

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

(I) Transferred Application No.205/86.

Narayan Haribhau Jadhav,
150/3, R Type Quarters,
Range Hills,
Pune - 411 020.

... Applicant
(Original Petitioner)

V/s.

1. Union of India, through
The General Manager,
High Explosive Factory,
Kirkee,
Pune - 411 003.

2. Deputy Director,
Ordnance Board,
Ministry of Defence,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 1.

... Respondents.

Appearances:

1. Mr. V.J. Kale, Advocate
for the applicant.

2. Mr. S.R. Atre, Advocate
for the Respondents.

(II) Transferred Application No.356/86.

Narayan Haribhau Jadhav,
150/3, Range Hills,
Pune - 411 020.

... Applicant
(Original Plaintiff)

V/s

1. Estate Officer,
Ordnance & Range Hills Estate,
Kirkee, Pune - 3.

2. The General Manager,
High Explosive Factory,
Kirkee, Pune - 3.

3. Union of India, through
The Secretary,
Ministry of Defence,
New Delhi.

... Respondents.
(Original Defendants)

Appearances:

1. Mr. V.J. Kale, Advocate
for the applicant.

2. Respondent No.1 appears in
person for himself and
Respondent No.2.

Coram:Hon'ble Vice-Chairman, B.C. Gadgil,
Hon'ble Member, J.G. Rajadhyaksha.

ORAL JUDGMENT:
(Per B.C. Gadgil, Vice-Chairman) Dated: 28-1-1987.

1. These two matters can be conveniently decided by a common judgment. Transferred Application No.205/86 was originally Writ Petition No.1845/86 on the file of the High Court of Bombay. In that Writ Petition the applicant has challenged an order dated 31-5-1984 removing him from service. This order was passed after holding a departmental enquiry.
2. Transferred Application No.356/86 was originally Regular Civil Suit No.840/85 filed in the Court of Honourable Civil Judge, Junior Division at Pune. The applicant was occupying Government Quarters. After his removal from service, proceedings were taken to evict him from the said quarters. An order for eviction was passed. In the suit he prayed for injunction restraining the Respondents from evicting him from the quarters. We are told that during the pendency of these proceedings the Respondents have evicted the applicant from the said quarters on 16-1-1987.
3. The applicant entered the service in the High Explosives Factory, Kirkee as a Labourer in 1963. On 1-11-67 he was made permanent. In 1978 he was promoted as a Compressor Attendant. A departmental proceeding was held against him on two counts viz. (1) absence from 6-1-84 to 21-3-84 without prior permission and (2) irregularity in attendance viz. habit of remaining absent without prior permission or sanction of leave. It is needless to say that an Enquiry Officer was appointed. He held the enquiry

and prepared his report. He found the charges proved. The Disciplinary Authority considered the said report and on 31-5-1984 he passed an order removing the applicant from service. Against this order the applicant had originally filed a Writ Petition in the High Court and thereafter an appeal to the Appellate Authority. However, we are not much concerned with that part of the litigation. Suffice it to say that the appellant's appeal was dismissed on 6th September, 1985.

4. We have heard Mr. Kale, Advocate, for the applicant and Mr. Atre for the Respondents. As far as the merits of the matters are concerned Mr. Kale frankly made a statement before us that he is not challenging the findings of the Enquiry Officer as regards the misconduct is concerned. His main and only grievance is that the penalty inflicted on the applicant is disproportionate to the nature of misconduct. He submitted that removal from service for unauthorised absence would be too harsh a penalty. Shri Atre for the respondents drew our attention to the fact that the applicant was absent for a very long period. For example in 1982 he was absent for about 193 days; in 1983 he was absent for about 88 days and so on. According to him this long absence warranted the penalty that was inflicted on the applicant.

5. It is true that ordinarily the quantum of penalty would be within the realm of the Disciplinary Authority and Appellate Authority. However, taking into account the peculiar facts of this case we feel that it would be just and proper to interfere in the quantum of punishment. Mr. Kale submitted that the applicant may be reinstated in service and that during

the intervening period from 31-5-84 till reinstatement he may not be awarded the back wages or salary and this would be a sufficient penalty.

6. Mr.J.K.Rastogi, whose is at present Estate Officer, informed us that the applicant has been in arrears of rent and other incidental charges to the tune of Rs.1920/20ps. upto 16-1-1987. According to him unless this payment is made there should not be any order of granting possession of the quarters to the applicant in case the applicant is to be reinstated.

7. Mr.Kale submitted that the applicant has a wife and 5 children. Some of them are school going and removal from service would be too harsh a penalty. It is in this background that he has stated before us that non payment of salary from 31-5-84 till reinstatement would be sufficient and proper penalty. In our opinion, taking into account, all the above factors the interest of justice will be met if we order reinstatement in service and re-allotment of the quarters (either the quarter which was previously occupied or some other equivalent quarter) on certain terms and conditions as mentioned below. Mr.Kale also made a statement on behalf of the applicant that the applicant undertakes not to remain absent without prior permission of the department. We may observe that in case he so remains absent without such prior permission the Respondents would be within their rights to take a serious view of such absence and to take suitable departmental action which may lead to any penalty including removal from service. Hence we pass the following order. We further make it specifically clear that we are passing these orders in the peculiar circumstances of the case, and they shall not form a precedent in such cases.

Bch.

8. The finding of the authority duly holding the applicant guilty of his conduct are confirmed. The quantum of penalty is however modified. The applicant should be reinstated in service immediately. However, the applicant would not get salary from 31-5-84(i.e. the date of his removal from service) till his reinstatement. The period from 31-5-84 till reinstatement should be treated as leave as may be due and permissible such as Earned Leave, Half Pay Leave and if any of the said kind of leave is not available then the period should be treated as EOL without pay. Thus there would not be any break in service. The quarters from which the applicant has been evicted should be restored to him with immediate effect; of course liberty is given to the Respondents to allot the said quarters or any other equivalent quarter to the applicant. The arrears of Rs.1,920.20 should be deducted from the monthly salary of the applicant w.e.f. the first full monthly salary that would be paid to him. The said deduction would be @ Rs.200/-p.m. Of course, the applicant would be liable to pay the future rent and other incidental charges regularly every month from the date on which he would be occupying the quarters. It is made specifically clear that if in any month the applicant's salary becomes less than Rs.200/- for any reason whatever (including leave of the applicant) the Respondents would be at liberty to evict the applicant from the said quarters and to recover the arrears from any sum that may be due and payable to the applicant.

Parties to bear their own costs of these proceedings.

B.C. Gadgil
(B.C. GADGIL)
VICE-CHAIRMAN

(J.G. Rajadhyaksha)
(J.G. RAJADHYAKSHA)
MEMBER(A)