

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

Original Application No. 387/1986.

Shri Ambaram Bherulal Masih,
Railway Quarters,
D-564, Kolsawadi,
Kalyan (East),
Dist. Thane.

... Applicant.

v/s

The General Manager,
Central Railway, V.T.,
Bombay - 400 001.

... Respondent.

Coram: Hon'ble Member (A), J.G. Rajadhyaksha

Hon'ble Member (J), M.B. Mujumdar

Appearance:

1. Mr. T.C. Philipose,
Advocate
for the applicant.
2. Mr. Neelkanth
Advocate
for the respondents.

ORAL JUDGMENT:-

Dated: 3.3.1987

(Per M.B. Mujumdar, Member (J))

This application is filed under section 19 of the Administrative Tribunals Act, 1985. The application is given under the following circumstances:

2. The applicant joined as Assistant Chemist in Dr. Ambedkar Hospital in 1968. At the relevant time he was serving as Chemist at the same hospital.
3. On 10.1.1986 he was served with an article of charge alongwith other accompaniments. The charge against the applicant was that while he was functioning as Assistant Chemist in the night duty on 15.12.1985 in the Pathological

Laboratory of the Hospital, he switched off the Blood Storage Refrigerator which caused deterioration of ten bottles of blood stored in the said refrigerator at 2° to 6°C for preservation. The charge further stated that this had happened due to utter negligence and irresponsible working on the part of the applicant while he was on duty. One Dr. S.C. Jain, Divisional Medical Officer(DMO) of the Hospital was appointed as the Inquiry Authority, During the inquiry three witnesses were examined. They were Mr. R.S. Ogale (in the report the name is wrongly typed as Ugale), Mr. V.G. Chaulkar and Dr. S.K. Gaur. The applicant was also examined on the basis of the evidence read before him. The Inquiry Officer held that the charge was proved. On the basis of that report the Disciplinary Authority i.e. DMO, Byculla by Order dated 4.7.1986 accepted the findings of the Inquiry Officer and imposed the penalty of removal from service upon the applicant with effect from 5.7.1986. Against that order the applicant preferred an appeal dated 6.7.1986. It is alleged that this date is wrongly typed on the appeal memo but in fact it should be 6.8.1986. The date, however, is not material for the purpose of this judgment.

4. The appeal was decided by the Appellate Authority Dr. M.S. Ugale, the Senior District Medical Officer, Byculla, Railway Hospital on 5.9.1986. He allowed the appeal and set aside the order of penalty. A copy of this order was sent to the applicant on 5.9.1986 and it was received by him on 9.9.1986. However, when the applicant went to join the duties on 9.9.1986 he was asked to come on the following day. On the following day i.e. 10.9.1986 when he again went to join his duties he was given a copy of the order passed by Dr. J.R. Sethi, Senior Divisional Medical Officer of the Hospital dated 29.8.1986. According to this order

the appeal was dismissed and the penalty of removal from service was confirmed.

5. Being aggrieved by the said order of Dr. Sethi the applicant has filed the present application on 10th October 1986. In view of the conflicting orders which were brought to our notice we stayed operation of the order of Dr. Sethi and directed that the applicant should be taken back in service forthwith. Accordingly, the applicant is doing his duties from 17.10.1986.

6. After hearing the advocates for both the sides we find that this is a fit case where both the orders in appeal should be set aside. We find from both the orders that none of the appellate authority had decided the appeal after giving a personal hearing to the applicant. We are also unable to find out as to whether Dr. Ugale was the competent authority to decide the appeal, or whether Dr. Sethi was the competent authority to decide the appeal. We are told that Dr. Ugale has retired with effect from 1.11.1986 and Dr. Sethi has retired on 1.1.1987. We, therefore, propose to set aside both the two conflicting orders in appeal and direct that the appeal should be decided ~~fresh~~ ^{fresh} by the competent appellate authority according to law. We also propose to direct that in the interest of justice the impugned order passed by the Disciplinary Authority i.e., Divisional Medical Officer, Byculla on 4.7.1986 should be stayed till the decision of the appeal.

7. If the appeal is decided against the applicant the applicant will be at liberty to come to this Tribunal

by way of a fresh application. With this we pass the following order :-

ORDER

- 1) The application is partly allowed.
- 2) The order passed on the appeal preferred by the applicant on 6.7.1986 or 6.8.1986 as the case may be, by Dr. M.S. Ugale, Senior Divisional Medical Officer, Byculla Railway Hospital on 5.9.1986, as well as the order passed by Dr. J.R. Sethi, Senior Divisional Medical Officer, Byculla on the same appeal on 29.8.1986, are hereby set aside.
- 3) We further direct that the appeal preferred by the applicant on 6.7.1986 or 6.8.1986, as the case may be, should be decided afresh by the competent appellate authority after giving a personal hearing to the applicant and on merits and by passing a reasoned and speaking order, according to Law. The appeal should be decided as far as possible by 30.4.1987.
- 4) The applicant will be at liberty to file a fresh application before this Tribunal in case the decision of the appellate authority goes against him.
- 5) We further direct that the order of penalty passed by the Disciplinary Authority i.e. DMO, Byculla on 4.7.1986 is stayed till the appeal preferred by the applicant is decided.
- 6) If the applicant has not been paid his salary for the period from 17-10-1986 to 31-10-1986 as alleged by the applicant, the respondents should pay the same to him as early as possible.

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7) Parties to bear their own costs.

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

(M.B. MUJUMDAR)
MEMBER(J).