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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 939/88

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Date of decision 25.8.1993

Shri V.S. Kedari Petitioner

Shri M.D.Tiwari Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

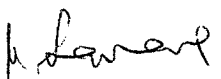
Shri V.G.Rege Advocate for the Respondent(s)


Coram :

The Hon'ble Shri **Justice M.S.Deshpande, Vice Chairman**

The Hon'ble ~~Shri Ms.~~ **Usha Savara, Member (A)**

1. ~~Whether the Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? no
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 ? hw!


(MS.USHA SAVARA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 939/88

Shri Vasant Shantaram Kedari ... Applicant

V/S*

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Ms. Usha Savara

Appearance

Shri M.D.Tiwari
Advocate
for the Applicant

Shri V.G.Rege
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 25.8.1993

(PER: M.S.Deshpande, Vice Chairman)

This application was filed by the original applicant Vasant Shantaram Kedari challenging the order passed by the General Manager, Central Railway on 2.12.1987 imposing the penalty of compulsory retirement on him on the charge of unauthorised absence. After Vasant Shantaram Kedari died on 12.11.1989 his two sons and a daughter continued with the present application.

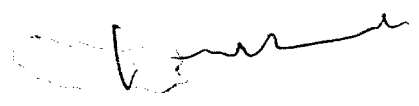
2. The applicant was serving as an Assistant Catering Manager at Bhusawal. A charge-sheet was given to him for his continuance absence on 14.12.1977 for the period between 21.9.1973 to 14.9.1977 and from 23.8.1977 onwards. Vasant Shantaram Kedari filed a statement denying the charges and the Enquiry Officer after consideration of the material before him found that his absence was unauthorised and the disciplinary authority imposed a penalty of dismissal. The applicant then preferred an appeal which came to be rejected, therefore he filed a civil suit challenging the removal. That suit came

to be transferred to this Tribunal and the Tribunal by its order dated 16.4.1987 set aside the order passed by the General Manager dismissing the appeal on 30.1.1982 was remanded the matter to the Appellate Authority for disposing^{of} the matter according to Law and by passing a speaking order. The matter was heard by the Appellate Authority and by speaking order the Appellate Authority modified the punishment by substituting compulsory retirement for removal and this is being challenged by the present applicants.

3. Three points were raised before the Appellate Authority as it is apparent from the order dated 2.12.1987 (Annexure-17), namely, that Vasant Shantaram Kedari was not served with the charge-sheet dated 14.12.1977, that he had not been afforded an opportunity to produce defence witnesses in the enquiry by the Enquiry Officer and that he was not absent unauthorisedly for the periods as mentioned in the charge-sheet as he produced medical certificates. Shri Tiwari, learned counsel for the applicant drew our attention to his reply dated 9.11.1978 (Annexure-3) in which he had stated that he had not been served with a copy of the charge-sheet. The fact that this objection was alleged before the Enquiry Officer was vehemently denied by the learned counsel for the respondents who urged that the applicant had^{not} at any point of time made any grievance about non-service of the charge-sheet on him. Even if we were to go by that, that if the objection in fact had been raised, it is apparent that the scope of the enquiry was restricted by the stand taken by the applicant. His contention was that though he was absent, the absence was not unauthorised. It was the contention of the respondents that before the Enquiry Officer the applicant had not denied the service of the charge-sheet nor in the memorandum of appeal filed before the Appellate Authority. In fact, the applicant knew what was the charge-sheet

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against him and had admitted in the question which was put by the Enquiry Officer but he did not know the procedure of sending information or letter about absent or sick period to the DCS Office or CRI DC Unit BSL but he was informing the Railway Doctors about his illness during the above unauthorised absent period as stated in the Memorandum dated 14.12.1977. The position that Vasant Kedari had remained absent for long spells during the period concerned was not in dispute. It was exactly this position which was pointed out by the Appellate Authority in his appellate order dated 2.12.1987. We are, therefore, not impressed by the statement that the applicant was not served with the charge-sheet and that he was not given an opportunity to appoint any Assistant Railway Employee to defend him before the Enquiry Officer. In fact, in view of the statement made by the applicant himself before the Enquiry Officer, nothing would have come out by examining defence witnesses when the absence was unauthorised. The Enquiry Officer and the appellate authority have considered this position and the appellate authority have passed a well-considered order. The appellate authority had taken note of the objections raised by the applicant and had decided them with reference to the material on record and it is not open to us to ^{interfere} unless the decision ^{was} reached on ^{no evidence} and this is not the case here. We, therefore, find no defect in the enquiry procedure which would justify our interference in this application. The grievance of the Legal Representatives of the applicant is that no payment was made to the original applicant and no family pension had been paid to the legal representatives after the original applicant was died. Shri Rege, learned counsel for the respondents urged that no application was made either by deceased or legal representatives and if such an application were to have been made, the question of payment of family pension would have been considered by the

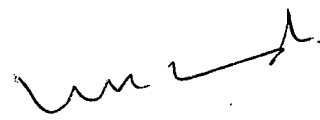


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authority. He offered to consider this request even now should the legal representatives make an application in this regard.

4. All that we need direct while dismissing the present application is that legal representatives of the deceased Vasant Shantaram Kedari make an application for pensionary and terminal benefits within one month from today and if such an application is made, the authorities should consider under the rules whether the legal representatives are entitled either to the pension which the deceased would have drawn and the family pension if any. This action be taken within three months after the filing of the said application. If the application is defective, the authority will see that the application is rectified without delaying the matter.


(MS.USHA SAVARA) *et. 8.73*
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.