

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 368/1996

DATE OF DECISION: 31/01/2001

Shri Kashinath Premchand Mahajan Applicant

Shri L.M.Nerlekar

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondents.

Shri Suresh Kumar

Advocate for
Respondents.

CORAM:

Hon'ble Shri S.K.I.Naqvi, Member(J)
Hon'ble Smt. Shanta Shastry 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. ✓

Sae Naqvi
(S.K.I.NAQVI)
MEMBER(J)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:368/1996
DATED THE 31ST DAY OF JAN, 2001

CORAM:HON'BLE SHRI S.K.I.NAQVI, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

Shri Kashinath Premchand Mahajan,
Employee of C.W.S, Bhusawal,
Central Railway - Bhusawal,
residing at Sharada Nagar,
Bhagyashree Niwas Technical
School Road, Bhusawal.

... Applicant.

By Advocate Shri L.N.Nerlekar

V/s.

1. Union of India,
Through:General Manager,
Chatrapati Shivaji Terminus,
Mumbai - 400 001.
2. The Divisional Railway Manager,
Central Railway,
Bhusawal

... Respondents

By Advocate Shri Suresh Kumar.

(ORDER)

Per Shri S.K.I.Naqvi, Member(J)

Applicant while posted as Fitter Grade 'A' with the respondents establishment, he was subjected to disciplinary proceedings and the disciplinary authority passed order dated 22/8/86 with a punishment of dismissal from the service with effect from 23/8/86. This punishment of dismissal from service was changed to removal from service vide order dated 21/24-6-88. The punishment of removal from service was modified to withholding of increment for a period of three years without cumulative effect vide order dated 18/12/89. The period from the date of dismissal till reinstatement was treated as period not spent on duty vide letter dated 18/12/89. Being aggrieved of this position, the applicant preferred OA-746/92 which was decided on 21/2/95 with the direction to the respondents *as under* ...2.

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"If the applicant submits an application bringing out all the points which he wants to raise for the purpose of treating the period of suspension as period spent on duty, within a period of one month from the date of order, the respondents would dispose of the representation within a period of four months after the receipt of the representation by passing a speaking order."

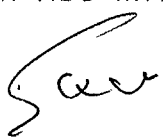
2. In compliance of this direction, the respondents passed the impugned order dated 23/1/96 holding that intervening period cannot be considered as suspension period.

3. The respondents have contested the case filed counter reply in support of decision taken in the impugned order.

4. Heard the counsel for rival parties. The learned counsel for the applicant took us through one CLR SC page - 638 Colour Chem Ltd V/s. A.L.Alaspurkar & Ors. and also a decision ^{rendered} ~~referred~~ to by Hyderabad Bench of the Tribunal in K.Chinnaiah V/s. Secretary, Ministry of Communications and Others in OA 358/91 decided on 27/4/94.

5. The learned counsel for respondents relied on Board's letter dated 7/4/86 as well as circular dated 3/12/95 from Department of Personnel and Training and emphasised that at no point of time the applicant remained under suspension prior to his dismissal and therefore the circular relied upon by the applicant is not applicable, Therefore this matter has been decided as per provision under Rule 1343 of Indian Railway Establishment Code Vol.IV.


6. As the facts have come up from the pleadings, the applicant was charged and subjected to major penalty but ultimately his delinquency was found to be for only minor penalty ~~as for an~~ action for minor penalty, there is no provision for suspension. When there is final decision that the applicant was ^{liable} ~~respondents~~ for an Act which is punishable with minor penalty,



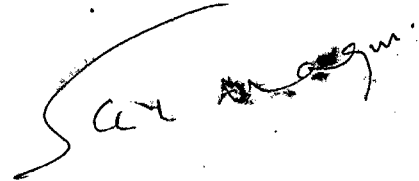
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the period during which he remained dismissed or removed from the service was ultimately found not justified and because of that the order had to be modified converting it into award of minor penalty and therefore this period should^{not} be treated as deemed suspension and the applicant becomes entitled to be held as deemed to be on duty during this period and therefore his claim for consequential benefits for the period during which he remained removed/dismissed, as on duty.

7. For the above reasons, the OA is allowed and the respondents are directed to treat the period, when the applicant remained removed/dismissed, from service, as on duty and make payment as per his entitlements within four months from the date of receipt of copy of this order. No costs.



(SHANTA SHASTRY)
MEMBER(A)



(S.K.I. NAQVI)
MEMBER(J)