of the case it appears to be a fit case in which the removal order of the applicant deserves to be set aside. It appears that the Inquiry Officer recommended his case but he did not conduct the enquiry in the manner it has to be done. Although the applicant has accepted the charges the Inquiry Officer did not enter into the question as to whether it was as a result of threat that he remained absent himself. The disciplinary authority should have entertained the question.~~xx~~  
~~xxx~~ But instead of totally taking into consideration the common conduct of the human being passed this order. In these circumstances and taking into consideration the statement of the learned counsel the application is allowed. Removal and appellate order is set aside. The applicant be reinstated in service ~~but~~ he shall not get any wages ~~xx~~ which he would have otherwise got from the date he remained absent till ~~he~~ resumed duty but the period shall be treated as duty without any break for all other purposes. He may be reinstated within a period of three months. There will be no order as to costs.



(M.Y.PRIOLKAR)  
Member(A)



(U.C.SRIVASTAVA)  
Vice-Chairman