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Central Administrative Tribunal
New Bombay Bench
New Bombay.

Original Application No. 734/88.

Afzal Khan,
House No. 9-3-79,
Germajupet,
WARANGEL(A.P.).

... Applicant.

V/S

- 1) The Union of India,
Through the Secretary,
Ministry of Defence,
NEW DELHI.
- 2) The Garrison Engineer(West),
Colaba,
BOMBAY - 400 005.
- 3) The Commander Works Engineer,
Colaba,
BOMBAY - 400 005.
- 4) The Chief Engineer,
Southern Command,
POONA.

... Respondents.

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

The Hon'ble Member(A), Shri M.Y. Priokkar.

Appearance:

Mr. P.T. Abraham,
Advocate for the
applicant.
Mr. V.S. Masurkar,
Advocate for the
respondents.

ORAL JUDGMENT:-

Date: 17.10.1989.

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

Mr. P.T. Abraham, Advocate for the applicant and Mr.
V.S. Masurkar, Advocate for the respondents.

2. The applicant has filed this application on 14.7.1988
under Section 19 of the Administrative Tribunals Act praying,
(a) that he should be reinstated in service with backwages from
31.3.1982, and (b) to quash and set aside the order dated
26.3.1979.

3. The relevant facts which emerge from the application,
replies and record are these: The applicant was appointed

P.I.O.

as Casual Vehicle Mechanic in the Office of the Garrison Engineer, Secunderabad. In March 1979 he was made regular. On 24.9.1973 he was transferred to the Office of the Garrison Engineer(West), Colaba, Bombay i.e. Respondent No. 2. On 24.7.1978 he proceeded on Extra Ordinary Leave for 6 days but thereafter did not return for duties. By letter dated 17.9.1978 respondent No.2 informed him that he would be discharged in case he fails to report for duty within 15 days. That letter was sent to his residential address at Warangal but that letter was received back with an ^{endorsement} appointment " Left." Thereafter an enquiry under CCS(CCA) Rules was held and order dated 26.3.1979 discharging him from service was passed. It is stated by the respondents on affidavit that ^{are} the papers of enquiry washed away in the floods. For more than three years after the order was passed the applicant did not come to the Office, but on 24.4.1982 he attended Respondent No. 2's Office alongwith a medical certificate dated 21.4.82 from his native place stating that he was fit to resume Government duties. Not satisfied with this certificate and in view of the order of discharge dated 26.3.1979, he was referred to the J.J. Group of Hospitals for medical examination by letter dated 22.7.1982. But he did not report at the hospital on the specified date and hence on his request he was again referred to that hospital for medical examination alongwith letter dated 4.8.1982. He was examined in that J.J. Group of Hospital from 25.8.1982 to 8.10.1982, as an outdoor patient. According to the certificate issued by the Assistant Resident Medical Officer he was suffering from " Alcoholism " and he was fit for duty from 9.10.1982. The applicant did not report for duty immediately but he came to the Office with that certificate in 9.4.1987 alongwith a representation. However, he was not allowed to resume duties

because he was absent all the while from 24.7.1978. Earlier, on 5.3.1988 the applicant was informed that his services were terminated as notified in the Order dated 26.3.1979. As he asked for a copy of the order he was again informed by letter dated 27.4.1988 that he had remained absent without permission from 24.7.1978, he had not joined duty inspite of various letters and hence he was deemed to have resigned from service by order dated 26.3.1979.

4. This is all that had happened before the application was filed. But after the application was filed the respondent started enquiree with the Intelligence Department and Police Department of the Andhra Pradesh. The replies received from these departments revealed startling circumstances. By its letter dated 3.11.1988 the Superintendent of Police Warangal informed Respondent No. 2 as follows :-

"1. As per above reference 1st cited, sustained efforts were made to find the antecedents of Shri Afzal Khan, Vehicle mechanic of your unit, and it was learnt that he is residing in the address furnished in reference 2 above with his wife and children, and is unemployed.

2. It is learnt that he obtained passport No. M-019580 between 20 and 26 July, 1977 from Bombay Passport office by giving particulars as s/o. Azam Khan r/o Laxmipura, A.P., while working in your unit and left for Zedda of Saudi Arabia via Delhi Air checkpost. His employment visa was obtained from Saudi Arabian Consulate in India on 17.7.78. The Xerox copies of passport and visa are hereby enclosed. Further a copy of the certificate issued by Md. Sultanuddin, Meer Mohalla Committee, Girmajigat Warangal regarding his stay in the above said address from 1982 onwards, is also enclosed, while in your letter it was noted that he served in one of the Gulf countries from 1978 to 1987.

