

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 30th day of June, 2003

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

O.A.990 OF 1999

Bachan Chand Malchand Ramula,
Assistant Cook,
Dr.Baba Saheb Ambedkar Memorial
Hospital, Byculla, Mumbai.
(By Shri K.B.Talreja)

- Applicant

Versus

1. Union of India through the General Manager, Central Railway, Mumbai, CSTM.
2. Divisional Railway Manager, Central Railway, Mumbai CSTM.
(By Advocate Shri Suresh Kumar) - Respondents

O R D E R

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

Applicant is aggrieved by the order of the Disciplinary Authority dated 30.3.1999 imposing upon him the penalty of removal from service and the order of the Appellate Authority confirming the said order. The applicant has preferred the instant OA.

2. The case of the Applicant in brief is that sometimes in the year 1984, he received a message that on account of severe earthquake in village Ramalgaon, District Tehri Garhwal, his property was destroyed and he accordingly went home. He suffered a severe mental shock on seeing the damage to his personal property and the condition of his family members who had suffered physical injuries. The Applicant was shifted to a Doctor at Varnasi where he was an indoor patient for sometime and visited as an OPD patient subsequently. He reported back for duty on receipt of communication dated 23.1.1998 and produced the medical

certificate given by the private doctor. He had reasonable expectation of being taken back in service. The medical authorities at Byculla Hospital issued him a fitness certificate. He was subsequently issued a charge sheet for the period from 1.5.1984 to 28.2.1998 and after conclusion of the departmental enquiry has been dismissed from service.

3. The further case of the applicant is that the charge sheet is vague and that the period of absence has been shown differently in letter calling for his explanation the charge sheet and the reply filed by the Respondents. The enquiry has been conducted in violation of principles of natural justice. There is no application of mind by the Disciplinary Authority and the Appellate Authority. A mercy petition had also been filed but the same has not been replied to. Hence after service of Lawyer's notice, the Applicant has preferred the present OA.

4. The case of the Respondents briefly is that the applicant was absent for a long period of 14 years and thereafter the enquiry was properly concluded and the penalty imposed. The applicant had actually served for about a year before proceeding to his village Ramalgaon and had not left behind any address. The medical certificate produced by the Doctor does not show any period of hospitalisation and only indicates that the applicant was suffering from severe hypertension. The Railway doctor has found him fit on the date of examination. This is a case governed by the doctrine of useless formality and the fact that he was allowed to join does not make any difference. A

5. We have heard the learned lawyer on behalf of both the parties and have gone through the pleadings. It is clear from the Medical Certificate that the Applicant had been absent from 1.5.1984 to 28.2.1998. Stress had been laid on the fact that the said absence is not wilful and that the Applicant was asked only in 1998 to report back for duty and he has thereafter reported back for duty on being declared fit by local doctor. He had a reasonable expectation of being taken back on duty.

6. We have noted in this connection the provisions of Para 510 of Indian Railway Establishment Code which provides that unless the President in particular circumstances of the case determines otherwise no government shall be granted leave on any kind for a continuous period exceeding five years. This in a way also to be a ceiling on the maximum amount of leave. It is also a settled principle that leave is not a matter of right and absence after expiry of leave renders a government servant liable for departmental action.

7. The Applicant has enclosed a copy of enquiries made from him by the Enquiry Officer. In reply to a question he has stated that he has filed a reply to charge sheet. The said reply has not been brought on record. The learned lawyer on behalf of the Respondents have drawn our attention to the decision of Apex Court in Deokinandan Sharma Vs. Union of India, 2001 SCC (L&S) 1079 wherein it has been laid down that if a case has not been made out before the Appellate Authority the same cannot be allowed to be raised before the Apex Court. The Applicant is accordingly precluded from setting out alternative case before the Tribunal. *JK*

8. The respondents have also relied on the theory of useless formality pronounced by the Apex Court in Aligarh Muslim University Vs. Mansoor Ali Khan, 2000 SCC (L&S) 965. This is an exception. Apart from the class of cases of "admitted or undisputable facts leading only to one conclusion" as discussed in S.L.Kapoor Vs. Jag Mohan, there has been considerable debate on the application of that in other cases. In the ultimate analysis the applicability of the theory would depend on facts of a particular case.

9. The medical certificate furnished by the applicant himself, the reply during the enquiry and the mercy petition themselves establish his absence for this long period. If the applicant himself admits his absence the same need not be established. The onus is on him to establish that it was bonafide. We note that as per the medical certificate he was only suffering from severe hypertension. No case of mental depression is made out.

