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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 620/87
~~ExAxxxNax~~

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DATE OF DECISION 12.2.1990

Shankar Ramchandra Pande Petitioner

S.B.Kasar

Advocate for the Petitioner(s)

Versus

GM, Central Railway, Bombay V.T. Respondent

MR. K. Shetty

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B. Mujumdar, Member(J)

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



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

(10)

O.A.620/87

Shankar Ramcharan Pande
C/o.Laxman Prasad Pande,
Ganesh Talai,
Near Kaydya Hanuman Mandir,
KHANDWA(M.P.)

.. Applicant.

vs.

1. The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
Bhusaval.

.. Respondents

Coram: Hon'ble Member(J)Shri M.B.Mujumdar
Hon'ble Member(A)Shri M.Y.Priolkar

Appearances:

1. Mr.S.B.Kasar
Advocate for the
Applicant.
2. Mr.R.K.Shetty
Advocate for the
Respondents.

ORAL JUDGMENT

(Per M.B.Mujumdar, Member(J))

Date: 12.2.1990

The applicant was appointed as a Gangman at Badnera on 24.11.80, when he was hardly 19years old. On 30.8.82 he had some quarrel with his superior officer viz. Assistant Station Master Mr.Jaynaryan Meena. He remained absent from duty from that date. According to him he was afraid of Mr.Meena as well as he had fallen sick. By order dated 28.6.1983 he was deemed to have resigned from the date of issue of the letter as he remained absent unauthorisedly for more than 90 days. His name was therefore struck off from the muster. It is alleged by the applicant that he had appealed against that order on 12.12.83 and he had also sent reminders on 20.6.84, 15.12.84 and 12.5.85 but he has neither received any reply nor

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he was taken on duty, Vide letter of the applicant dated 8.12.85 to the DRM, Central Railway, Bhusaval at page 16 of the application. Lastly on 6.6.86 he preferred an appeal against discontinuance of service. It was disposed of by DRM(W) Bhusaval on 24.7.86 by observing "the penalty imposed by AE(E) Akola is in order". Thereafter the applicant had preferred an appeal/representation dtd. 2.9.86 to the Divisional Railway Manager, Bhusaval and the reminder dated 15.2.87. As no reply was forthcoming he had also sent another appeal to the DRM, Bhusaval on 12.6.87. As he was not informed anything he filed this application on 23.9.87 challenging the order dated 28.6.83 passed by the AE(E) Akola. He has also requested for reinstatement with all arrears of pay and allowances.

2. The respondents have filed their written statement. According to them the impugned order dated 28.6.83 was passed under ~~Rule 732 of the Indian Railway Establishment Code~~ Note 2 of rule 732 of the Indian Railway Establishment Code, Vol.I. That note is quoted in para 4 at page 3 of the written statement and it reads as under:

"Where a temporary Rly. servant fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him or where he is granted a lesser amount of extraordinary leave than the maximum amount admissible, and remains absent from duty for period which together with the period of extraordinary leave granted exceeds the limit upto which he could have been granted such leave under sub-rule(1) above, he shall, unless the President in view of the exceptional circumstances of the case otherwise determines, be deemed to have resigned his appointment and shall, accordingly, cease to be in railway employ."

3. We have heard Mr. Kasar for the applicant and Mr. R. K. Shetty for the respondents. We may point out that on the complaint of Asstt. Station Master, Jaynarayan Meena, Police had filed a chargesheet against the applicant in the Court of Judicial Magistrate, First Class, Murtajapur. The case was numbered Criminal Case No. 32/83 and the applicant was acquitted of the offence under Sections 324 and 352 of the Indian Penal Code by judgment dtd. 14.3.1986. But neither that criminal case nor the incident in that case has anything to do with the impugned order dated 28.6.1983. The impugned order was passed because the applicant had unauthorisedly remained absent from 17.8.1982 i.e. prior to the date of incident in the criminal case.

4. Hence the only point that we shall have to consider in this case, apart from the point of limitation, is whether the provision under which the applicant was deemed to have resigned from the post is legally valid. In *Jai Shanker v. State of Rajasthan*, AIR 1966 SC 492 the Bench of the Supreme Court comprising of 5 Judges has held that removal from service on overstay without giving an opportunity to hear and service regulations providing that there is automatic termination of service is violative of Article 311 of the Constitution of India. Following this case, Principal Bench of this Tribunal (of which one of us, M. B. Mujumdar, was a Member) has held in *Tirlok Singh v. Union of India*, 1988(2)(CAT) SLJ 82, that Rule 14 of the Revised Leave Rules 1933 which is similar to Note 2 of Rule 732 of Indian Railway Establishment Code, Vol. I, which we have quoted earlier, is ultravires of Article 311 of the Constitution of India. It is not necessary to discuss all the case laws on this point, because we have no doubt that such a

provision in the rules or regulations ^{is} ~~are~~ not sustainable in view of Article 311 of the Constitution of India. Needless to point out that the respondents have passed the impugned order without giving a showcause notice to the applicant. Hence the impugned order dtd. 28.6.83 is liable to be quashed and set aside.

5. Mr.R.K.Shetty however, vehemently submitted that the applicant has filed this application on 23.9.87 i.e. more than 4 years after the impugned order was passed and hence it is barred by limitation. But the applicant was making appeals/representations. His appeal dated 6.6.86 was dismissed by the Divisional Railway Manager(W), as can be seen from the letter dtd. 24.7.86, with a cryptic statement that the penalty imposed by the AE(E)Akola is in order. The applicant has alleged in para 7 at page 9 of the application even thereafter that he had preferred appeal/representation to the Divisional Railway Manager dtd. 2.9.86 followed by reminder dated 15.2.87 and another appeal dtd.12.6.87. In para 14 of the written statement ☐ the respondents have stated that no reply to the appeal dated 2.9.86 was considered necessary as it was a case of abandonment of contract of employment. Whatever it may be the applicant's appeal dtd. 6.6.86 was rejected by the respondents on 24.7.86 and the applicant should have approached this Tribunal within one year therefrom. The applicant has stated that he was preferring appeals even prior to 6.6.86 but the ^{receipt} ~~reply~~ thereof is denied by the respondents in their written statement.


6. The applicant has filed Misc.Petition on 1.12.87 for condonation of delay. The respondents have denied the grounds therein by filing the reply on 25.1.88. After considering all the facts we feel that ends of justice would be met if we direct the respondents

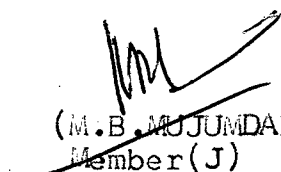
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to pay arrears to the applicant since one year prior to the filing of this application.

7. With this we pass the following order:

- (i) The impugned order dated 28.6.83 passed by the AE(E)Akola(at Annexure-11 at page 11 of the application)is hereby quashed and set aside. The respondents are directed to reinstate the applicant as Gangman i.e. the post which he was holding prior to 28.6.83 within two months from the date of receipt of a copy of this order;
- (ii) The period from 17.8.82 to 28.6.83 should be regularised by granting him whatever kind of leave is admissible to him including EOL without pay. The period from 28.6.83 till 22.9.86 should be treated as dies-non without break in service. That period will not count for any other purposes except pensionary services. The applicant, ~~xxx~~ however, shall be deemed to be on duty from 23.9.86 till the date of reinstatement and he shall be paid salary and allowances for that period within three months from the date of reinstatement.
- (iii) ~~Parties to bear their own costs.~~ Parties to bear their own costs.


(M.Y. PRIOLKAR)
Member (A)


(M.B. MUJUMDAR)
Member (J)