

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 666/2000

Date of Decision : 30.6.2003

G.B.Merchant	Applicant
Shri B.Ranganathan	Advocate for the Applicant.

VERSUS

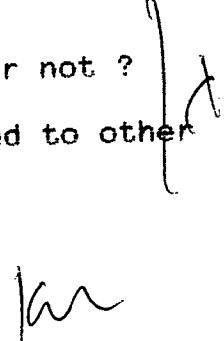
Union of India & Ors.	Respondents
Shri S.S.Karkera	Advocate for the Respondents

CORAM :

The Hon'ble Shri Kuldip Singh, Member (J)

The Hon'ble Shri Shanker Prasad, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ✓


(KULDIP SINGH)
MEMBER (J)

mrj.

2. The facts in brief are that the applicant was working as a Technician in the Department of Telecommunication and fallen sick and could not attend office from 16.11.1979 due to some serious disease. The relatives of the applicant were periodically sending application for leave of absence to applicant's superior and those applications were also supported by medical certificates. On 16.2.1985 applicant received a communication dated 6.2.1985 stating that the last medical certificate from the applicant dated 21.12.1983 for leave for a period of two months could not be granted and the applicant was also warned that if he fails to report for duty, disciplinary action will be taken against the applicant. However, the applicant thereafter reported for joining duty after obtaining fitness certificate. When the applicant reported for joining, he was informed that since the applicant was absent for more than 5 years, he could not be allowed to join duty without presidential sanction to leave and the applicant was asked to go back to Mumbai till he was recalled after obtaining the permission of the President. But instead of getting any reply and sanction of the leave, the applicant received communication to the effect that he was unauthorisedly absent and a chargesheet was also issued to him and as a result of this chargesheet, the applicant was ultimately initiated with the penalty order. The applicant challenges the impugned orders on the ground that he had not been given a proper opportunity, nor chargesheet was produced before the enquiry officer during the enquiry and enquiry proceedings were violated of procedure and the facts that the applicant has been submitting leave applications on medical grounds. Thus, he submits that the decision of the enquiry officer as well as disciplinary authority and appellate authority is perverse.



3. Respondents have contested the OA., filed the written statement in support of the impugned orders stating therein that the applicant had been provided with all the opportunities as per CCS9CCA) Rules and the punishment awarded is in accordance with the rules.

4. We have heard the learned counsel for the parties and have gone through the record.

5. From the perusal of the order of appellate authority, we find that the appellate authority while considering all the facts was of the view which he expressed in the following terms :-

"I bear full sympathy with the CO for the decade long procedures that had already cast as spell of shadow of stress and strain which I believe, itself can inflict any person with serious agony. But for me there remains no scope to take any shelter under the sun or on my stratum of sympathy to gain any advantage for the absence more than five years without proper sanction of leave by the competent authority. And here I fail to support the applicant Shri G.Merchant to retain any longer in service.

So with a heavy heart I can not help in reducing the intensity or the very gravitas sense of Departmental Rulings, which incorporates as under."

The order passed by the appellate authority only shows that the appellate authority was unable to help the applicant since the leave beyond a period of 5 years required a sanction from the President. Otherwise, it appears that the appellate authority was out to help the applicant. It means that the

punishment of dismissal from service has been awarded only because the appellate authority observed that as the sanction of leave beyond five years is not coming from the President of India. The correspondence on record also shows that the leave for five years was being granted by the Department on account of illness of the applicant. Thus, it appears that the charge of wilful absence could not be established since the Department itself has granted leave to the applicant.

6. In these circumstances, we are of the opinion that merely because of lack of Presidential order, the applicant could not be awarded the penalty of removal from service. There are various means of awarding punishment to the applicant other than dismissal from service. For illustration, the said period could be treated as dies-non. With this background of the facts, we find that even the conscience of the appellate authority was not satisfied to award the punishment of dismissal of the applicant. The punishment of dismissal also appears to be disproportionately awarded to the applicant since his medical certificates had been accepted initially for five years. Hence, it shocks the conscience of the Tribunal that merely because of the lack of the Presidential sanction the penalty of dismissal has been awarded.

7. Accordingly, we have no hesitation to quash and set aside orders passed by the disciplinary authority as well as the appellate authority and we remand back the case to the authorities for passing any appropriate punishment in accordance with rules ^{by} unless than the penalty of dismissal from service. This may be done within a period of three months from the date of receipt of a copy of this order and the applicant be reinstated in service. No order as to costs.

Shankar Prasad
(SHANKAR PRASAD)

MEMBER (A)

mrj.

Kuldeep
(KULDIP SINGH)

MEMBER (J)

C.P. 20/2004

for orders
on 8/3/04

A

Dated: 8-3-2004 (17)

Applicant by Sh. B. Ranganathan.

Applicant has filed C.P. 20/2004
for non implementation of the Tribunal
order dated 30-6-2003. On the last
date 2 months time to grant to implement
the order but it has not been implemented
so far.

Issue notice to the Contemnor
1 and 2 returnable by 7-4-2004 to show
cause as to why the proceedings ~~be~~ on
Contempt should not be initiated against
them. Personal appearance of the
Contemnor is dispensed with.
List the case on 7-4-2004.

Kil
(A.C. Agarwal)

^{Swas}
(Mr. Zaffar Hussain)
M.T.

AB

~~Recd
9/3~~

Notice issued
on 18/3/04

K.S.

Dated: 27-5-2004 (14)

Applicant by Shri B. Ranganathan.
Respondent by Shri S-S. Karkera for Shri
P.M. Pradhan.

It has been brought to the notice of the Tribunal that the matter has been taken by the respondents to the High Court and the Hon'ble High Court of Judicature at Mumbai has given stay on the order of the Tribunal on 21-4-2004. In the circumstances we feel that the present C.P. has become infertile and is disposed of accordingly.

^{Shri}
(Muzaaffar Husain)
m(J)

^{Shri}
(Anand Kumar Bhattacharya)
M(A)

Mr.

~~bit (W.M.)~~
~~31/5~~

Ad-interim order passed
by the High Court on
15-3-2004, being the
Same is hereby continued
pending the hearing &
final disposal of this
Writ Petition by Hon'ble
High Court order of
21-4-2004
circulated on 16-6-04

16-6