

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. - 198-  
T.A.No. 34 of 1987

DATE OF DECISION 7.7.1987

Shri I.H.Shaikh Applicant/s.

Mr.D.V.Gangal Advocate for the Applicant/s.

Versus

General Manager, C.Rly Respondent/s.  
Bombay V.I.

Advocate for the Respondent(s).

CORAM:

The Hon'ble Member(A) Shri J.G.Rajadhyaksha  
The Hon'ble Member(J) Shri M.B.Mujumdar

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not ? No
3. Whether to be circulated to all Benches? No

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH.

Transferred Application No.34 of 1987.

Ibrahim Husain Shaikh,  
45, Near Tirhegawi Peth,  
Solapur.

... Applicant  
(Original Plaintiff)

V/s.

Union of India  
Owning the Central Railway  
through the General Manager,  
Central Railway, V.T.,  
Bombay.

... Respondents  
(Original Defendant)

Coram: Hon'ble Member(A) Shri J.G. Rajadhyaksha  
Hon'ble Member(J) Shri M.B. Mujumdar

Appearance:

Mr. D.V. Gangal, Advocate  
for the applicant.

ORAL JUDGEMENT

Dated: 7-7-1987.

(Per Shri M.B. Mujumdar)

The applicant had filed Regular Civil Suit No.183 of 1978 in the Court of the Civil Judge, Senior Division, Solapur and it is transferred to this Tribunal under Section 29 of the Administrative Tribunal's Act, 1985.

The applicant Mr. I.H. Shaikh was first appointed as Pointsman in March, 1964. After about six months, he was transferred to Angar as Gateman. In April, 1970, he was sent to Assistant Medical Officer at Solapur for periodical examination. The Divisional Medical Officer, Solapur who examined him found that his vision without glasses was below the prescribed standard. He was asked to use spectacles and submit the same for examination. The Divisional Medical Officer approved spectacles but informed him that he was colour blind. For that defect he was treated at the Eye Hospital at Solapur. But, still, according to the applicant he was removed from service from 6-7-1970 as he was medically unfit. No written order was passed but he

...2/-

was removed from service orally.

He then sent notice dated 15-3-1972 to the Respondents under Section 80 of the Civil Procedure Code Challenging the termination of his services and claiming the arrears. As no reply was received, he filed Regular Civil Suit No. 553/1973 in the Court of Joint Civil Judge, Senior Division, Solapur claiming appropriate reliefs. In fact, initially, the suit was filed on 1-8-1972 in forma pauperis requesting for exemption from payment of Court Fee. After that request was granted, the suit was registered and numbered as 128/73. The applicant has made the following prayers in the suit. He should be declared to be in the service of the Respondents. He should be given arrears of salary of Rs. 3183/- for the period from 7-7-70 to 30-4-72 at the same rate at which he was getting his salary while he was in service.

4. The suit was resisted by the Respondents but, after hearing, the learned Joint Civil Judge, Senior Division, Solapur decreed the suit with costs on 30-9-75. A declaration was given that the applicant had continued to be in service of the Respondents. He was given arrears of salary amounting to Rs. 3183/- as claimed by him. The Respondents did not prefer any appeal against that order.

5. In pursuance of the decree, the applicant was reinstated in service as Gateman with effect from 26-8-76. He is still serving as Gateman.

6. The applicant was given arrears of salary amounting to Rs. 3183/- as claimed by him but he was not given any arrears of salary from the date of the suit till actual reinstatement on 26-8-76. He did make representations to the Respondents but they have been turned down as there was no specific direction from the Court.

7. On 13-2-78, the applicant has filed the present suit  
...3/-

i.e. Regular Civil Suit No. 183/78 in the Court of Joint Civil Judge, Senior Division, Solapur. In para 3 of the plaint, he has mentioned the basis on which he is entitled to the arrears of salary from May, 72 to 25-8-76. According to the calculations, he was entitled to Rs.13,276.15. But he has clarified that this claim is not legal as part of the claim is time-barred. Hence, he has restricted his claim to Rs.6854.80 i.e. the arrears of salary from November 74 to 25-8-76. He has claimed that amount with interest and costs.

8. We may point out that the applicant has paid Court Fee of Rs.510/- on the suit. The suit was resisted by the Respondents by filing their written statement at Exhibit 16 in the suit. Mr. S.S. Boralkar, Senior Clerk in the Divisional Railway Manager's Office at Solapur requested for an adjournment but we have rejected that request as the case is old and simple.

9. The main contention of the Respondents is that the Court had not given any direction regarding the payment of salary from the date of the suit till the date of actual reinstatement of the applicant in service. The other contention of the Respondents is that the applicant was not on duty during that period and hence he is not entitled to any arrears.

10. As already pointed out, the previous suit was decreed with costs. We have gone through the judgement and we find that the termination of the services of the applicant was held illegal and malafide by the learned Civil Judge who decided the suit. It is on the basis of this finding, that a declaration was given that the applicant was still in service and he continued to be in service.

11. It is true that the learned Civil Judge has not given any specific direction or order regarding payment of salary from the date of the suit till the date of actual reinstatement of the applicant. But that is the reason why the applicant was

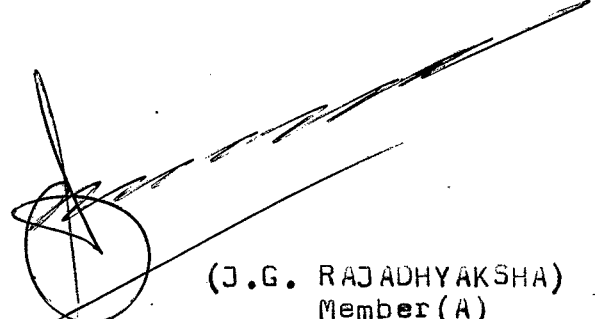
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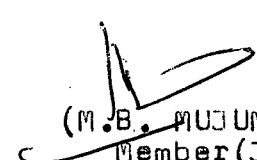
required to file the present suit. In our opinion, the applicant is entitled to claim salary for the period from November 74 till 25-8-76. We do not find any justifiable reason as to why the applicant should not be given arrears of salary for that period. It is true that the applicant was not on duty during that period but this was because he was illegally removed from service on 6-7-1970, as held by the Court.

12. We are, therefore, inclined to award the amount claimed by the applicant with interest and costs, which we quantify at Rs.800/-. We therefore pass the following order:-

O R D E R

- 1) The Respondents shall pay Rs.6855/- with interest at the rate of 12% per annum from the date of the suit i.e. 12-1-78 till the date of actual payment to the plaintiff.
- 2) The Respondents shall also pay Rs.800/- as costs of the suit and application to the applicant.
- 3) The above order should be complied within three months from the date of receipt of a copy of this order.

  
(J.G. RAJADHYAKSHA)  
Member(A)

  
(M.B. MUJUMDAR)  
Member(J)