

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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## NEW BOMBAY BENCH

~~XXXXXX.~~

198

T.A. No. 399/87

DATE OF DECISION 4-2-1988Eradali Madar Shah PetitionerShri K.R.Jadhav Advocate for the Petitioner(s)

Versus

Union of India RespondentShri J.D.Desai(for Shri M.I.Sethna) Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. L.H.A.Rego, Member(A)

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
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

Tr. Application No. 399/87

Eradali Madar Shah,  
Ashok Nagar, 92,  
1/1, New Vasinaka,  
Chembur,  
Bombay - 400 071.

... Applicant  
(Original  
Petitioner)

vs.

Union of India  
through  
The Secretary,  
Department of Atomic Energy,  
and the Director;  
Bhabha Atomic Research Centre,  
Trombay  
Bombay - 400 085.

... Respondent  
(Original  
Defendant)

Coram: Hon'ble Member(A) Shri L.H.A. Rego

Hon'ble Member(J) Shri M.B. Mujumdar

Appearances:

1. Shri K.R. Jadhav,  
Advocate, for the  
Applicant.
2. Shri J.D. Desai (for  
Shri M.I. Sethna)  
Advocate for the  
Respondents.

ORAL JUDGMENT

Date: 4-2-1988

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

The applicant, Shri E.M. Shah, had  
filed Short Cause Suit No. 5064/81 in the City  
Civil Court at Bombay and it is transferred to  
this Tribunal under Section 29 of the Administra-  
tive Tribunals Act, 1985.

2. The essential facts for the purpose  
of this judgment are these: The applicant had  
joined service with the respondents as a Driver

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on 15-4-1958. On 11-10-1978 he was communicated some adverse remarks against his behaviour, namely, that he was argumentative in nature. He had protested against these remarks but with no success. On the contrary by an order dtd. 17th December, 1976 passed under Rule 56(j) of the Fundamental Rules he was compulsorily retired from service from the same date by paying three months' pay and allowances in lieu of notice. He represented against that order and the Committee constituted for considering his representation rejected his representation and confirmed the order of compulsory retirement. He made a representation against that decision also and the Committee consisting of Additional Secretary and two Jt. Secretaries reviewed the case of the applicant and held, "The CRs of Shri E.M. Shah indicate, that though there were some uncomplimentary remarks regarding his behaviour etc. his overall performance during the years has not been such as to warrant his premature retirement from service. Accordingly the Committee recommend <sup>reinstatement</sup> of Shri Shah to his post of Grade II Driver, BARC. The position regarding treatment of the period of his unemployment before reappointment should be considered by the appropriate authority, in the light of relevant rules on the subject."

3. Thereafter, by an order dtd. 10th January, 1978 the applicant was directed to report for duty within three days from the receipt of the order. It was mentioned in the order, that formal order of reinstatement and orders relating to payment of pay and allowances from the date of premature retirement

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to the date of joining, would be issued as soon as the applicant reports for duty.

4. The applicant reported for duty on 16-1-1978. But it appears that no formal orders either regarding his reinstatement or regarding payment of pay and allowances were issued at any time. However, on 27th October, 1978 an order was passed granting 120 days E.L. from 18-12-1976 to 16-4-1977, 88 days' HPL from 17-4-1977 to 13-7-1977 and 184 days E.O.L without medical certificate from 14-7-1977 to 13-1-1978. 14-1-1978, 15-1-1978 were Saturday and Sunday respectively and probably he was allowed to suffix these days to <sup>the</sup> leave. It was further ordered that the period of leave from 14-7-1977 to 13-1-1978 will not count for increment. The applicant retired from service on superannuation on 1-4-1979.

