

(4)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~15/11/89~~ BOMBAY BENCH

O.A. No. 418/89

T.A. No. ---

198

DATE OF DECISION 8-3-94

S. Rajamani

Petitioner

Mr. G. S. Walia

Advocate for the Petitioner(s)

Versus

Union of India & Or.

Respondent

Mr. V. S. Masurkar

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice M. S. Deshpande, V.C.

The Hon'ble Mr. B. Rangarajan, Member(A)

1. ~~Whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? *no*
3. ~~Whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether in needs to be circulated to other Benches of the Tribunal ? *no*

M. S. Deshpande
(M. S. DESHPANDE)

VC

5

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.418/89

S.Rajamani,

.. Applicant

-versus-

1. Union of India
through
Chief General Manager,
Telecommunication,
Maharashtra Circle,
G.P.O., Bombay 400 001.

2. Chief Superintendent,
Central Telegraph Office,
Bombay - 400 001.

.. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande
Vice-Chairman

Hon'ble Shri R.Rangarajan,
Member(A)

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.

2. Mr.V.S.Masurkar
Counsel for the
Respondents.

ORAL JUDGMENT:
(Per M.S.Deshpande, V.C.)

Date: 8-3-1994

The only question which arises for consideration in this application is whether the respondents were right, after having granted the leave to the applicant for the period 16-11-1988 to 10-12-88, in cancelling the leave without issuing any notice to the applicant.

2. The applicant had applied for leave from 16-11-88 to 10-12-88 and had left the head-quarter. Prior to that he had written to the department stating that communication in regard to his leave should be given 18 hours before the beginning of his leave. No communication was given and the applicant left the head quarter.

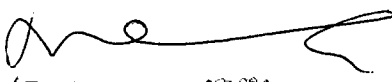
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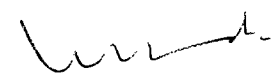
On 19-12-88 a showcause notice was issued to him in respect of his proceeding on leave and leaving the head quarter without permission. The applicant gave his explanation on 24-12-88 and an order was passed on 2-1-89. On 20-1-89 the applicant was sanctioned commuted leave. The matter should have ordinarily ended there with regard to the sanctioning of the leave. But another order came to be passed on 10-4-1989 taking exception to the behaviour of the applicant in addressing his superiors and unilaterally cancelling the leave that has been already granted and treating the period as dies-non.

3. The submission of Mr.G.S.Walia, counsel for the applicant was that having once granted the leave it could not have been unilaterally cancelled and the order dt. ~~10-4-89~~ cannot be supported because the applicant was not given any opportunity to showcause against the order proposed.

4. Learned counsel for the respondents urged that the remedy of appeal was available to the applicant. Since that was not exhausted, in view of the provisions of Section 20 of the A.T. Act the Tribunal should not entertain this application. Sub-section (1) of Section 20 says that "the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant rules as to redressal of grievances". The use of expression "shall not ordinarily admit" shows that the Tribunal has the discretion in the matter and that is where sub-section (4) of Section 19

of the A.T. Act would come in and it provides that "Where an application has been admitted by a Tribunal under sub-section, every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such ~~admission~~ shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules." The applicant could not be expected to have ~~persuaded~~^{ed} his remedy of appeal and the appeal could not have been decided by the respondents once the matter was admitted unless leave was obtained from the Tribunal to seek departmental remedies. It is therefore clear that we have to decide the present application on its merit and we are satisfied that the order dt. 10-4-89 could not have been passed, once the leave was granted, on extraneous consideration such as the behaviour of the applicant in relation to his superiors after the leave was sanctioned. In any case an opportunity should have been given to the applicant before the action for cancelling the leave was taken. The order dt. 10-4-89 cannot therefore be supported. It is set aside and the order granting leave to the applicant is restored. The consequence will be ^{that} the absence of the applicant from 16-11-88 to 10-12-88 cannot be treated as dies-non. If the applicant has not been paid for these period, his wages for that period should be paid within two months from the date of communication of this order. Application is disposed of accordingly.


(R. Rangarajan)
M(A)


(M. S. Deshpande)
VC