

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 562/91

198

~~T.A. No.~~DATE OF DECISION 27-3-1992Chandriak J Jaiswal PetitionerMr. S P Kulkarni Advocate for the Petitioner(s)

Versus

Union of India & 3 ors. RespondentMr. R E Kotienkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M Y PRIOEKAR, MEMBER (A)

The Hon'ble Mr. S. SANTHANA KRISHNAN, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*


 MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD, BOMBAY-400001

6

O.A. No. 562/91

CHANDRIKAPRASAD JAISHREE JAISWAL
SON OF JAISHREE RAM JAISWAL
STAFF NO. 25355 CATEMAN ANNEX 59
UNDER DMX 50/59 THANE TELEPHONE EX.
RESIDENT OF TYPE-I/1/2 ORDNANCE
FACTORY QUARTERS, AMBERNATH(W)
DIST. THANE 421502

.. Applicant

V/s.

1. Union of India through
Chief General Manager
Mahanagar Telephone Nigam
(GOI UNDERTAKING)
Telephone House
Prabhadevi; Bombay 400028.
2. The DET (Internal)
Thane Telephone Exchange
Mahanagar Telephone Nigam Ltd.,
MTNL Thane 400 602
3. The General Manager (E&ND)
Mahanagar Telephone Nigam Limited
Vikroli, Bombay 400083
4. The Chief General Manager
Telecom Dept. of Telecommunication
Old CGO Building
Bombay 400 001

.. Respondents

Coram: Hon. Shri M Y Priolkar, Member (A)
Hon. Shri S. Santhana Krishnan, Member (J)

APPEARANCE:

Mr. S P Kulkarni
Advocate
for the applicant

Mr. R C Kotienkar
Advocate
for the respondents

ORAL JUDGMENT
(PER: M Y PRIOLKAR, MEMBER(A))

DATED: 27-3-1992

The applicant in this case was a Casual Labourer for about 5 years in the office of the Divisional Engineer, Thane Telephone Exchange and thereafter from 15.3.1980 he was appointed as a gate-man in a temporary capacity. Within a month or so the applicant met with an accident while on duty and was under



medical treatment for the period 26.3.80 to 10.5.80 and after declaration as medically fit, he reported for duty on 12.5.80. He continued to work till 30.5.1980 and thereafter he remained absent without any intimation and his whereabouts were not known to the respondents till he submitted a report dated 12.9.90.

According to the applicant the absence was due to some head injury which he had sustained earlier and the subsequent mental imbalance and he had lost his normal behavioural routine. He states that he was treated by some herbal/jadi buti treatment for almost 10 years and only after he became fit he offered himself to join duties by submitting representations to the respondents from 12.9.90 onwards.

The learned counsel for the respondents argued that the representations were ^{for} asking for a job ant not for rejoining duty and they were also not accompanied by any medical certificates. Respondents have also stated that they have repeatedly sent letters to the applicant during July-December 1980 calling upon him to attend duty and since there was no response from the applicant and he continued to remain absent, in May-June 1981 his services were terminated by giving a month's notice in accordance with the rules. Respondents however state that the relevant records are not now available with them as they are either lost or destroyed due to shifting of office, lapse of time etc.

Since it is the applicant's contention that at no time he has received a copy of any termination order as explained by the respondents and it is also not possible for the respondents to show us any record / evidence in support of despatch of any termination order or acknowledgement thereof, we feel that at this stage the respondents should proceed afresh against the applicant either for termination in accordance with law or to offer him reappointment to the post as they may deem fit in the circumstances. In case a fresh termination order is issued to the applicant and if the applicant is aggrieved with the order of punishment he is at liberty to approach us again ⁱⁿ accordance with law.

The application is disposed of accordingly with this direction, which should be implemented latest within three months from the date of receipt of this order. However, we pass no order as to costs.


(S. Santhana Krishnan)
Member (J)


(M Y Priolkar)
Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

R.P.No. 147/92
in
OA.NO. 562/91

Shri Chandrika Prasad Jaishree Jaiswal ... Applicant
V/S.
Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon
Hon'ble Member (A) Shri M.Y.Priolkar

Tribunal's Order On Review Petition
by Circulation.

Dated: 20-10-92

(PER: S.K.Dhaon, Vice Chairman)

This is an application seeking the review of the order dated 6.3.1992 passed by us in a Misc.Petition No. 649/92 in Original Application No. 562/91 which had stood finally disposed of on 27.3.1992.

2. In OA. 562/91 the case set up by the applicant (Chandrika Prasad Jaishree Jaiswal) was, in brief, this. He was working as a Casual Labourer. He was absorbed as a regular employee and was appointed as 'Gateman'. While on duty he met with an accident. He suffered a mental ailment. He went home for treatment. After recovery from mental sickness, he returned to Bombay and requested the respondents to allow him to join duties but in vain. He preferred representations on 12.9.1990 praying that he may be permitted to resume duties followed by several reminders. The latest being the one sent on 2.4.1991. He made the prayer that this Tribunal may direct the respondents to permit him to resume duties.

3. In the reply filed on behalf of the respondents the case set up, inter alia, was this. The applicant was appointed on probation. Some-time in May-June 1981 his services were terminated during the period of probation. The case being more than 10 years old, the office records of the letters issued to the applicant calling upon him to attend duty and also sending the notice-cum-termination order are missing and are not traceable.

12

4. This Tribunal in its order dated 27.3.1992 took the view that the grievance of the applicant that he had not been served with a copy of any order of termination could not be investigated as the respondents were unable to produce the record or evidence in support of the case set up by them that the order of termination had been despatched to the applicant. It, therefore, felt that the respondents should proceed afresh against the applicant either for termination of his services in accordance with law or to offer him reappointment to the post held by him. This Tribunal further directed that in case a fresh termination order is issued to the applicant and if the applicant is aggrieved by the said order, he will be at liberty to approach the Tribunal again. The Tribunal made it clear that the direction given by it should be implemented latest within three months from the date of receipt of this order.

5. M.P.No. 649/92 was filed on behalf of the respondents, namely, the Union of India & Ors. with a prayer that the time for the implementation of the direction of this Tribunal dated 27.3.1992 may be extended till 31.12.1992. On 6.8.1992 we disposed of the said M.P.No. 649/92. We took the view that it was not possible to grant any further time unless the respondents gave an undertaking that the applicant would be paid his future emoluments till the finalisation of the disciplinary proceedings which, as mentioned in the said M.P., were intended to be reinitiated. This Tribunal also took the view that the respondents shall either comply with the directions of this Tribunal given earlier or if they wish to complete the enquiry by 31-12.1992 they shall pay to the applicant the past emoluments etc. from 12.9.1990 and shall continue to pay to him the future emoluments till the completion of the enquiry. In the review application also one of the prayers still is that the respondents may be granted time till 31.12.1992 for implementation of this Tribunal's order dated 27.3.1992.

sy

6. We have considered the contents of the review application carefully and we find no merit in the same. We are unable to ~~discern~~ any apparent error on the face of the record in our order dated 6.8.1992. Since, we are disposing of the application on merits, we do not consider it necessary to go into the question as to whether a review application lies for getting an order passed in a Misc. Petition set aside or modified.

7. While disposing of this application we have adopted the procedure of circulation as permissible under the rules. The application is rejected.

M.Y. Priolkar

(M.Y. PRIOLKAR)
MEMBER (A)

S.K. Dharon

(S.K. DHARON)
VICE CHAIRMAN

mrj: