

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
NEW BOMBAY BENCH

OKAxxDex
T.A. No. 416/87

198

DATE OF DECISION 30-6-88

Shri T.S.Bagde

Petitioner

Shri C.M.Jha

Advocate for the Petitioner(s)

Versus

Union of India, Ministry of Railways

Respondent

Shri P.R.Pai

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.Srinivasan, Member (A),

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

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

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

Tr. Application No. 416/87.

Shri T.S.Bagde,
C/o.Western Railway Chawl,
No.30/E, Room No.G-1,
1st Floor, Matunga Road,
Bombay.400 019.

... Applicant

V/s.

Union of India through the
Ministry of Railways having
its office at New Delhi.

... Respondents

Coram: Hon'ble Member(A), Shri P.Srinivasan,
Hon'ble Member(J), Shri M.B.Mujumdar.

Appearances:

Mr.C.M.Jha, advocate
for the applicant and
Mr.P.R.Pai, advocate
for the respondents.

JUDGMENT:

(Per Shri P.Srinivasan, Member(A)) Dated: 30-6-88

This is a transferred application received from the City Civil Court of Bombay where it was filed as small cause suit No.6666/83.

2. Shri C.M.Jha, learned counsel for the applicant and Shri P.R.Pai, learned counsel for the respondents have been heard.

3. The applicant was employed as Khalasi in 1975 in the Western Railway under the Inspector of Works at Parel. The applicant's uncle who was ^{an} employee of the Western Railway died on 3.3.1975 and his widow requested the Railway Administration to give employment to the applicant so that he could maintain her and her child. The applicant was already working as a casual labourer was, thereupon, given regular employment as a Khalasi and was allotted a Railway Quarter out of turn. It appears that subsequently, differences developed between the applicant and his aunt who complained to the Railway authorities that he was not treating her properly and wanted her to go out of the quarter. On

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receipt of such complaints the respondents instituted an inquiry against the applicant levelling the charge that though he was appointed as Khalasi and allotted Railway Quarter out of turn on the condition that he would look after his aunt and her children, he had failed to look after her and her children, and he was ill-treating them. It was further narrated that the applicant's aunt had complained of illtreatment from the applicant. The applicant was accused of breach of trust and going back on the word given to the Railway Administration that he would look after his aunt and her children. An Enquiry Officer was appointed, who, after inquiry held the applicant guilty of the charge. Thereafter, by an order dt. 25.5.1983 the applicant was removed from service by the Disciplinary Authority. An appeal filed by the applicant against this order was dismissed by the appellate authority by order dt.27.10.1983. A review application was filed after the Small Cause Suit was filed in the Bombay City Civil Court, and this was also rejected on 6.10.1987. The applicant has challenged all these orders.

4. Shri C.M.Jha learned counsel for the applicant submitted that merely because the applicant was appointed on the basis of a request from ^{of his aunt} her(aunt) and at that time it was understood that he would look after her, he could not be removed from service merely because ^{of the} ~~the~~ applicant failed to fulfill the obligation undertaken by him. The service rules of the Railways did not provide for a punishment of an official who failed in his obligations to his family. Shri Jha also submitted that the applicant was already working as a Casual Labourer for a number of years when he was offered regular appointment in 1975. Therefore,

it was not merely out of compassion that he was offered regular appointment, but also because he was already working with the Railways in the capacity of a Casual Worker. He therefore, submitted that the impugned orders be quashed and the respondents directed to reinstate the applicant.

5. Shri P.R.Pai, learned counsel for the respondents submitted that the only reason for which the applicant was given regular appointment was that he would be in a position to support his widowed aunt. By neglecting his aunt and illtreating her, the applicant had gone back on his words. Once he failed to fulfill his obligation, the very raison-d'etre of the applicant's appointment fell to the ground. The Enquiry Officer, after due inquiry had held the applicant guilty of the charge levelled against him and therefore, the applicant was rightly removed from service. He therefore, submitted that the application should be dismissed.

6. We have considered the rival contentions carefully. We do agree that there was some moral obligation on the part of the applicant to maintain his aunt and to the extent that he failed to carry out this obligation, as found by the Enquiry Officer, his conduct was deplorable. There is provision in the instructions issued by the Railway Board for giving appointment to a near relation of a deceased employee on compassionate grounds so that the person so employed will maintain the family of the deceased. But for the reason that his uncle ^{had} died, the applicant may not have got regular appointment in 1975 but probably some time later. From the nature of the applicant's appointment on compassionate grounds, one can infer that ^{he} ^{had} a ^{cast} duty ^{to} look after his aunt. A person can be punished for conduct un-becoming of a Government servant. Conduct un-becoming of a Government servant is not capable of precise definition. On the other hand, a Government servan:

P.R.Pai

has to conduct himself with decorum all the 24 hours of a day. If he fails in his family obligations and thereby causes distress to his dependent relatives it is undesirable conduct on his part as a Citizen and as a member of Society. If this is carried too far, one could say that it amounts to conduct un-becoming of a Government servant. At the same time we feel that as long as the applicant was carrying out his duties properly - there is no complaint voiced in the reply of the respondents in this regard - the ultimate punishment of removal from service was excessive. Now that the applicant has been out of service from 1983, we feel that he has sufficiently atoned for failing in his commitment implicit in the manner of his appointment. We would therefore, direct the respondents to take the applicant back into service within a month from the date of receipt of this order. In view of the peculiar facts and circumstances of this case and what appears to be a breach of ^a solemn undertaking given by the applicant when he was appointed on regular basis, we consider it fit to direct the respondents to pay the applicant 50% of the pay and allowances ^{to which} he would have been otherwise entitled, ^{if} had he not been removed from service, for the period 30.5.1983 to the date of reinstatement. The said period will for all other purpose be treated as period spent on duty and there will be no break of service.

7. In the result we pass the following orders.

O R D E R

1. The respondents should take back the applicant into service within one month from the date of receipt of this order.
2. The applicant should be paid 50% of the pay and allowances, to which he would have been entitled but for his removal from service, from 30-5-1983 to the date of his reinstatement and the said period will be treated as period spent on duty

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for all other purposes with no break in service. The arrears on this account should be paid to the applicant within three months of the date of receipt of this order.

3. The application is disposed of on the above terms. Parties to bear their own costs.



(P. SRINIVASAN)
MEMBER (A)



(M.B. MUJUMDAR)
MEMBER (J).