10. The applicant has relied on a number of judgments.

The first judgment of S.K.Pramanik Vs.Union of India 2002 (1) ATJ 244 relates to a case where the facility of granting of leave on private medical practitioner's certificate had been withdrawn w.e.f. 20.12.1984 and the period of absence was covering this period also. The Calcutta Bench in OA 475/94 held

that in peculiar circumstances of the case the Applicant was not expected to have notice of the withdrawal of the circular and hence could not be charged. This is clearly distinguishable.

Smt. Mahadevi Vs. Union of India 2002 (1) ATJ 367 is a case where the Respondent Railway department had failed to produce Muster Roll and, therefore, the question as to whether her husband the Railway servant was present on duty or otherwise could not be examined. The facts are clearly distinguishable.

9. P.N. Patel Vs. Union of India, 2002 (1) ATJ 310 is a case where the period of absence had already been regularised as leave without pay and, therefore, the Ahmedabad Bench held that the absence could no longer be considered to be unauthorisedly absent. It is clearly distinguishable from the present case. The Apex Court in Maan Singh Vs. Union of India, 2003 SCC (L&S) 314 has held "the decision in Bakshish Singh is not an authority for the proposition that the order terminating the employment cannot be sustained in as much as in the later part of the same order the disciplinary authority also regularised unauthorised absence from duty by granting an employee leave without pay. In our view, thus, there is no conflict in this regard with the decision in Harihar Gopal's case."

The last decision is that of K. Srinivas Murthy Vs. Senior D.C.M., 2002 (3) ATJ 301. It has been stated therein that if the authorities doubted the genuineness of Medical

:: 6 ::

Certificates produced by a private doctor they should have got it verified. However, what sought of verification is possible after after somebody turns up with a medical certificate of 14 years' absence. In case the Applicant had remained absent for few days or months there was a possibility of verification. Even otherwise the medical certificate only refers to Hypertension and does not indicate hospitalisation. It is also not in the format prescribed under the Rules.

11. As per Railway Board's circulars department ought to have taken immediate action for unauthorised absence. Railway circulars which are in the nature of statutory rules, quoted at page 267 - 268 of Indian Railway Servants (Discipline & Appeal) Rules provide under what circumstances the departmental enquiry under Rule 14 (2) may be dispensed with and orders passed on the basis of material available on record.

12. In view of what has been discussed above, there is no merit in the OA and the same is dismissed. There shall be no order as to costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

mf

Kuldip Singh
(Kuldip Singh)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Review Petition No.59/2003
in OA No.990/1999

8th August, 2003

Shri Bachan Chand Malchand Ramula

... Applicant
(Review Petitioner)

V/s.

Union of India & Anr.

... Respondents

TRIBUNAL'S ORDER BY CIRCULATION

Per Shri Shankar Prasad, Member(J)

The instant review petition in OA 990/99 has been preferred on the ground that there are errors, apparent infirmities as stated in para 2 of the review application. 18 grounds have been mentioned. They include leave should have been granted for this long absence of 14 years, private medical certificate should have been considered, enquiry was not conducted in accordance with principles of natural justice and that all judgements cited by him were not considered and since he had resumed duties he could not have been proceeded against.

2. The scope of review under the Administrative Tribunal Act has been explained by the Apex Court in Ajit Kumar Rath Vs. State of Orissa & Others 2000(1)SC 811.

29. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for fresh hearing or arguments or correction of an erroneous view taken earlier. that is to say, the power of review can be exercised only for correcting of patent error of law or

...2.

fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

30. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgement.

3. It is clear from the above judgement that error apparent on fact of record or new materials which could not be found earlier even after due diligence can result in review of the application.

4. It is a case of absence from 1984 to 1998. During the departmental enquiry the applicant had admitted his absence mentioning health grounds. The issue regarding medical certificate of private doctor have been dealt in para 10 of judgement pointing out that cross checking is not possible after such a long lapse of time. } If the charges are admitted then as per Rule 14(10) the Enquiry Officer has to record a finding of guilt and send the report to disciplinary authority for further action. The report was made available and then the orders passed. As regards the plea that after the letter asking him to rejoin and he having joined action for absence cannot be taken the Apex Court decision in Maan Singh Vs. Union of India 2003 SCC (L&S) 314 refers. This aspect has been considered in para 9 of the judgement. All the relevant decisions cited by the applicant's lawyer have been considered and it is not necessary to consider each and every cited judgement.

5. There is no merit in this review application and the same is dismissed at the circulation stage.


 Shankar Prasad
 (SHANKAR PRASAD)
 MEMBER(A)
 app


 Kuldip Singh
 (KULDIP SINGH)
 MEMBER(J)