

(22)

193

T.A. NO:

DATE OF DECISION 9.8.1991

Petitioner:

Advocate for the Petitioners

Versus

Respondent

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman,

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 ?

(U.C. SRIVASTAVA)
VICE-CHAIRMAN.

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(93)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, BOMBAY.

Tr. Application No.32/88.

Shri S.V.Dusankar.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman,
Hon'ble Shri M.Y.Priolkar, Member(A).

Oral Judgment:-

(Per Shri Justice U.C.Srivastava, Vice-Chairman) Dt. 9.8.1991.

The applicant was employed as a Painter in the Bhabha Atomic Research Centre (BARC), Trombay on 7.12.1962. He was dismissed from service vide order dt. 13th March, 1981 and against the dismissal order he filed Civil Suit in the City Civil Court, Bombay earlier without paying the Court fee claiming that he was a pauper and later on he was supposed to pay. The applicant was dismissed after a departmental inquiry and against that order he filed an appeal and it appears that the Appellate Authority found certain flaws in the Enquiry Officer's report which had been referred back to the Enquiry Officer and the Enquiry Officer submitted another report. On the basis of the said report, the dismissal order was passed.

2. It is because of the absence on certain days that the Enquiry Proceedings started against him and he was awarded the punishment. The applicant has given his explanation regarding absence that he had sent an application through 'under certificate of posting'. It has been stated that the Stores Officer Shri N.S.Nair under whom he was working asked him to do painting work at his residence and he refused to do so and he started harrasing him by not recommending or sanctioning him leave inspite of preintimation even though he being the sanctioning authority. The

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applicant made a representation to the Senior Stores Officer on 2.4.1974 whereupon according to him Officers were called upon and advised them to behave in a right^leous manner. But they continued to harrass the applicant and were looking for the chance to corner him. He brought this fact to the Senior Stores Officer again vide letter dt. 2.4.1975 that the Officers provoked and ~~starting~~ insulting him. He made yet another representation on 11.4.1975 to the Head of the Personnel Division, BARC, Trombay praying that he may be transferred to some other department where these two Officers would have no control. The applicant's request for transfer was rejected and the harrassment went on increasing. As a result of the same he had to face 3 departmental inquiries. First he was censured, second his increments were stopped for three years. It has been stated by the applicant that the Enquiry Officer did not consider the situation under which the applicant was absent which he had mentioned in his application sent to them through under certificate of posting. The grievance of the applicant is that the intimation which was given to the Officer who received this information on phone. Against dismissal order the applicant preferred an appeal and the appellate authority dismissed the appeal. Thereafter, he submitted a mercy petition and failing to get any response he gave a notice under Section 80 of the C.P.C. whereafter, he filed the Civil Suit.

3. The respondents have not denied moving of the application against its two officers and it has been stated that he was placed under observation a number of times and his work was not satisfactory, his probationary period was extended. The allegation of the applicant that he was to work at the residence of his superiors has been denied by the respondents in their written statement. There is no other charge against the applicant excepting his habitual absentism. The averment of the applicant that he had sent applications 'under certificate of posting' has not been denied, but what

25


has been contended is that he did not exhaust the ~~app~~ responsibility in taking appropriate approval which he failed to do so. The dismissal order indicates that the previous punishment after dismissal ~~after holding the enquiry~~ that the Enquiry Officer after holding the enquiry submitted his report to the Disciplinary Authority and the Disciplinary Authority found that the certificate of posting which was sent by the applicant for sending intimation of defence did not ascertain actual facts and that is why the matter was remitted to the Enquiry Officer for submitting a fresh report and he submitted a fresh report. It is on the basis of this report that the Enquiry Officer came to the conclusion that the charge of the applicant was proved without assigning any reasons for the same. The order indicates that the Disciplinary Authority took into consideration the previous punishments which were given to the applicant. The orders have been passed accordingly. Obviously ~~while~~ previous punishments were taken into account for awarding harsh punishment of dismissal. The applicant was not given an opportunity of hearing. It appears that at no stage the Enquiry Officer's report was given to the applicant and the Enquiry Officer was required to clarify his findings and which he did behind the back of the applicant and that report too has not been given to the applicant who had no chance to make any representation against the same. In this connection a reference may be made to the case of Union of India v. Mohd. Ramzan Khan (JT 1990(4) SC 456). The dismissing authority has also not assigned any reasons why he agreed with the finding of the Enquiry Officer and apart from saying that undersigned holds that the charge was proved. The matter ~~is~~ remitted back to the Enquiry Officer to submit a fresh report cannot be sustained and accordingly ~~this~~ application is allowed and the order dt. 13.3.1981 dismissing the applicant is quashed. But it ^{is} ~~has been~~ made clear that the applicant will not be entitled to any back wages from the day he was

26

dismissed upto this date. It is for the respondents to hold an inquiry in accordance with law as they deem it proper. ~~Na~~ The applicant shall be deemed to be continuing in service and he will be entitled to count this period for pensionary benefits. The applicant shall be reinstated in service forth with. The applicant is allowed cost of Rs.2,000/- i.e. the amount which represents the Court fee.



(M.Y. PRIOLKAR)
MEMBER (A)



(U.C. SRIVASTAVA)
VICE-CHAIRMAN