

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 302/89

Transfer Application No:

DATE OF DECISION: 19.10.1994

Sopan Kisan Shelke Petitioner

Shri Y.R.Singh Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri Subodh Joshi. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri P.P.Srivastava, Member(A).

1. To be referred to the Reporter or not ? NO
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO


(M.S.DESHPANDE)
VICE-CHAIRMAN

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No.302/89.

Sopan Kisan Shelke. Applicant.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

Appearances:-

Applicant by Shri Y.R.Singh.
Respondents by Shri Subodh Joshi.

Oral Judgment:-

[Per Shri M.S.Deshpande, Vice-Chairman] Dt. 19.10.1994

By this application the applicant challenges the inquiry leading to the order of his removal from service passed on 31.12.1985 and the Appellate Order dt. 25.8.1988 by which the Disciplinary Authority's order was affirmed.

2. The applicant was employed as a Gangman and came to be chargesheeted on 9.4.1982, the charge being that he remained unauthorisedly absent from 23.3.1982 to 3.4.1982 and that he had not observed the Medical Rules and this had violated item 9 of Medical Rules. The only reference which is to be found in the inquiry papers is the statement of the applicant recorded in question and answer form by the Enquiry Officer. It appears that certain questions were put to the applicant and he admitted that he did not attend duty but contended that this was on account of his illness, and that he had submitted a medical certificate which was of a private Doctor for the period upto 30.3.1985 and he had not gone to the Railway Doctor for treatment. In answer to Question No.5, the applicant stated that he had not been attending to his duties as he was not well

and was not able to go for treatment to the Railway Doctor. He stated that he would submit his explanation with the help of his Assistant Railway Employee (ARE) on 15.4.1984. The report of the Enquiry Officer shows that the applicant attended on 8.4.1985, but without the ARE after the case was adjourned on some occasions and he was asked certain questions. It is apparent from the Enquiry Officer's report that the applicant had produced a Private Doctor Certificate signed by Dr.H.S.Bhurat - Lonavala which showed that he was under treatment from 7.3.1984 to 17.3.1985. The Enquiry Officer's report shows that the applicant was not acquainted with any of the Railway Rules regarding obtaining medical certificate from the Medical Officer - ADMO/LNL.

3. The learned counsel for the applicant urged that the papers of the inquiry which he has produced would thus show that the applicant's contention that he was absent on account of his illness ^{and this} ~~and was~~ supported by medical certificate. The applicant was asked a question whether he had attended duty from 30.3.1985 onwards though the charge was only for absence from 7.3.1984 to 4.10.1984. There is no reference anywhere that the applicant had been asked to attend the Railway Dispensary and get himself examined by the Railway Doctor or that any attempt was made by the Railway Authorities for getting the truth ascertained by getting the applicant examined by a Railway Doctor.

4. We inquired from the learned counsel for the Respondents whether he had brought the papers of the inquiry and he informed us that the official concerned has not attended, though he had specifically instructed the Officer to attend the Court today with the relevant records and that he was not therefore

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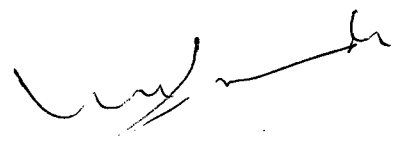
in a position to produce the relevant records and offer assistance to us on the basis of the records maintained by the Enquiry Officer. From what-ever material that has been placed before us by the applicant, it is apparent that the procedure for imposing major penalty as prescribed by Rule 9 has not been followed. The learned counsel for the applicant had shown us the certificate dt. 14.6.1988 which showed that the applicant had attended the Sassoon Gen. Hospitals, Pune from 9.6.1988 and that he was discharged on 14.6.1988. This certificate had been shown to us on the last hearing and also to the learned counsel for the respondents. The certificate showed that the applicant was suffering from Leprosy and he was advised rest and that the AFB was Negative and that he had completed three years treatment and he was fit for duty. The learned counsel for the Respondents stated that this certificate had not been produced at the time of inquiry, but that would be obvious because the certificate is dated 14.6.1988 and could not have been produced at the time of the inquiry. Had the applicant been given a proper opportunity, including ~~of~~ the fact that he was a patient of Leprosy could have been brought to light. But, evidently the inquiry was conducted by an Officer who was entirely insensative to the needs of holding the inquiry and the rules. The Appellate Authority also does not appear to have shown any inclination to go into the relevant documents or to find out whether the relevant procedures had been followed. The indifference of the authorities is obvious ~~on~~ ^{from} the fact that even though the Tribunal wanted records to be produced before it, none were produced. It is therefore, impossible for us to infer that the necessary procedure had been followed in holding the inquiry and giving a fair opportunity to the

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applicant to establish his innocence. We are therefore, constrained to set aside the finding of guilty recorded against the applicant and the penalty of removal from service imposed on him. We therefore, quash the findings of the inquiry and the punishment and direct that the applicant be reinstated in service with full backwages. The applicant should report to the Assistant Engineer, Lonavala within a month. The amount of backwages payable to the applicant shall be worked out and paid to him within three months from the date of communication of this order to the Respondents. The Respondents will also examine whether any action is required to be taken against the officials conducting the inquiry and passing the appellate order, in a slipshod manner while performing their statutory functions. With the above directions the application is disposed of.



(P.P. SRIVASTAVA)
MEMBER (A)



(M.S. DESHPANDE)
VICE-CHAIRMAN

B.