

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXX~~
NEW BOMBAY BENCH

~~XXXXXX~~
T.A. No. 505/87

198

DATE OF DECISION 30-12-1988Shri R.S.Mahajan

Petitioner

Shri K.R.Jadhav

Advocate for the Petitioner(s)

Versus

Union of India and another

Respondent

Shri P.R.Pai

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

Tr.505/87

Shri R.S.Mahajan,
Room No.2, Yardi Chawl,
Bhartachari Chowk,
Kalyan,
Dist.Thane.

.. Applicant
(Original Petitioner)

vs.

1. Union of India
through
The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
VT Annex Building,
Bombay V.T. .. Respondents

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

Hon'ble Member(A)Shri M.Y.Priolkar

Appearances:

1. Shri K.R.Jadhav
Advocate for the
Applicant.
2. Shri P.R.Pai
Advocate for the
Respondents.

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

Date: 30-12-1988

The applicant had filed the present Writ Petition in the High Court of Judicature at Bombay on 6-11-1985 and it was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act by an order passed on 17-9-1987.

2. The relevant facts for the purpose of this judgment are these: On 22-6-1956 the applicant was appointed as Diesel Mechanic in the Loco Shed of the Central Railway at Kurla. On 16-2-1975 he applied for casual leave for 5 days and went to his native place at village Sakli in Dist.Jalgaon. In May,1975 his father died. It is the case of the applicant that

thereafter he wrote to the Railway authorities for extending the leave. In 1975 he went to report for duty at the Loco Shed, Kurla. But he was orally asked to bring medical certificate from the medical authority of the Central Railway. Thereafter he was visiting the office of the Loco Foreman (Diesel) at Kurla for resuming his duties. But the Loco Foreman did not allow him to resume his duties. He was also not informed anything in writing. He also approached the District Medical Officers of the Central Railway at Kalyan and Byculla for obtaining medical certificate but they declined to issue any medical certificate. Finally he obtained a duty certificate on 16-4-1983 from the District Medical Officer, Kalyan but it was not accepted by the authorities and he was not taken on duty. After serving a notice under Section 80 of the Civil Procedure Code through his advocate the applicant has filed the present petition praying for a direction to the respondents to take him back on duty with full back wages from 23-2-1975.

3. The respondents have filed their written statement. They have relied on Rule 2014 of the Indian Railway Establishment Code Vol. II.

4. We have heard Shri K.R. Jadhav, the learned advocate for the applicant and Shri P.R. Pai the learned advocate for the respondents.

5. Rule 2014 of the Indian Railway Establishment Code Vol. II on ~~which~~ which the respondents have relied reads as under:-

"Rule 2014(F.R.18)R.II

(1) No Railway servant shall be granted leave of any kind for a continuous period exceeding five years.

(2) Where a Railway servant does not resume duty after remaining on leave for a continuous period of five years, or where a Railway servant after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension, for any period which, together with the period of leave granted to him, exceeds five years, he shall unless the President, in view of the exceptional circumstances of the case, otherwise determines, be deemed to have resigned and shall accordingly cease to be in Railway Service".

6. The applicant had gone to his native place on casual leave for 5 days on 16-2-1975. But there is nothing to show that he applied for extension of leave thereafter at any time further. It is not his case that he had fallen sick and hence he could not write to the authorities. We are therefore inclined to hold that he had failed to resume his duties for a period of more than five years after his leave expired on 22-2-1975. Hence in our view, under Rule 2014(2) quoted above, the applicant shall be deemed to have resigned and accordingly ceased to be in railway service after the expiry of five years from 22-2-1975.

7. Shri K.R.Jadhav, submitted that the sanction of the President was necessary for holding or for treating that the applicant had deemed to have resigned and ceased to be in railway service. But no comments are necessary for rejecting this submission in view of the wording of sub-rule 2 of Rule 2014. What the sub-rule says is that a railway servant shall be deemed to have resigned and shall accordingly cease to be in railway service on his failure to resume duties after remaining absent from duties for a period of more than five years, unless the President determines otherwise, in view of the exceptional circumstances of the case.

