

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 907/99

Kushalpriy Shankar Kolchaude

By Advocate Shri G.S. Walia.

VERSUS

Union of India & another.

(By Advocate Shri V.D. Vadharkar)

CORAM : Hon'ble Shri Kuldip Singh - Member(J)
Hon'ble Shri Shankar Prasad - Member (A)

- (i) To be referred to the Reporter or not ? ^{no}
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? ^{no}
- (iii) Library ? ^{yes}

Sn
(Shankar Prasad)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this 02nd the July day of 2003

Coram: Hon'ble Mr.Kuldip Singh - Member (J)
Hon'ble Mr.Shankar Prasad - Member (A)

O.A.907 of 1999

Kushalpriy Shankar Lokhande,
R/o 4/77, M.G.M.Hospital,
Staff Quarters,
Dr.S.S.Rao Road,
Parel (East),
Mumbai.

(By Advocate Shri G.S.Walia) - Applicant

Versus

1. Union of India
through General Manager,
Western Railway,
Headquarters Office,
Churchgate, Mumbai - 20.
2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
DRM's Office, Mumbai Central,
Mumbai - 400 008.
(By Advocate Shri V.D.Vadhavkar) - Respondents

O R D E R

By Hon'ble Mr.Shankar Prasad, Member (A) -

The Applicant has preferred the instant OA with the following reliefs -


(a) This Hon'ble Tribunal will be pleased to call for the records and proceedings of the case which led to removal of the applicant from service, and after going through its legality and constitutional validity, quash and set aside the same.

(b) This Hon'ble Tribunal be pleased to order and direct the Respondents to take the applicant back on duty forthwith and counting the applicant's previous service of about 10 years for all purposes and intents. *Sh*

2. The case of the applicant in brief is that he went to his village in January, 1993 on hearing of his father's death. He fell sick on account of it and could not resume duty. He sent application in April, 1993 for extending leave. He became mentally ill on account of his father's death and his illness. As per the medical certificate of psychiatrist dated January, 1999 the applicant contacted him for the first time in March, 1993 and he was found fit to resume duty in 1999. In the meantime he also addressed a letter of 23.6.1998 to Senior DEE to supply a copy of removal order if any.

The further case of the applicant is that the respondents have not followed the rules before removing him from service. The respondents have also not served the dismissal order on him.

He has relied on the decision of Allahabad High Court in Balwant Singh Vs. Union of India, AIR 1968 Allahabad 14 and the decision of Apex Court in Union of India Vs. D.S.Karekar & others 1998 SCC (L&S) 1837.

3. The respondents have stated in their written statement that all the records are unfortunately not available. It, however, appears that a departmental proceeding had been initiated for unauthorised absence from 30.9.1991 to 9.2.1992 against him vide letter dated 10.2.1992/20.3.1992. The same was served on him. The applicant did not attend the enquiry on 14.8.1992, 25.9.1992 and 20.10.1992 and the enquiry had to be held ex-parte. The applicant was also present for duty 

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only from 25.7.1992 to 2.8.1992 and on 14.9.1992 and has thereafter absented. The Enquiry Officer report was sent by registered post at three addresses. Sr.DEE (RS) passed an order removing him from service vide order dated 1.3.1993.

The further case of the respondents is that the case is hopelessly barred by limitation.

4. We are handicapped on account of its non-availability. What is available is only Enquiry Officer's report and some other papers.

5. Rule 9 (23) of Railway Servants (Discipline & Appeal) Rules indicates that if an employee does not reply to the charge sheet or does not appear the enquiry can be conducted ex-parte. The enquiry has been conducted before January, 1993 or March, 1993 that is the date before he proceeded on leave. It appears that he did not participate.

The said file also indicates that the report of Enquiry Officer has been sent at three addresses.

6. It further appears that the employee was earlier proceeded against for unauthorised absence from 18.8.1990 to 14.3.1991 and his pay was reduced as a result of penalty. *su*

.....4/-

7. Rule 510 of Indian Railway Establishment Code indicates that the maximum period of leave which can be sanctioned to any employee is five years.

8. Rule 26 of the Railway Servants (Discipline & Appeal) Rules, 1968 provides "Every order, notice and other processes made or issued under these rules, shall be served in person on the Railway Servant concerned or communicated to him by registered post.

9. The Allahabad High Court in Balwant Singh Vs. Union of India, AIR 1968 Allahabad 14 has held -

"The words "fails to resume duty" who by voluntary or deliberate act or omission stays away from duty and fails to report and not to one who was prevented by a cause beyond his control to resume duty. It cannot apply to a servant who fell ill and was treated by the Railway in its own hospital under its own supervision and was discharged as fit for duty by its own officers after the expiry of the maximum period of leave due to him."

The facts in that case was that the Railway employee was in Railway Hospital from 1953 to 1956 for treatment of T.B. He was proceeded against for not resuming duty in 1954 and was dismissed from service. The High Court allowed the Writ and quashed the dismissal order.

The facts are distinguishable. *Sn*

10. The Apex Court in Union of India & others Vs. D.S.Karekar & others, 1998 SCC (L&S) 1837 has considered service of notice under CCS (CCA) Rules. It held -

"Position regarding service of charge-sheet is different from position regarding communication of termination order. Where the disciplinary proceedings are intended to be initiated by issuing a charge sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. Similarly, when show cause is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply the theory of "communication" cannot be invoked and "actual service" must be proved and established. Neither the charge-sheet nor the show-cause notice were ever served upon the original respondent. Consequently, the entire proceedings are vitiated."

11. We have noted above that the charge sheet and notices of the dates for conduct of enquiry were served on the applicant. Thus the conduct of ex-parte enquiry is justified.

The report of Enquiry Officer has been sent by registered post at three addresses. There is a presumption of service. The Acknowledgement due is not on record.


As far as the service of order is concerned the decision of Apex Court refers.


12. We also note that the OA has been filed after more than one year after he sent his representation in June, 1998. No *Sn*

.....6/-

application for condonation of delay has been filed. The application is barred by limitation.

13. Under the circumstances, the OA is barred by limitation as well as devoid of merit. It accordingly fails. No order as to costs.


(Shankar Prasad)
Member (A)


(Kuldip Singh)
Member (J)

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