

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
NEW BOMBAY BENCHO.A. No. 354
~~XXXXXX~~

1987

DATE OF DECISION 11.01.1988Janardan Vithal Mhaske PetitionerShri D.V. Gangal Advocate for the Petitioner(s)

Versus

Divisional Mechanical Engineer, Respondent
Central Railway, Bombay V.T. And another.Shri N.R. Bhavsar Advocate for the Respondent(s)
(for Shri D.S. Chopra)

CORAM :

The Hon'ble Mr. J.G. Rajadhyaksha Member (A)

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

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Yes
NO

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

ORIGINAL APPLICATION NO.354/87

Janardan Vithal Mhaske,
At & Post; Chowk,
Taluka: Kholapur,
District: Raigad.

... Applicant.

Vs.

1. Divisional Mechanical Engineer,
(Carriage and Wagon),
Central Railway,
Bombay V.T.-400 001.

2. Assistant Mechanical Engineer,
(Carriage and Wagon),
Central Railway,
Bombay V.T.-400 001.

... Respondents.

Coram: Hon'ble Member (A) J.G. Rajadhyaksha.

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

Appearance:

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

Shri N.R. Bhavsar
(for Shri D.S. Chopra)
Advocate
for the respondents.

JUDGMENT

Date: 11.01.1988

(PER: J.G. Rajadhyaksha, Member (A))

The facts leading to this application under section 19 of the Administrative Tribunals Act, 1985 are that the applicant who was a Welder-Gr.III under the Carriage and Wagon Superintendent, Lonawala, was removed from his service because of alleged continued absence from his post between 10.4.1984 and 3.4.1986. Though the plaint contained many averments, the applicant's case mainly was that he had been suffering from mental disorder "wz f. Schizophrenic Psychosis," took treatment at the Mental Hospital, Thane and despite the fact that he was declared

...2.

fit on 22.4.86 to resume duty he was charge-sheeted and removed from service with effect from 20.5.1986. He appealed against the order of removal but the departmental appellate authority, confirmed the penalty of removal by an order dated 18.3.1987. The respondents had filed their reply in this Tribunal resisting the application contending that the applicant was absent for long periods and when he wanted to resume duties he was referred to the Railway doctors for certification that he was fit to resume the duties. In the case of the applicant, the respondents state that the applicant remained absent unauthorisedly from 10.9.1984 till the issue of the charge sheet and his production of a certificate from the Mental Hospital, Thane on 22.4.1986 could not stop the process of disciplinary action against him for his unauthorised absence. A charge-sheet was issued to him on 4.3.1986 and then alone he seems to have got the certificate from the Mental Hospital, Thane.

2. Shri Gangal, the Learned Advocate, for the applicant had several points to argue but his main contention was that when the applicant was on medical leave because of his mental disorder, the respondents had no right to proceed against him. According to him, this was not legal and accordingly not permitted. He, therefore, desired that the enquiry should be held as vitiated and the applicant reinstated in service. Shri Gangal, however, argued that even if for some reason the enquiry was warranted and it is held and that it was held according to the prescribed procedure, the quantum of punishment imposed upon the applicant was too harsh and disproportionate to his delinquency which was occasioned by a mental

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disorder. He added that the enquiry also suffered from the default of the Disciplinary Authority to furnish the applicant with a copy of the inquiry report to enable him to meet the case against him. Shri Gangal then added that even the appellate order was bad. In conclusion, however, Shri Gangal stated that if the order of removal was set aside and the applicant reinstated in service, he will not insist upon the payment of full salary from the date of the penalty order to the date of reinstatement. He may be granted half salary as the Tribunal may deem proper.

3. Shri Bhavsar (for Shri Chopra) the learned advocate for the respondents relied upon the reply submitted by the respondents and said that the action had been properly taken against the applicant and there was no reason why the Tribunal should feel inclined to interfere with the penalty order.

4. Having heard both the sides and perused the record of the case we felt, in the interest of justice, that Dr. Y.W. Kelkar who had issued to the applicant a certificate on 22.4.1986 should also be heard.

5. Accordingly, Dr. Y.W. Kelkar who is at present in Pune was heard on 4.12.1987. Dr. Kelkar stated that though the applicant had not been under his continuous treatment he could say that the applicant suffered from a mental disorder as certified from 17.9.84 and that on 22.4.1986 he was found fit by him and therefore, he issued the certificate that he could resume duties. It was Dr. Kelkar's opinion that the applicant did indeed suffer from mental disorder viz., 'Schizophrenic Psychosis' from 17.9.1984. On 22.4.1986 Dr. Kelkar certified that since

the applicant had been maintaining good and consistent improvement, he was certifying him as fully recovered from his mental symptoms and, therefore, he was physically fit and mentally alert enough to rejoin his duties.

6. There is no doubt that the applicant had remained absent from his duties and had failed to obtain leave of absence according to rules. Applicant had remained absent from duty and had neither reported sick nor intimated about his whereabouts according to the charge, served upon him. On 30.4.1986 applicant had admitted the charges. In the circumstances neither a full scale enquiry was called for, nor was it necessary to supply the applicant with a copy of the report of the enquiry officer before imposing the penalty upon him. In other words the Departmental Enquiry, findings therein and the results thereof are unassailable. We need not also go into the technical aspects raised in his argument by Shri Gangal, in view of his concluding submission that if applicant is reinstated in service he would not claim full pay from the date of removal till the date of reinstatement. This also is in a way an admission of the guilt on the part of the applicant accompanied by a prayer for reduction in penalty as already mentioned by the learned advocate.

7. In view of the record before us and in view of the statement made by Dr. Kelkar before us we are inclined to hold that the absence of the applicant was perhaps for reasons beyond his control. His failure to ask for leave or intimate his whereabouts is no doubt in breach of service rules and conditions. But the only mitigating circumstance is the confirmed possibility that he was

suffering from 'Schizophrenic Psychosis'. He has now been certified fit for duty. We, therefore, feel that in the peculiar circumstances of the case the penalty imposed upon the applicant is too harsh and disproportionate to his delinquency viz. absence from duty. We do not mean to suggest that every absence from duty can be condoned on any pretext whatsoever. But after having heard the medical opinion coupled with the circumstances we have no hesitation in holding that the applicant deserves some relief. We, therefore, pass the following orders:

ORDER

1. The application is partly allowed.
2. We direct the respondents to reinstate the applicant in service within 30 days of the date of receipt of this order subject to his producing a certificate of fitness from the authorities of the Railway Hospital or from any other authority that might be nominated by the respondents.
3. Though we are setting aside the order of removal we would accept Shri Gangal's suggestion that the applicant need not be paid his full salary from the date of his removal to the date of his reinstatement.
4. As for his unauthorised absence, and for the period between his removal from service as penalty and reinstatement, the respondents should obtain from the applicant applications for leave as may be due and admissible and sanction such leave including extraordinary leave

without pay. To be more specific his absence during illness may be treated suitably as leave due and admissible, including Extraordinary Leave, according to rules. The period between his removal and reinstatement should be "dies non". There shall thus be no break in service of the applicant and he shall not become disentitled to pensionary benefits on his retirement.

5. In the circumstances of the case parties may bear their own costs.

(M.B. MUJUMDAR)
MEMBER (J)

(J.G. RAJADHYAKSHA)
MEMBER (A)

Announced in after Court
today

11-1-1988