

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 187/89

198

~~ExxxDxx~~

DATE OF DECISION

13.2.1991

Shri P.S.Kukadwal Petitioner

Shri V.M.Bendre, for S.R.Atre, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

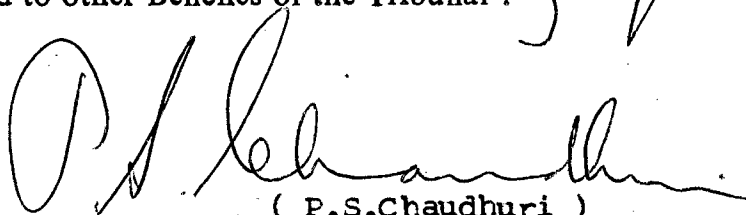
Shri R.K.Shetty Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S.Chaudhuri, Member (A)

The Hon'ble Mr. T.C.Reddy, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(P.S.Chaudhuri)
Member(A)

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

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Original Application No.187/89

Shri Pratap Somnath Kukadwal,
C/o. D.S.Pardeshi,
Parsuram Keni Niwas,
Room No.2, Gavan Pada,
Mulund (East),
Bombay 400 081.

... Applicant

V/s

1. Union of India through
The Director,
Central Govt. Health Services,
Nirman Bhavan, 'D' Wing,
Maulana Azad Road,
New Delhi.
2. The Deputy Director,
Central Govt. Health Services,
Central Govt. Health Scheme,
United India Building,
2nd Floor, Sir P.M.Road,
Bombay 400 001.

... Respondents.

CORAM: Hon'ble Member (A), Shri P.S.Chaudhuri.
Hon'ble Member (J), Shri T.Chandrasekhara Reddy.

Appearances:

Shri V.M.Bendre, holding
the brief of Mr.S.R.Atre,
Advocate, for the applicant
and Mr. R.K.Shetty, Advocate,
for the respondents.

JUDGEMENT:

Dated : 13-2-1991

{Per. P.S.Chaudhuri, Member (A) }

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 9.3.1989. In it the applicant who is working as a Laboratory Technician under the respondents is challenging their action in not allowing him to resume his duties as Laboratory Technician.

2. The applicant was appointed as a Laboratory Technician with effect from 5.8.1970 and was confirmed in that post in 1982. It is the applicant's case that

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on 3.7.1983 he received a message to the effect that his father was not well. He, therefore, left for his native place with the ^{prior} permission of the Medical Officer in-charge of the Dispensary. He applied for leave from his native place from 3.7.83 to 8.10.83. Thereafter he applied for extension of leave. It is the case of the applicant that he was mentally disturbed and was undergoing treatment of Dr. I.K.Chhajed at Pune from 5.1.85 to 15.9.1986 on which ^{date} he was declared medically fit by the said Doctor. The applicant preferred an application on 27.10.1986 seeking to rejoin his duties and followed ^{up} this ~~up~~ with personal visits almost every month from January to May 1987. As he had not been allowed to join his duties he submitted a representation on 15.6.1987. In reply on 15.7.1987 he was directed to inform his residential address where he was staying at Pune and undergoing regular medical treatment from 5.1.1985 onwards. By letter dated 8.2.1988 the applicant was directed to appear before a Medical Board to be convened by the Director of Health Services, Government of Maharashtra. He appeared before this Board on 21.3.1988. By letter dated 4.5.1988 he was declared fit to resume his duties. Being aggrieved at the action of the respondents in not permitting him to resume his duties the applicant filed the present application.

3. During the preliminary stages of the hearing of the application by an interim order dated 27.4.1989 the Tribunal directed the respondents to allow the applicant to join his duties as Laboratory Technician within one month from the date of receipt of a copy of the interim order. A copy of that order was received by the applicant's advocate on 1.5.1989.

4. The respondents have opposed the application by filing their written statement. We have heard Mr. V.M.Bendre, holding the brief of Mr. S.R.Atre, learned counsel ^{for} ~~of~~ the applicant and Mr. R.K.Shetty, learned counsel for the respondents.

