

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: ~~XXXXXX~~ 479/87

~~XXXXXX~~

DATE OF DECISION 7.4.1993

Shri S.M.Pawar. Petitioner

Shri G.S.Walia Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri P.R.Pai. Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.S.Deshpande, Vice-Chairman,

The Hon'ble ~~Shri~~ Ms. Usha Savara, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(M.S.DESHPANDE)  
VICE-CHAIRMAN

NS/

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, BOMBAY.

Original Application No. 479/87.

Shri S.M.Pawar.

..... Applicant.

V/s.

Union of India & Ors.

..... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,  
Hon'ble Ms.Usha Savara, Member(A).

Appearances:-

Applicant by Shri G.S.Walia.  
Respondents by Shri P.R.Pai.

Oral Judgment:-

¶Per Shri M.S.Deshpande, Vice-Chairman Dated: 7.4.1993.

This application is directed against the order of removal from service which was passed by the Disciplinary Authority and was maintained in appeal and was a subject matter of an infructuous Review Application. The applicant had been charged with absence from duty for two short spells and for producing a medical certificate, the date of which had been altered by him. The applicant admitted all these facts before the Enquiry Officer ~~was~~ and the finding of guilty recorded by the Enquiry Officer was accepted by the Disciplinary Authority and in <sup>an</sup> which appeal both the finding and the penalty of removal from service came to be maintained. In the Review Application also, the applicant failed.

2. The only ground on which Shri Walia, learned counsel for the applicant pressed before us was that in the circumstances of the case though the finding of guilt could not have been altered in the present case, at least if personal hearing were to have been given to the applicant, he would have been in a position to urge for some claimancy before the appellate authority and this opportunity was denied to him. Reliance was placed on

the observations of the Supreme Court in Ramchander V/s. Union of India (1986(2) SLR 608), where it was observed that fair play as justice also require the ~~person~~ <sup>15</sup> hearing before passing the order. We find that though it is difficult for the applicant to get over the finding of guilt recorded on his own admission, it may be possible for him to place the factors which might justify claimancy in the circumstances of the present case before the Appellate Authority ~~which~~ <sup>who</sup> would be in a position to consider whether the removal from service was the appropriate penalty to be imposed in the circumstances having regard to the age of the applicant at the time when the ~~lapse~~ lapse was committed.

3. We would, therefore, set aside the order of removal passed by the appellate authority and direct the appellate authority to give a personnel hearing to the applicant within three months from to day and then impose such penalty as he may feel would be justified in the facts and circumstances of the case. Shri Walia makes it clear that in the event the order of removal is not maintained by the authority concerned, he would be willing to forego all the benefits of back wages and continuity of service, should the appellate authority consider such a course advisable.

*U. Savara*  
(USHA SAVARA)  
MEMBER(A)

*M. S. Deshpande*  
(M. S. DESHPANDE)  
VICE-CHAIRMAN

B.