

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 49/87  
~~XXXXXX~~

198

DATE OF DECISION 1.5.1991

Mr. M.A. Mutawalli Petitioner

MR. G.S. WALIA Advocate for the Petitioner(s)

Versus

UNION of India and others Respondent

MR. P.M. PRADHAN Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. U.C. SRIVASTAVA, Vice-Chairman

The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
  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*
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.49/87

M.A.Mutawalli,  
C/o.G.S.Walia,  
Advocate,  
89/10,Western Rly.Qtrs.,  
Matunga Road,  
Bombay - 400 019.

.. Applicant

vs.

1. Union of India  
through  
General Manager,  
Telecommunications,  
Maharashtra Circle,  
Bombay - 400 001.
2. General Manager,  
Telecommunications,  
Maharashtra Circle,  
Bombay - 400 001.
3. Director,  
Telecommunications,  
Bombay.

.. Respondents

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

Appearances:

1. Mr.G.S.Walia  
Advocate for the  
Applicant.
2. Mr.P.M.Pradhan  
Advocate for the  
Respondents.

ORAL JUDGMENT:

Date: 1-5-1991

(Per U.C.Srivastava, Vice-Chairman)

Before arguing this case learned counsel for the applicant stated that in case his application is allowed and he is reinstated back in service, he has instruction from his client to state that in that event he will not claim backwages from the date of termination to this date.

2. The applicant <sup>has</sup> approached this Tribunal against the order dated 28-1-1985 by which he was removed from service <sup>and</sup> ~~based on~~ the order dtd.19-12-1986 dismissing his appeal. The applicant was a Telegraphist

in the department of Telecommunication in the office of the General Manager, Telecom Maharashtra Circle, Bombay. He was served with a charge sheet and the charges against him were that while functioning as C/S Telegraphist in C.T.O. Pune during the period from December, 1981 to March, 1983 he violated the provisions of Rule 62 & 162 of P&T Manual Vol. III. The second charge was that while functioning in the aforesaid office he violated the provisions of Rule 3(1)(ii & iii) of the CCS Conduct Rules, 1964. The charge was elaborated and it was mentioned that during this period he availed 110 days of leave on medical ground and on 18 occasions he has sent leave applications by post and the leave papers are received late due to late posting. It was further alleged that on 8 occasions he personally handed over his leave papers late in the office. By doing so he violated the provisions of Rule 162 of P&T Manual Vol. III and further from 3-1-1983 he was absent from duty without any application or intimation thereby he has violated provisions of Rule 62 & 162 of P&T Manual Vol. III.

3. According to the applicant, as the applicant submitted a reply to the same and explained that his absence was neither intentionally nor deliberate as during this period he was sick and could not attend the duty and he was under treatment of family doctor from whom a medical certificate was obtained. It was further submitted that although he has sent the medical certificate it appears that the same did not reach his office as the letters were not posted by the person to whom the work was entrusted.

4. The proceedings started against him. The applicant, it appears that, did not attend the enquiry on the ground that he was sick and during this period he was also in hospital as appears from the record.

The inquiry proceeded ex-parte and charges against him was held to have been proved. The Inquiry Officer could have waited for this purpose as the charge was only for absence and there was no charge of corruption or any other charge but instead of waiting the enquiry officer proceeded with the enquiry. The enquiry, obviously an - ex-parte enquiry, could not be said to be a fair enquiry and the enquiry proceedings in these circumstances are vitiated. Consequently we are constrained to allow this application and both the orders dated 28.1.1985 and 19.12.1986 are quashed and set aside and the applicant should be taken back to service.

5. In view of the statement made on behalf of the applicant that backwages may not be paid, the applicant shall not be paid any backwages but he would be deemed to have continued to be in service for the entire period and the period may be treated as on leave with continuity in service. There will be no order as to costs.

  
(M.Y. PRIOLKAR)  
MEMBER (A)

  
(U.C. SRIVASTAVA)  
Vice-Chairman