

(46)

CENTRAL ADMINISTRATIVE TRIBUNAL.
BOMBAY BENCH

Original Application No: 233/87

Transfer Application No:

DATE OF DECISION 5-8-93

Shri V.L.Pawar Petitioner

Shri G.S.Walia Advocate for the Petitioners

Versus

Union of India through Respondent

General Manager, Telecommunication Bombay & Ors.

Shri P.M.Pradhan 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 ? *No.*
2. To be referred to the Reporter or not ? *No.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No.*

✓
(M.S.Deshpande)
Vice-Chairman

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY

O.A.No.233/87

Shri V.L.Pawar .. Applicant
vs

Union of India
Through General Manager,
Telecommunication .. Respondents
Bombay and ors.

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

Appearance:

Mr.G.S.Walia Adv. for
the applicant

Mr.P.M.Bradhan Adv. for
the respondents.

Dated: 5-8-93

Oral Judgement
(Per Hon'ble Mr.Justice M.S.Deshpande)

By this application the applicant challenges findings of the Enquiry Report that he was absent unauthorisedly without prior sanction of leave and the penalty of reducing his pay to the minimum of scale Rs. 260-480 for a period of 3 years.

The charge against him was unauthorised absence for 11 days on 10 occasions in all. The Enquiry Officer made his first report on 30-7-1985 and it went to the Disciplinary Authority. The Disciplinary Authority directed that further evidence to be recorded without recording his reasons for the directions. When the matter came up before the Enquiry Officer, certain documents were allowed, on the basis of these documents Enquiry Officer came to the conclusion that the applicant was unauthorisedly absent

on 10 occasions for 11 days ~~apart~~ from the regular leave which was granted for 44 days. The Disciplinary Authority agreed with the findings of the Enquiry Officer and imposed the punishment as stated above. The appeal against that order held and the applicant has therefore moved the Tribunal by this application.

The contention of Shri Walia counsel for the applicant was that there was irregularities in the procedure adopted as such entire Enquiry was a farce. Although no evidence was ^{led} laid by the Presenting Officer the applicant was cross-examined by the Enquiry Officer by conducting the proceedings in parts. The copies of the documents ~~on~~ which reliance was placed depending on it were not supplied to the applicant. None of these documents were given to the applicant. The applicant was informed to refer to only circumstances that he was unauthorisedly absent. The Enquiry Officer ^{did} not accept the applicant's version that he had dropped his outturnslips for those days in the outturn-slips box kept for the purpose, Only on the ground that if such slip had been dropped memo would not have been issued to him for his absence on 10 occasions. The applicant denied that he had given signatures in token of having received memo, and insisted that he was attending office. The Enquiry Officer relied on the evidence that no reply had been received to the memo's issued to him. Nothing turns upon these documents because the Enquiry Officer himself pointed out that on inspection of IOS on 17-6-81 which was received on 16-9-81 after verification the applicant came to be marked present on 17-6-81. ^{instance alone} This summary is as much as was sufficient to show that the marking of the applicant as absent and issue of memo's to him for the absence was not sufficient. We find considerable substance in the grievance

that reference had been made to it in Annexure-3 to the statement impuned and which was given to the applicant. The documents seems to have been placed on the record, but the presenting officer did not examine any person who would have been conversent with the documents.

In this context we might refer to the observations of the Hon'ble Supreme Court in M/s Bareilly Electricity Supply Co. Ltd. AIR 1972 P. 330" that other document is produced to establish some fact which is relevant to the enquiry, the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order III Civil Procedure Code and the Evidence Act both of which incorporate these general principles! In the present case at least notice should have been given ~~avtolaathe~~ to the applicant of the documents on which reliance was placed, the official record should have been made available at least for inspection of the applicant and an opportunity should have been granted to him before the material was sought to be used against him. This case to our mind was one of no evidence and the applicant cannot be found guilty in the circumstances to which we have referred above. In the result the application is allowed. The order dated 10-2-1987 finding the applicant guilty as charged and imposing punishment against him is quashed. The applicant will be entitled to all monetory benefits which he has claimed for the punishment were imposed on him. The monetory benefits should be calculated within 3 months from the date of receipt of this order. No order as to costs.

b. Lawrence
(Ms.Usha Savara)
Member(A)

M.S.Deshpande
(M.S.Deshpande)
Vice-Chairman