8. Mr.Jadhav relied on some letters. The first is dtd. 24-3-83 and the other is dtd.21/22-4-83 from Loco Foreman(D)Kurla. The former letter shows that the applicant was granted casual leave for 6 days from 17-2-1975 to 22-2-1975, but since the expiry of the leave he was continuously absent from duty till the date of letter due to some difficulties. The letter further stated that the applicant had not however informed about the sickness to the Railway doctors. Mr.Jadhav stressed on the sentence in the letter that the applicant's name was still on the muster roll. According to the letter dtd.21/22-4-83 written to the Divisional Railway Manager(D),Mechanical, Bombay, service particulars regarding the applicant were intimated and further orders were requested. A query was made in the letter as to whether the applicant should be taken on duty. These letters show that though the applicant had remained absent unauthorisedly for a period of about 8 years no former order terminating his services was passed. However, we find from the wording of Rule 2014 that no former orders terminating the services are necessary to be passed. It is a deeming provision and according to us when a railway employee remains absent from duty for a period of more than 5 years, unauthorisedly, he may be deemed to have resigned from service and accordingly cease to be in railway service.

9. Lastly Mr.Jadhav relied on a letter dtd. 6-3-1985 from Divisional Mechanical Engineer(D) Kurla to the Senior Divisional Personnel Officer, Bombay. By this letter it was informed that the applicant was unauthorisedly absent from 23-2-1976 for a period of more than 7 years. Along with this letter, service

record of the applicant was sent and it was requested to issue a notice of termination as per procedure. It appears that no notice or order terminating the service of the applicant was issued. But as already pointed out by us, no such order is contemplated ~~in the~~ Rule 2014(2) quoted above.

10. Coming to the authorities, Mr. Jadhaw relied on four authorities before us. However, we may point out that no authority was cited before us on behalf of either side in which Rule 2014 is explained. In our view the rule, as it is, is not illegal or invalid on any count.

11. The cases on which Mr. Jadhav relied are these: (i) I(1987)ATLT 37, Kusum Gupta vs. Haryana State Small Industries and Export Corporation, (ii) II(1987)ATLT(SN)32, Union of India vs. M.A. Chowdhary (iii) II(1987)ATLT 83, Radhakant Jha vs. Chief Commissioner, and (iv) II(1987)ATLT 427, Kismatram Kedaram vs. The Divisional Railway Manager. The first is the judgment of the Supreme Court. The entire case is not reported but a short note shows that the services of the applicants were terminated by mentioning in the order that the appellant would be paid one month's salary in-lieu of notice. However, one month's salary was not paid and it was contended that the appellant had not produced no dues certificate from the employer. The Supreme Court held that the employer cannot take advantage of his failure to give such a certificate to the employee and claim that he was entitled to withhold one month's pay and allowances. Obviously the facts are not at all similar to the case before us. The ratio of the judgment in no way supports the case of the applicant before us. The second case is

also a short note regarding the judgment of the Supreme Court. Facts stated in the short note show that the respondent, Chowdhary, was appointed as Staff Artist in All India Radio under an agreement for three years. On expiry of that period he was re-employed for various terms of contract. The orders stipulating retirement on attaining 55 years were passed. One of the clauses of the agreement provided for six months notice on either side. Notice of 6 months was issued and the service was terminated. The Supreme Court held that the Staff Artists hold civil posts under the Govt. of India and were entitled to protection under Article 311(2) of the Constitution of India. Again this case also does not help the applicant before us in any way.

12. In the third case the Supreme Court has held that if the Appellant in that case was unsuitable to hold the post of Extension Officer (Industries) which he was holding on officiating basis since 1966, and if he was found unsuitable for that post the proper thing to do was to revert him to the post which he was holding before he was appointed as Extension Officer. However, what was done was that his services were straightway terminated. That termination was held bad. Again we are at a loss to understand how this case would help the applicant before us. Last case is a judgment of this Bench of the Tribunal. In that case the services of casual labourers were terminated on the ground that they had obtained service by producing bogus and forged Casual Labour Service Cards. The Tribunal struck down the termination of the services of the applicants in that case. We have no doubt that

there is nothing in the judgment which helps the applicant before us.

13. In result we find that the application is devoid of any merit hence we dismiss the same with no order as to costs.


(M.Y.PRIOLKAR)
Member(A)


(M.E.MUJUMDAR)
Member(J)