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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A. No. 13/88

198

DATE OF DECISION 5.6.1990

Dada Pandu Wagh Petitioner

Mr.D.V.Gangal Advocate for the Petitioner (s)

Versus

Union of India and others. Respondent

Mr.P.R.Pai Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. D.Surya Rao, Member (J)

The Hon'ble Mr. M.Y.Priolkar, Member (A)

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 ?

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(22)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.A.13/88

Dada Pandu Wagh

.. Applicant

vs.

Union of India and others

.. Respondents

Coram: Hon'ble Member(J) Shri D.Surya Rao

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

Appearances:

1. Mr.D.V.Gangal
Advocate for the
applicant.
2. Mr.P.R.Pai
Advocate for the
Respondents.

ORAL JUDGMENT

Date: 5-6-1990

(Per D.Surya Rao, Member(J))

The applicant in this transferred application is a Laboratory Attendant in the Byculla Hospital of the Central Railway working under the jurisdiction of the 5th respondent. He had originally filed Writ Petition No.1791/85 in the High Court of Judicature at Bombay which has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985. It is alleged in the petition that the applicant was issued a chargesheet dtd. 15th June, 1981 alleging that he had accepted a bribe. The Disciplinary Authority appointed an Inquiry Officer. After enquiry he submitted his report on 30.8.1983. On consideration of the report third respondent passed an order dtd. 30.8.1983 imposing upon the applicant a penalty of dismissal from service.

Applicant preferred an appeal to the second respondent under rules 18,19 of the Railway Servants Discipline and Appeal Rules, 1968.

The Appellate Authority set aside the order of dismissal ^{and it} converted ^{it to one of} into punishment of compulsory retirement with effect from 1st May, 1984. The orders passed by the Disciplinary Authority, ~~of the~~ third respondent and the Appellate Authority are questioned on various grounds.

Thereafter the applicant submitted a demand notice dtd. 24th August, 1984 against the compulsory retirement. He did not get any reply thereto from the railway administration. The copy of the demand notice was also served upon the Assistant Labour Commissioner(Central)(Conciliation Officer). As no reply was received he ^{served it} ~~sent~~ letter dtd. 7-2-1985 upon the second respondent requesting him to admit ~~his~~ his individual Industrial Dispute in conciliation under Section 2(A) read with Section 12 of Industrial Disputes Act 1947. No action was taken by the second respondent. It is contended that the second respondent due to a policy decision of the Government has been consistently refusing to admit the individual industrial disputes of the Railway employees ^{for} ~~in~~ conciliation. The said action of the second respondent is assailed ^{as being contrary to} ~~on its part~~ ^{the provisions of} and of the Industrial Disputes Act. The applicant

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alleges that instead of ^{acting in the} compliance with the letter and ^{spirit of the letter} formalities the first and second respondents are not acting to admit ~~the~~ industrial dispute, in conciliation for adjudication before the Central Government Administrative Tribunal, Bombay. Therefore he filed the application under Article 226 of the Constitution for issue of writ of mandamus ^a directing ^{to} the second respondent to admit the Individual Industrial Dispute of the applicant in conciliation and direct the first respondent to refer the same to Central Government Industrial Tribunal, Bombay.

2. After transfer of the application notices have been issued to the respondents and duly served. On behalf of the ^RRailways a reply has been filed in regard to the allegations made against

the Railways that no proper enquiry was conducted.

^R It is contended that there are no procedural or legal infirmities in regard to the orders and ~~seeking of assistance~~ and orders of compulsory

retirement. In so far as ~~xxx~~ first and second

respondents are concerned ~~xxxx~~ namely failure to

refer the individual industrial dispute ^{to} the

Industrial Court the railways do not oppose the same

but state that it is ~~xxxx~~ for the first and second

respondents to answer these ~~xxxxxxxxxxxx~~ allegations.

No reply has been filed by Respondents 1 and 2.

3. We have heard Shri D.V. Gangal for the applicant and Shri P.R. Pai for the respondents No.

3 to 6. Shri Gangal relies upon the decision of the

Supreme Court reported in AIR 1960 SC 1223
(State of Bombay v. K.P. Krishnan). That was a
case wherein the Government ^{for} ~~on~~ certain reasons
refused to make a reference to the Industrial
Tribunal. The Supreme Court held as follows:

"The order passed by the Government
under S.12(5) may be an administrative
order and the reasons recorded by it
may not be justiciable in the sense that
their propriety, adequacy or satisfactory
character may not be open to judicial
scrutiny; in that sense it would be
correct to say that the court hearing
a petition for mandamus is not sitting
in appeal over the decision of the
Government; nevertheless if the court
is satisfied that the reasons given by
the Government for refusing to make a
reference are extraneous and not germane
then the court can issue, and would be
justified in issuing a writ of mandamus
even in respect of such an administrative
order"

The instant case is ^{slightly} ~~likely~~ different, In that no
order has been passed ~~by the~~ either by the first
respondent or second respondent. However, the
applicant has alleged that for extraneous reasons
the respondents No.1 and 2 have been consistently
refusing to admit individual disputes of railway
employees in conciliation. This allegation that the
Government refusal ^{or inaction to admit disputes for conciliation is} ~~are not being made~~ due to some
~~policy~~ policy decision of the Govt. of India is
not rebutted by the respondent No.1 and 2 either by

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appearing or filing a counter. Since the allegation has been un rebutted it follows that reference is being denied for certain ~~extra~~ extraneous reasons. In the circumstances it would be justifiable that ~~the~~ ^{is directed to} respondent No.2 should be directed to admit the individual petition of the applicant in conciliation. Respondent No. ¹ ~~2~~ is further directed to ~~refer~~ seek adjudication in accordance ^{with} ~~under~~ section 10 and 12 of the Industrial Disputes Act, 1947. The application is allowed with these directions with no order as to costs.

4. Shri Gangal represents that pursuant to the interim order of the High Court he is continued ^{ing} in occupation of the Govt. quarter till today. He prays that till any order of reference is made to the Industrial Tribunal and the Industrial Tribunal ^{seizes} ~~ceases~~ of jurisdiction ^{of} ~~the~~ matter the status-quo may be allowed to continue.

Orders are passed accordingly in respect of his continuance in quarter. ^{The respondents are directed not to} ~~This prayer is ordered~~ disturb the applicant and to allow him to continue in the quarter accordingly. till a reference is made to the Industrial Tribunal and till the Tribunal takes the case on file.

(M.Y. PRIOLKAR)
Member(A)

(D. SURYA RAO)
Member(J)