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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

CAMP: NAGPUR

O.A. NO. 354/89

S.D. Sonkusare

..Applicant

V/s.

Union of India & Ors.

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.
Hon. Shri M.R. Kolhatkar, Member (A).

APPEARANCE:

Ms. K K Pathak
for Mr. P.C. Marpakwar
counsel for applicant

Ms. Thompson for Mr. R. Darda
counsel for respondents.

ORAL JUDGMENT: DATED: 12.1.1994
(Per: M.S. Deshpande, Vice Chairman)

The applicant who was working as a Darwan was charged with continued absence for a period of 80 days and 439 days. The inquiry officer after considering the material before him held that the charge was established. The appellate authority by its order dated 13.4.1988 held that the applicant's absence could not have been justified on the ground of his mental disturbance because the Medical Officer who examined him could not have been aware of the mental condition of the applicant prior to 19.10.1985. The period of absence was between March 1984 to October 20, 1984 and 21.10.84 to 2.1.86. The applicant wanted to examine witness in support of his contention about the mental disturbance. However, Our attention was drawn to the letter dated 22.12.86 which was written by the inquiry officer to put up his own opinion in writing regarding the applicant to close down the inquiry against him. With regard to the evidence of his wife the inquiry officer made it clear that it was

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not found necessary to call her as witness.

Obviously she was the person who could have spoken about the mental condition of the applicant during the period for which the charge was framed and the observation of the inquiry officer that the wife's evidence was not necessary prevented the applicant from adducing the evidence in support of his contentions. It is, therefore, clear that there was a material defect in the inquiry and the finding at the inquiry cannot be supported.

2. The learned counsel for the applicant made a statement on behalf of the applicant and filed a pursis stating that the applicant was willing to forgo the backwages in case ~~if~~ he is reinstated in service and continuity is given to him. Since the absence has been over a long period, we find interests of justice would be met by directing the respondents to reinstate the applicant to his original post within a period of one month from to day with continuity of service without backwages. The finding at the enquiry is set aside and order of punishment is quashed and set aside. The applicant be allowed to join his post within one month from to-day with continuity of service without backwages for the period of absence. With these directions the OA is disposed of. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member(A)

M.S. Deshpande

(M.S. Deshpande)
Vice Chairman