

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

Tr. Application No.79/86.

Smt. Laxmi widow of Narayan
Vasudev Raut for herself
and her three minor sons,
Tarapur, Savaria Pada,
Tal. Palghar, Dist. Thane.

... Applicants.

V/s.

1. Union of Indian in Ministry of
Energy and Power.
2. Chief Superintendent, Tarapur
Atomic Power Station, Tarapur,
Post TAPP,
Dist. Thane 401 504.

... Respondents.

Appearances:

1. Shri A.J. Joshi for the
Applicant and
2. Shri Subodh Joshi for the
Respondents.

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

JUDGMENT:

(Per Rajadhyaksha, Member)

Dated: 14.7.1986

Writ Petition No.3809 of 1982 was filed by the Original
Petitioner now described as the Applicants abovenamed for redressal
of certain grievances in the High Court of Judicature at Bombay on the
2nd of September, 1982. The matter has been transferred to this
Tribunal in terms of the Central Administrative Tribunals Act, 1985 and
now bears Transferred Application No.79/86.

2. The facts leading to this litigation, briefly, are that,
Shri Narayan Vasudev Raut referred to hereafter as the 'employee' was
working in the Tarapur Atomic Power Station as Tradesman Grade 'A'
for about 11 years. Since February, 1981, his health failed and
ultimately he expired on 2nd of September, 1981. His frequent absence

...2.

from duty led to departmental action against the employee and his services were terminated on 13.8.1981 for reasons recorded in the order. The grievance is that the termination was ordered without holding any inquiry and, therefore, it was bad in law. It is prayed that the employee should be treated as having continued in service up to his demise, and all consequential benefits should be extended to the widow and children of the employee. These reliefs might include family pension, gratuity, General Insurance Scheme, G.P.F. and any other benefit available under the rules.

3. Written statement on behalf of the Respondents was filed in the High Court, disputing the claim stating that the employee was Tradesman Grade 'A' only for 1 $\frac{1}{2}$ years, and the actual appointing authority had not been made a party at all. The employee was stated to be very irregular in his attendance and there were ten lapses on his part between May, 1979 to July, 1980. On humanitarian grounds these were regularised as 'leave without pay'. After 23.2.1981 the employee never informed the organisation of his own illness and did not avail of the Contributory Health Service scheme which ran a very well-equipped Hospital at Tarapur. The employee was aware of these facilities since he had used them on 30.8.1977, as also for periodical medical check ups, the last one being on 25.7.1980. The Respondents sent him letters asking him to join duties immediately. There was no response to such a Registered letter sent on 1.6.1981 and received by the employee on 4.6.1981. The telegram asking him to join duties sent on 27.6.1981 remained un-complied with. On 23.7.1981 another registered letter was sent but it came back un-delivered and the postman's attempts to serve the letter failed on 3 occasions namely on 25.7.1981, 27.7.1981 and 28.7.1981. Other employees of the respondents stayed in the same village, but the employee never sent a message through any one of them. Thus the Respondents had no alternative but to treat the

employee's absence as un-authorised, without official leave. It is further stated that it was not feasible to hold an enquiry under Rule.14 of the CCS(CCA) Rules, 1965 as it was impossible to locate the employee for service of notice etc. The employee was removed by order dated 11.8.1981 without holding any enquiry. Such action was right and within the powers of the disciplinary authority in view of the continued absence of the employee. The Respondents claim to have offered to the applicant full refunds of Provident Fund, standing at the credit of the employee with the employers contribution and also offered to consider appointment of the employee's son subject to availability of vacancies. In conclusion, it is stated that since the employee was removed from service his legal representatives are not entitled to any relief, whatsoever.

4. Shri A.J.Joshi the Learned Counsel for the applicants contends that proper enquiry was not held before removing the employee from service. There was no notice to show cause why action should not be taken, there was no enquiry at all. Citing Rule 19(2) of the CCS (CCA) Rules, the Advocate argues that an enquiry may be dispensed with in certain circumstances where it is 'reasonably impracticable' to hold an enquiry. But Rule 14 of the same Rules enjoins upon the employer to hold a proper enquiry before inflicting a major penalty on any employee. Referring to evidence such as Medical Certificates at page 13 Ex.'A', collectively, issued by one Dr. R.M.Raut and Dr. S.K.Chiniwala, Shri Joshi contends that the employee had suffered from amebic dysentery between 27th August and 2nd September, and earlier from 23rd February, 1981 to August, 1981. The employee succumbed to these ailments. His health and the distance from the office prevented him from sending messages about his absence as also from attending Hospital at the Tarapur Atomic Power Station. Only bullock cart traffic is possible from his village and even that is difficult in monsoon. The employee was not conversant with the rules and regulations. The contention of the respondents that he was un-traced, is patently in-correct.