

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

Original Application No. 307/86

Kashinath Mahipat More,
Room No.2, Vasant Vestachi Chawl,
Sunil-Anil Niwas Compound,
Kajupada Ganesh Chowk,
Borivali(E),
Bombay - 400 066.

... Applicant

V/s.

1. The Dy. Chief Electrical Engineer,
(W)/PL Carriage Workshop(WR),
Lower Parel,
Bombay - 400 013.
2. The Addl.C.Electrical Engineer(E)(TL),
Western Railway H.Q.,
Churchgate,
Bombay - 400 020.
3. The Chief E.E.(E),
Western Railway H.Q.,
Churchgate,
Bombay - 400 020.
4. The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
5. Enquiry Officer, SS(TL)/PL,
Carriage Workshop (WR),
Lower Parel,
Bombay - 400 013.
6. Indian Railways,
Western Railway,
Churchgate,
Bombay - 400 020.

... Respondents

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

Appearance:

1. ME. P.K. Jadhav
Advocate for
the applicant.
2. Mr. Kasture,
Advocate for
the respondents.

ORAL JUDGMENT

Date: 17-6-1987

(Per, B.C. Gadgil, Vice-Chairman)

The applicant who was working as a Carpenter in the Western Railway workshop at Lower Parel has challenged the order dtd. 23-2-1982 removing him from service. The order is made effective on 2-3-1982. The applicant filed an appeal against that order. That appeal was dismissed.

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Then he took the matter to the higher authorities and ultimately his mercy petition was rejected on 12th March '86.

2. The impugned order was passed after holding necessary departmental enquiry with an allegation that the applicant was unauthorisedly absent from duty from 15-1-1981 to 10-9-1982. It is not necessary to give the details how the enquiry was held. Suffice it to say that at the time of the arguments of this application Shri P.K. Jadhav the learned Advocate for the applicant did not challenge the said enquiry and the findings thereof. The main and only point that was urged before us was about the quantum of penalty.

3. Along with the application the applicant has filed a certificate of Dr. P.N. Vyawahare who is Senior Psychiatrist, Central Mental Hospital, Yervada. The said certificate shows that the applicant was under the treatment of Dr. Vyawahare from 1-2-81 till 10-9-82 and that during this period the applicant showed remission and relapses. It is true that the applicant was not an indoor patient throughout this period, ~~that~~ but what is contended by Mr. Jadhav is that the fact that the applicant was under medical treatment for such a long period and that too for a mental illness would be a circumstance to show that the absence of the applicant from service, though technically a misconduct, need not require a harsh punishment of removal from service. He submitted that ends of justice will be met if the applicant is reinstated in service with a direction that the period from 2-3-82 till reinstatement be treated as leave as may be permissible. We have heard Mr. Kasture for the respondents. Though he did not concede this reduction of penalty we think that the interests of justice will be met if the order as submitted by Mr. Jadhav is passed.

4. The application partly succeeds. The findings about the applicant's misconduct of unauthorised absence is confirmed.

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However, the penalty of removal from service is set aside and in its place it is directed that the applicant should be reinstated in service and that the period of his absence from 15-1-1981 till such reinstatement should be regularised by granting him leave as may be permissible such as Earned Leave, Half Pay Leave (Commuted Leave), and if necessary by granting EOL without pay for the remaining period. It is further directed that there would not be any break in service of the applicant and that this penalty would not come in the way of the applicant getting further promotions if he is found otherwise fit and eligible.

5. Parties to bear their own cost of the application.

B.C. Gaugil

(B.C. GAUGIL)
Vice-Chairman

[Signature]

(J.G. RAJADHYAKSHA)
Member (A)