

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

Original Application No.321/86.

Radheshyam Tanwar,  
Kherwadi, Block No.96,  
Bandra (East),  
Bombay - 400 051.

... Applicant.

V/s.

1. The Secretary,  
Ministry of Defence,  
New Delhi.
2. The Group Captain,  
Commanding Officer,  
Air Force Station,  
Bombay - 400 033.
3. The Air Marshal,  
Air Officer Commanding in Chief,  
Central Air Command,  
Indian Air Force,  
Madhya Vayu Kaman Mukhyalaya,  
Bamrauli,  
Allahabad - 211 012.
4. Mr. Bapat,  
Wing Commander,  
Air Force Station,  
Cotton Green,  
Bombay - 400 033.

... Respondents.

Coram: Hon'ble Member(A)J.G.Rajadhyaksha  
Hon'ble Member(J)M.B.Mujumdar.

Appearances:

1. Mr.B.K. Hegde, Advocate  
for the Applicant.
2. Mr.M.I. Sethna,  
for the Respondents.

ORAL JUDGMENT:

(Per J.G. Rajadhyaksha)

Dated: 30-1-1987.

Applicant was a civilian Chowkidar with the Respondents. He was ordered by Commanding Officer, Air Force Station, Bombay to be dismissed from service on 2-6-1983, primarily because of his absence from duty. The order also said that his entire absence from 12th January 1982 to 16th January 1983 should be

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treated as unauthorised absence from duty. Applicant had preferred an appeal to the appellate authority. The matter was remanded on 2-2-1985 with a direction that a de novo enquiry should be held. This order was passed by AOC in Chief Central Air Command, Indian Air Force, Allahabad. It was applicant's grievance that even de novo enquiry had not been <sup>of taken</sup> up and he was thus suffering a double jeopardy.

2. Today Mr. Hegde, appearing for the applicant, produced a xerox copy of an order issued by AIR Headquarters (VB), New Delhi stating that the applicant had been reinstated in service, but the question of back wages etc. had not been settled. Mr. Sethna appearing for the respondents confirms the issue of such order on 19th December, 1986.

3. By this order the entire proceedings have been set aside because :-

- (i) the punishment was awarded by an officer who was not empowered to do so, and
- (ii) the appellate orders had been passed by an officer who was not empowered to do so.

Therefore, the applicant was ordered to be allowed to resume duty immediately. The concluding paragraph of the order, however, indicates that the case is remitted to the competent Disciplinary Authority for initiating fresh disciplinary proceedings from the charge sheet stage, and <sup>passing</sup> ~~pass~~ appropriate orders. Mr. Hegde states that this para of the order is not contested by him and he has no objection to a fresh enquiry being held.

4. Mr. Sethna also concedes that the effect of this order is that the position is as if no enquiry had been started at all against the applicant, since it has now been ordered to be started afresh. He sees, therefore, no difficulty in settling the wages of the applicant as might be due to him for the intermediate period.

5. Since the primary cause of action does not now survive, we propose to dispose of the application with a direction that the respondents may arrange to settle all amount due to the applicant from 3rd June, 1983 until the date of reinstatement within a period of 3 months from the date of this order. We also wish to specify that the concluding paragraph of the order issued on 19th December, 1986 that the appropriate Disciplinary Authority may proceed with the enquiry remains unaffected by our orders.

The application is disposed of accordingly.

No orders as to costs.

  
(J.G. RAJADHYAKSHA)  
MEMBER(A)

  
(M.B. MUJUMDAR)  
MEMBER(J)