5. On his premature retirement on 17-12-1976, the applicant was paid Provident Fund balance of Rs.11,377 (personal contribution of Rs.5,521/- plus Government contribution of Rs.5,856/-) By <sup>a</sup> letter dtd. 21-3-1978 the applicant was directed to refund the said amount to Government, together with interest in lumpsum or in default to forego his claim for past service upto the date of his premature retirement from service. The applicant could not refund the amount in time and hence he went on representing for adjusting the amount towards the arrears due to him on account of pay and allowances for the period from 17-12-1976 to 16-1-1978. We are told, that

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since his retirement with effect from 1-4-1979  
the applicant is drawing a pension of <sup>about</sup> Rs.190/- <sup>per mensem.</sup>  
The amount of Provident Fund paid to him on his  
retirement.

6. The main prayer of the applicant in the  
plaint is for treating the period from 18-12-1976  
to 16-1-1978 as on duty on full pay and allowances.  
According to him, the order of compulsory retirement  
was not proper and legal and after it was set aside  
he should have been given all the consequential  
benefits.

7. The respondents have filed their written  
statement when the suit was pending in the City Civil  
Court. They have justified the directions given by  
the respondents in their letter dtd. 27-10-1978.

8. We have heard advocates for both the sides  
and considered the relevant record and provisions.  
We are of the view, that the direction given by the  
respondents in their letter dtd. 27-10-1978 that the  
period from 14-7-1977 to 13-1-1978 should be regula-  
rised by granting one kind of leave or the other is  
not proper and legal. The direction in that letter  
that the said period would not count for increment  
is also not proper and legal.

9. We have pointed out, how the Committee  
constituted for reviewing the representation of the appli-  
cant had come to the conclusion that there was no warrant  
for premature retirement of the applicant, considering his

overall performance during the relevant period. Hence it is clear that the order of compulsory retirement dtd. 17-12-1976 passed under FR 56(j) was not justified. Once the order is set aside as it was unwarranted and unjustified it should be followed by all its natural consequences. It was not because of the fault of the applicant that he could not remain on duty during that period. It was also not on account of any fault of the applicant that the order of the compulsory retirement was set aside after about 13 months. Hence to treat the intervening period as on leave will not be proper and justifiable. We are justified in taking the above view by the provisions of FR 56(jj)(i) which read as follows:

"(jj)(i) If on a review of the case either on a representation from the Government servant retired prematurely or otherwise, it is decided to reinstate the Government servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement by the grant of leave of the kind due and admissible, including extraordinary leave, or by treating it as dies non depending upon the facts and circumstances of the case:

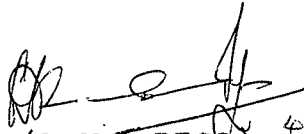
Provided that the intervening period shall be treated as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or, if the order of premature retirement is set aside by a court of law."

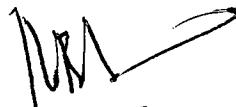
In our opinion the case of the applicant is covered by the above proviso. As already pointed out, the applicant's premature retirement was held unwarranted by the Committee constituted for reviewing his representation. The officer who passed the order on 27-10-1978 has not stated as to whether premature retirement of the applicant was justified in the circumstances of the case or not. Hence in view of the aforesaid proviso the period from 18-12-1976 to 15-1-1978, shall have to be treated as on duty for all purposes including pay and allowances and increments.

10. We, therefore, direct that the period from 18-12-1976 to 15-1-1978 should be treated on duty for all purposes including pay, allowance and increments. On that basis, the applicant's pay shall be fixed on 16-1-1978 and further, till the date of his retirement on superannuation on 31-3-1979. His pension from 1-4-1979 shall also be refixed on that basis. The leave order dtd. 27-10-1978 passed by the Asstt. Personnel Officer is quashed. The applicant shall be paid the amount of encashment of leave due to ~~his~~ credit at the time of his retirement. On the same basis arrears due to the applicant should be calculated and the amount which is due to the respondents from the applicant shall be adjusted against arrears. Balance, if any, shall be paid to the applicant as far as possible within three months from the receipt of a copy of this order.

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11. With these directions the application  
is disposed of, with no order as to costs.

  
(L.H.A. REGO) 4.2.1988  
Member(A)

  
(M.B. MUJUMDAR)  
Member(J)