3. It is also gathered that he applied for grant of medical leave on 26.4.1982 for his absence from 14.7.1978 to 21.4.1982 and requested you to take him to duty by producing a medical fitness certificate issued by Asstt. Residential Medical Officer, J.J. Group of Hospitals Bombay as he suffered from 'Alcoholism' and that he was 'Fit for Duty' from 9.10.1982. A Xerox copy of the same is also enclosed. It may be noted that his application for grant of medical leave with a request to take him to duty was dated 26.4.1982 whereas his 'Fit for duty' certificate was dated 9.10.1982.

4. Lately, it is even gathered that he is planning to move the tribunal in Bombay for his reappointment on the above grounds and that he left Warangal for appearing before the tribunal on 15.11.1988. You may trace him there for your further action."

To this letter, xerox copies of passport, visa and certificate issued by Mir Muhalla Committee of Ward No.9, Warangal were attached. The ~~letter~~ ^{certificate} shows that the applicant was not seen in the locality during the period 1978 to 1982 when only his family was residing in the locality. He was residing in the locality with his family from 1982 onwards.

5. Similarly by ~~the~~ letter dated 19.12.1988 Special Inspector General of Police (Intelligence), Andhra Pradesh, Hyderabad informed respondent No.2 as follows:

"Enquiries revealed that Shri Mohd. Afzal Khan while serving in Defence Manager to obtain a passport bearing No. MO 19580 dated 26.7.1977 from Passport Officer, Bombay to visit Saudi Arabia. After deserting his service in defence he also managed to obtain VISA from the consulate of Saudi Arabia in India on 17.7.1978 and went to Arabia via Delhi. He left his wife and children to the care of his Brother-in-law Mohd. Basheeruddin. He visited Warangal twice during the period between 1978 to 1987.

It is not known whether he was engaged in any service in Saudi Arabia during that period. It is confirmed through reliable sources that the individual went to Saudi Arabia in July, 1978."

6. All these facts show that the applicant is not in service since 24.7.1978. He had proceeded on Extra Ordinary Leave (EOL) on that day. Thereafter he did not resume his duties. It may be noted that he had obtained visa on 17.7.1978 i.e. 7 days prior to proceeding on EOL. Passport was also obtained on 20.7.1977, that is about 1 year before proceeding on EOL. The letter from the Superintendent of Police, Warangal shows that the applicant had left for Jeddah in Saudi Arabia via Delhi Air checkpost. It must be after his return from Saudi Arabia that he had gone to his office in April, 1982. At that time he must have come to know about the order of discharge. Even though he was asked to attend ~~for~~ a medical examination on 22.7.1982 he did not report at the hospital. It was along with the next letter dated 4.8.1982 that he visited the hospital on 25.8.1982. But even after a certificate was issued on 9.10.1982 he did not attend the office for joining duties. In all probability it was in April, 1987 that he came to the office along with certificate of 9.10.1982. In our opinion it was too late and the respondents were justified in not allowing him to join duties.

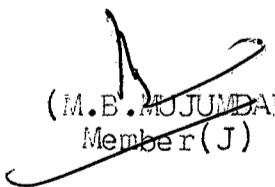
7. What is more important is that the applicant is now challenging the discharge order dated 26.3.79 which was passed after enquiry. He cannot challenge it by filing this application in July, 1988. In fact we have no jurisdiction to entertain an application challenging that order. Even assuming that he had not come to know about that order as he was in Saudi Arabia he must have

come to know about that order in April, 1982 when he tried to resume duties. But even thereafter he has not challenged the order of discharge in any court within a reasonable period. The applicant has stated that he was making representations for allowing him to resume duties. The Respondents have denied receipt of these representations. But even assuming that he was making representations, in our view such representations will not save this application from the clutches of limitation.

8. What is more tragic is that he had obtained passport and visa while he was in service without obtaining necessary permission from the competent authority. By taking EOL for 6 days he had proceeded to Saudi Arabia, again without permission and knowledge of the concerned authorities and had stayed there for about 4 years. We do not think that such a person deserves any sympathy.

9. We, therefore, hold that the application is hopelessly barred by limitation. On merits also he had no case. In view of the facts narrated above he deserves no sympathy also. The application is therefore dismissed, with no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(M.B. MOJUMDAR)
Member(J)