

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.186/1999

THIS THE 12TH FEBRUARY, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL.
HON'BLE SHRI S.G. DESHMUKH

VICE CHAIRMAN
MEMBER (J)

Mr. Ramdas N.
alias Ramdas Nathu Chavan,
Age 54 years Occ. Nil
R/o Nandurbar,
Dist. Nandurbar.

... Applicant

By Advocate Shri V.N. Tayade.

Versus


1. The Union of India,
through General Manager,
Central Railway, B.C.T.
 2. ADRM (O), BCT,
DRM's Office,
Bombay Central.
 3. Asstt. mechanical Engineer,
Nandurbar, (W. Rly.)
- .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Hon'ble Shri A.K. Agarwal, Vice Chairman.

This OA was filed by the applicant Shri Ramdas.N challenging the order of removal from service by respondents. The applicant expired on 08.7.2001 during the pendency of OA. Therefore, a MP was moved for substituting the name of legal heirs namely (1) Smt. Sarlabai Ramdas Chavan, 92) Mr. Vinod Ramdas Chavan, and (3) Mr. Naresh Ramdas Chavan. This MP was allowed by the Tribunal on 02.01.2002 and necessary corrections were made in the cause title.

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2. The Tribunal vide its order dated 13.11.2002

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held that there is no case for condoning the delay in filing the OA and dismissed the same without considering it on merit. Against this order, a writ petition was filed in the High Court of Judicature at Bombay. The High Court, vide its order dated 10.4.2003 condoned the delay in filing the OA and remitted the matter back to the Tribunal for deciding the same on merit in accordance with law.

3. The applicant was awarded penalty of removal from service vide order dated 24.11.1995. The document produced is notice of imposition of penalty (N.I.P.) under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. It is mentioned in the order that the penalty would take effect from the date the applicant receives the N.I.P. or from the date of issue if it is returned undelivered by the postal service. The N.I.P. was received by the applicant on 28.11.1995. The applicant through proper channel made a representation dated 2.1.1996, i.e. after about 5 weeks to A.D.R.M. This appeal was rejected by the appellate authority on 7.2.1996 holding that "the penalty imposed vide NIP dated 24.11.1995 is adequate".

4. We have heard both the counsel and have gone through the records. The learned counsel for applicant has mentioned that the applicant was absent from duty for long period on account of his ill-health. In

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support of this, medical certificate dated 24.12.1998 was filed indicating that the applicant was suffering from Tuberculosis and was under the treatment at the Hospital from 10.11.1997 to 23.12.1998. During this period, he was also advised bed rest. In view of this, the absence of applicant from duty is fully justified, and it is absolutely unfair to remove him from service on this ground. Learned counsel further stated that it is not denied that the applicant should have applied for leave during this period. However, he could not do because of his ill-health.

5. The learned counsel for respondents mentioned that the applicant was appointed in Railways on 01.10.1971 and was in the habit of remaining absent for long period right from the year 1979. On the issue of medical treatment from private Doctor, the learned counsel mentioned that Railways have very good hospitals and the railway employees get passes for free travel to these hospitals and also get free medical advice and medicines. When such facilities are available it is very doubtful that the railway employees will take expensive treatment for a disease like Tuberculosis from outside hospitals. Secondly the applicant did not cooperate and did not attend the inquiry held against him. More over, the appeal made by him against the order of removal was duly considered by the Appellate Authority holding that the punishment imposed by the Disciplinary Authority is proper and adequate.

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6. In this case, the notice of imposition of penalty has been actually treated as the order of removal passed by the disciplinary authority. The appellate authority has also heard the appeal against NIP and rejected the same. We do not find any order, removing the applicant from service by following the procedure for imposing a major penalty as laid down in Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. Further we do not see any provisions of issuing NIP under Rule 6.

7. We, find that the order of removal has been passed without following the proper procedure laid down in rules. Moreover, NIP itself mentioned that the orders will take effect from the date of receipt by the applicant which is 28.11.1995. In the subsequent order of the appellate authority, the date given is 24.11.1995. This also clarifies that while passing the order there was no judicious application of mind. We, therefore, hold that the order removing the applicant from service is bad in law and deserves to be quashed and set aside.


8. The employee will be treated as reinstated with effect from 24.11.1995 the date from which the impugned order was made effective. The applicant has expired on

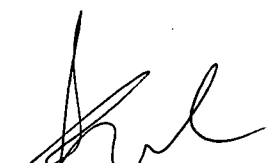
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8.7.2001. For the period before these two dates the employee will not be entitled for any salary etc. On the principle of "No Work No Pay".

10. This OA thus allowed. The impugned order dated 24.11.1995 of the Disciplinary Authority and order of Appellate Authority dated 07.02.1996 are quashed and set aside. The intervening period till the death of employee or till his attaining the age of superannuation, whichever is earlier, will be treated as diesnon. No order as to costs.


(S.G. DESHMUKH)
MEMBER (J)


(A.K. AGARWAL)
VICE CHAIRMAN.

Gajan