5. It is the submission of the respondents that the applicant suddenly remained unauthorisedly absent with effect from 11.7.1983. It is their further submission that he should be deemed to have voluntarily abandoned the contract of employment with effect from 11.7.1983. Mr. Shetty fairly stated before us that there had been no order from the respondents to the applicant informing him that his services stood terminated in any manner. We are totally unable to go ^{along} with these submissions of the respondents. It is undisputed that the applicant is a Government servant holding a civil post under the Union and so is governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, the Rules). It is well established that the only penalties that can be imposed on a Government servant to whom these Rules apply is one of the penalties specified in the Rules. It is also well established that the procedure prescribed in these Rules has to be followed before any such penalties can be imposed. There is no provision in these Rules for any penalty of restraining a Government servant from joining his duties or for deeming a Government servant to have voluntarily abandoned his contract of employment. The constitutional provision regarding the removal from service of a person who holds a civil post under the Union are too well known to need any repetition. In view of this position we have no

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difficulty in holding that the action of the respondents in not permitting the applicant to resume his duties after he had been found medically fit to do so is illegal and incorrect.

6. The respondents have themselves stated that the applicant submitted an application on 15.6.1987 requesting permission for resuming his duties. The respondents considered it necessary to obtain reports from various police authorities. On their own submission all these reports were received on 16.1.88. The respondents also considered it necessary to obtain the opinion of the Medical Board of the Government of Maharashtra. This report was sent on 4.5.1988 (annexure-9 to the application). Thus, there was nothing standing in the way of the respondents to permit the applicant to rejoin his duties with effect from 4.5.1988. This is the date which the applicant has mentioned in his prayer in the application. By our interim order dated 27.4.89 we had directed the respondents to allow the applicant to join his duties as Laboratory Technician within one month from the date of receipt of a copy of the order. The applicant's advocate received a copy of the order on 1.5.1989. We are of the opinion that an outer limit of ten days is more than adequate to enable the applicant to present himself for work and that if he delays his joining his work beyond this period, he has to suffer the consequences. From M.P.No. 846/89 filed by the respondents it is seen that inspite of this position the applicant resumed his duties only on 12.6.1989. It is also clear to us that ^{it was} only on 4.5.88 that the applicant was found medically fit to rejoin his duties after his protracted absence from 1983.

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7. While concluding his arguments Mr. Shetty submitted before us that the applicant had been unauthorisedly absent from 1983 and had been erratic in his attendance even after resuming his duties in 1989. He submitted that in view of this position even if it was decided that the applicant should be deemed to have been on duty from any date prior to 12.6.1989, any payments for this period should be made conditional to the applicant not having been gainfully employed elsewhere during that period. Mr. Bendre had no objection to the furnishing of a certificate to this effect by the applicant immediately, should it be necessary. Mr. Shetty's second submission was that any orders passed by us should not stand in the way of the respondents taking action in accordance with law and in conformity with the rules regarding pay and allowances as also the above mentioned 'Rules' in respect of the actions and conduct of the applicant. We see considerable merit in both these submissions and hence propose passing appropriate orders in the matter.

8. In this view of the matter, the application partly succeeds and we pass the following orders:-

- (i) The applicant shall be deemed to have been on duty from 4.5.88 to 10.5.1989. He shall be paid the arrears due to him for this period less any permissible or ordered deductions within a period of three months from the date of receipt of a copy of this order and the furnishing of a certificate by him to the respondents that he had not been gainfully employed

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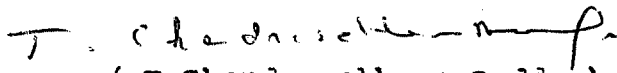
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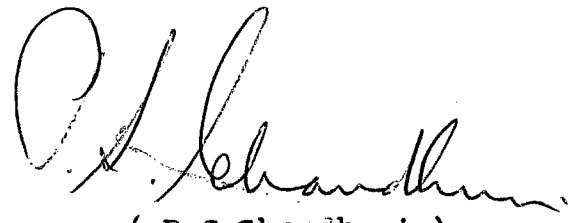
during this period.

(ii) The respondents are at liberty to regulate the pay and allowances payable to the applicant from 1983 to 3.5.89 as also on and after 11.5.1989 in conformity with the relevant rules in this regard.

(iii) The respondents are at liberty to take such action as they consider necessary for any absence during the periods mentioned at (ii) above in accordance with law and in conformity with the Rules.

9. In the circumstances of the case there will be no order as to costs.


(T.Chandrasekhara Reddy)
Member (J)


(P.S.Chaudhuri)
Member(A)

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