

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

Original Application No.166/1996.

Dated: 30.05.2000.

M.B.Hashmi,

Applicant.

Mr.C.M.Jha

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. V.S.Masurkar.

Advocate for  
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S.Baweja, Member (A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to  
other Benches of the Tribunal?
- (3) Library?

  
(R.G.VAIDYANATHA)  
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.166/96.

Tuesday, this the 30th day of May, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri B.N.Bahadur, Member (A).

M.B.Hashmi,  
B.U.F. Lower Parel Workshop,  
Western Railway,  
Bombay - 400 013.  
(By Advocate Mr.C.M.Jha)

... Applicant.

Vs.

1. Union of India through  
General Manager, Western Railway,  
Churchgate,  
Bombay - 400 020.
2. Chief Works Manager,  
Western Railway, Mahalaxmi Workshop,  
Lower Parel,  
Bombay - 400 013.
3. Works Manager,  
Mahalaxmi Workshop,  
Western Railway,  
Bombay - 400 013.  
(By Advocate Mr.V.S.Masurkar)

... Respondents.

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant challenging the order dt. 13.11.1995 and for a direction to respondents to pay him backwages for the period from 10.10.1988 to 3.4.1992. Respondents have filed reply opposing the application. We have heard Mr.C.M.Jha, learned counsel for the applicant and Mr.V.S.Masurkar, the learned counsel for the respondents.

...2.



2. The relevant facts which are necessary for our present purpose is that applicant was proceeded against in a departmental enquiry. After the enquiry, a punishment of dismissal from service was imposed on the applicant. The applicant challenged that order of punishment by filing an O.A. viz. OA 369/89. That OA came to be disposed of along with connected cases by a Division Bench of this Tribunal by order dt. 8.8.1991 under which all the impugned orders came to be set aside in view of the Judgment of the Supreme Court in Mohd. Ramzan Khan's case, with liberty to the administration to supply the copy of the enquiry report and give an opportunity to the delinquents to make a representation against the enquiry report and then pass fresh orders according to law. In pursuance of the orders of this Tribunal, the applicant came to be reinstated in service on 3.4.1992. Now, the applicant's grievance is that since he has been reinstated by an order of this Tribunal, he should be given back wages for the period from 10.10.1988 to 3.4.1992. But, on the other hand, the respondents have rejected the request of the applicant for backwages, but have passed an order that the period of absence shall be treated as Extraordinary Leave without pay and allowances. Being aggrieved by this order, the applicant has approached this Tribunal.

3. The respondents have stated in their reply that applicant himself gave a written application for treating the period of absence as Extraordinary Leave. That request of the applicant has been granted by the Competent Authority. On merits, it is stated that the Disciplinary Authority and the Appellate

...3.



Authority have taken a lenient view and imposed a ~~penalty of~~ minor penalty against the applicant.

4. In the light of the pleadings and the arguments addressed at the bar, the short point for consideration is whether the applicant is entitled to full back wages for the period from 10.10.1988 to 3.4.1992.

5. It is not a case where the order of the Disciplinary Authority was set aside on merits. The orders of the Disciplinary Authority was set aside by the previous Division Bench in the previous OA purely on a technical ground viz. the copy of the enquiry report was not furnished <sup>to</sup> ~~upon~~ the applicant before the final order as per the decision in Mohd. Ramzan Khan's case. The applicant came to be reinstated. The competent authority took a tentative decision as to how this period should be treated and issued a show cause notice to the applicant. The applicant gave a reply to that show cause notice by his letter dt. 11.8.1995 which is at Ex. R-II annexed to the reply. After meeting the contentions taken by the Competent Authority, in the last para the applicant has stated as follows :

"In view of the above I request your honour to treat this period of absence from as extra ordinary leave in order to allow me the continuity of period for the purpose of pensionary benefits, for this kind act of yours I shall be highly obliged."


After receiving the reply of the applicant, the competent authority has passed the impugned order dt. 13.11.1995 stating that the said period from 10.10.1988 to 3.4.1992 is treated as Extraordinary Leave. Of course, the order does not indicate whether the said period will count for the purpose of pensionary benefits which was one of the request made by the applicant in

his letter dt. 11.8.1995.

When the applicant himself has made a specific request and that request has been granted by the administration, it is too late in the day for the applicant to say that he should get back wages for the said period.

6. Admittedly, it is not a case of unauthorised absence from 1988 to 1992. The absence occurred since the applicant had been dismissed from service. The order of dismissal has been set aside by this Tribunal on a technical ground. When the competent authority has passed an order treating the period as extraordinary leave, he has almost conceded that it is not a case of unauthorised absence, but it is a case where the period of absence has been treated or condoned as Extraordinary Leave. In such a case, we hold that the applicant should get the benefit of the said period for the purpose of pensionary benefits at the time of superannuation. This is the only limited reliefs we can give to the applicant in the facts and circumstances of this case.

7. In the result, the application is allowed in part. While rejecting the applicant's prayer for back wages for the period from 10.10.1988 to 3.24.1992, we hereby direct the administration to treat the said period as qualifying service for the purpose of pensionary benefits and other retiral benefits admissible as per rules. In the circumstances of the case, there will be no order as to costs.

  
(D.S. BAWEJA)  
MEMBER(A)

  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN

B.