

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.46/87.

Mr. V.K.Wankhade,  
C/o. Abhay Bhojnalaya,  
Bus Stand Bhadrawati,  
Tahsil: Bhadrawati,  
Dist: Chandrapur (M.S.) .. Applicant

V/s.

1. The Chairman,  
Ordnance Factories Board,  
44, Park Street,  
Calcutta - 700 016.

2. The General Manager,  
Ordnance Factory,  
Chanda,  
P.O.Chandrapur,  
P.O.Chandrapur Dist (M.S.)  
442 501. .. Respondents

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

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

Appearance:

1. Mr.D.M.Kakani, Advocate  
for the applicant.
2. Mr.Ramesh Darda, Advocate  
for the Respondents

ORAL JUDGMENT

Dated: 27.2.1987.

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

We have just now heard Mr.D.M.Kakani, the learned advocate for the applicant and Mr.Ramesh Darda, the learned advocate for the Respondents, on the point of admission.

2. The applicant was working as an Examiner Gr.II in the Ordnance Factory at Chanda since 1973. He was kept under suspension on 21.1.1981 for a 'gherao' of

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the General Manager and remaining absent from duty. On these charges a departmental inquiry was held against him and by an order dated 2.4.1983 he was dismissed from service with effect from the same date. The applicant had preferred an appeal against that order on 19.3.1983. That appeal is still undecided as stated before us. The applicant had filed ~~a~~ Writ Petition No. 319/85 in the Nagpur Bench of the High Court Judicature of Bombay. But on 20 September, 1985 it was withdrawn. A copy of the order passed by the High Court was shown to us by the learned advocate Mr. Ramesh Darda. The order reads - "Allowed to be withdrawn".

3. Thereafter the applicant had filed an application before the Assistant Labour Commissioner (Central) and Conciliation Officer under the Industrial Disputes Act. However, the Assistant Labour Commissioner (C) informed the applicant that the Ordnance Factories are exempted as an Industry from the purview of the Industrial Disputes Act. The applicant has filed this application under ~~a~~ section 19 of the Administrative Tribunals Act, 1985 on 8.1.1987. The Respondents have not filed any reply at admission stage.

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4. Mr.Darda, the learned advocate for the Respondents has urged before us that after the withdrawal of the Writ Petition by the applicant he cannot file a fresh application before this Tribunal for the same purpose for which he had filed the Writ Petition. According to him, before the Writ Petition was withdrawn by the applicant the respondents had filed a reply and the High Court had heard both the sides. Mr.Darda and Mr.Kakani were also appearing in the High Court in the said Writ Petition. Mr.Kakani stated before us that the applicant had withdrawn the Writ Petition because he wanted to file an application under the Industrial Disputes Act. Mr.Darda denied this statement. But it is not necessary for the purpose of this order to decide which version is correct.

5. Mr.Kakani categorically stated that he is not challenging before us the view taken by the Assistant Labour Commissioner (Central) and he restricts his challenge only to the order of dismissal passed by the General Manager. But he had challenged that order in the Writ Petition and after the Writ Petition was withdrawn, we do not think we should entertain this application for the same purpose. We found from the argument of Mr.Kakani that he is still of the view that the Labour Court has jurisdiction to decide the issue.

If it be so, we may in this connection point out that by an amendment to the Administrative Tribunals Act, 1985 S. 28 (b) has been inserted so as to keep intact the jurisdiction of Labour and Industrial Courts. Mr. Kakani informed that some persons similarly placed have approached the High Court against the view taken by the Assistant Labour Commissioner. We are not required here to consider whether or not the view taken by the Assistant Labour Commissioner (C) is correct because the applicant has restricted this application only to the order of dismissal passed against him. As the applicant had withdrawn the Writ Petition and filed this application for the same purpose, that too about three and half years after the impugned order, we are not inclined to admit this application. We, therefore, reject this application summarily under section 19(3) of the Administrative Tribunals Act 1985 with no order as to costs.

6. We, however, direct that if the appeal preferred by the applicant on 19.4.1983 against the impugned order of dismissal from service is not so far disposed of for one reason or the other, the appellate authority should decide it as early as possible.

( J G Rajadhyaksha )  
Member (A)

( M B Majumdar )  
Member (J)