

(d4)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 630/91

Transfer Application No:

DATE OF DECISION 5.1.1993

S.D. JESWANI Petitioner

SHRI R.S.MORE Advocate for the Petitioners

Versus

UNION OF INDIA AND ORS. Respondent

SHRI J.G.SAWANT Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y.PRIOLKAR, MEMBER (A)

The Hon'ble Shri V.D.DESHMUKH, 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 ?
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 ?


(M.Y.PRIOLKAR)
MA

NS/

(05)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO: 630/91

Shri S.D.Jeswani,
Inspector of Works,
Central Railway, Bombay- VT,
Residential Address 71/B,
Sindhu Wadi, M.G.Road,
Ghatkopar (E), Bombay-77

.... Applicant

V/s

Union of India
and others

... Respondents

CORAM : HON'BLE SHIR M.Y.PRIOLKAR, MEMBER (A)
HON'BLE SHRI V.D.DESHMUKH, MEMBER (A)

Appearance :

Shri R.S.More, Adv.
for the applicant

Shri J.G.Sawant, Adv.
for the respondents.

ORAL JUDGEMENT

DATED 5.1.1993

(PER : M.Y.PRIOLKAR, MA)

The applicant was working as Inspector of Works, Thane in the Central Railway when he was transferred in the same capacity to Jhansi Division by order dated 19.10.1982. The applicant, however did not carry out the transfer order. According to him, he was admitted in the Central Railway Hospital on 21.10.1982. It appears that he did not resume his duties after that date. He states that he continued under treatment of Railway Doctors till 21.2.1983 and thereafter was under the treatment of private doctors for treatment of Maniac Depressive Psychosis (Depression)

till September 1985. Departmental proceedings were instituted against the applicant on 30.7.1985 for various charges of misconduct namely disobedience of transfer order, unauthorised absence, unlawful possession of expired pass, misuse of date expired duty card pass, unauthorised occupation and non-payment of rent of quarter, etc. After conducting an inquiry, the penalty of reduction in rank was imposed by the disciplinary authority on 10.9.1986. His appeal against this penalty was rejected by the Appellate Authority by order dated 20.1.1987. The applicant has filed this application on 19th Sept. 1991 praying for a number of reliefs. The first prayer of the applicant is to set aside the order of reduction in rank. The second prayer is a direction to the respondents that his application for voluntary retirement which is stated to have been made on 1.4.1991 be accepted by the department. He has also prayed for some incidental reliefs, like regularisation of entire absence on medical grounds as 'Dies non' which should be counted for the purpose of qualifying service, after adjusting the various types of leave and also that he should be treated on duty with full pay and allowances during the period from 18.1.1989 when he is stated to have requested for resumption of duty but was not allowed to do so.

2. According to the respondents, the main reliefs asked by the applicant viz. setting aside of the penalty order and treating the period from 18.1.1989 as duty for all purposes are hopelessly time barred. Admittedly, the appellate order dated 20.1.1987 had become final. The applicant did not prefer any further review or revision application before the competent authority.

It is only in the present application filed before this Tribunal in September 1991 that he sought to challenge this order of disciplinary authority imposing the penalty and of the appellate authority. ^{Confirming its} No explanations confirming ~~the penalty~~ are forthcoming for the inordinate delay of almost five years in challenging these orders except that the applicant had been asking for resumption of duties but was not allowed to do so. We do not find any merit in this contention that only because the applicant was not on duty, he could not pursue the matter of challenging the appellate authority's order before the appropriate forum. We are, therefore, of the opinion that the prayer for setting aside the appellate order is hopelessly time barred and has to be rejected as such.

4. The second relief prayed for by the applicant is that he may be treated on duty from 18.1.1989. The ~~applicant~~ has annexed a copy of his letter dated 18.1.1989 purporting to be a request that he be allowed to resume duty. This letter was addressed to the Chief Personnel Officer. According to the respondents, no such letter has been received by the Chief Personnel Officer's office. Admittedly, the head of the department of the applicant was the Chief Engineer and the applicant who was a responsible officer in the Central Railway working as Inspector of Works should have known that any such representation should have been addressed to the Controlling officer. In any case, since the respondents have categorically denied that any such letter had been received in the office of Chief Personnel Officer to whom it is stated to have been addressed and in the absence of any evidence from the applicant about any such letter having been sent to or received in any office of the Railways, this prayer has to be rejected as time

barred under the provisions of the Administrative Tribunals Act, 1985. The applicant states that he had sent a reminder for his 18.1.1989 letter on 2.2.1990. But again the respondents categorically deny having received any such reminder. It appears to us that the applicant was not very serious about resuming the duties, otherwise he would not have waited for more than a year to pursue his request for resuming the duties. Atleast he should have ~~obtained~~ the acknowledgement for the receipt of the reminder letter sent by him but even this he failed to do.

5. The only two reliefs therefore which we think deserve consideration in this application are, firstly, the acceptance of the notice of his voluntary retirement and secondly, his prayer for adjusting the various kinds of leave to which he is entitled against the period of absence.

6. According to the applicant, he had submitted the notice of his voluntary retirement on 1.4.1991 to the Chief Engineer, Central Railway. It has been mentioned in a copy of this notice (Annexure-2) that the applicant was suffering from Maniac Depressive Psychosis (Depression) and unable to resume normal duties, and therefore, was seeking voluntary retirement. It has also been stated in this notice that the emoluments for the period of three months could be adjusted in lieu of notice period from his settlement dues. According to the respondents, this notice does not appear to have been received in the office of the Chief Engineer. The respondents have also stated that according to the rules/instructions, the voluntary retirement notice appropriately should have been addressed to the controlling officer of the applicant, namely, Senior Divisional Engineer, Bombay and that

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after obtaining, if necessary, the required leave application from the applicant. The medical certificates attached to the application may be accepted for this purpose without insisting ^{on} a fresh medical certificates. His qualifying service for pension may be calculated after taking into account such adjusted leave in accordance with the rules. The payment including pensionary benefits may be made within a period of three months from the date of receipt of this order. There will be no order as to costs.



(V.D. DESHMUKH)
MJ



(M.Y. PRIOLKAR)
MA

srl

Rejoinder of answer
to m.p. filed by
Respondent section
2-G-93

MS

mp No. 433/93
for extension
of time fixed
on 18/6/93

Yeli
14/6/93

dt 18/6/93
order/Judgement despatched
to Applicant/Respondent (s)
on 28/6/93

8/6/1

e.p. No. 59 /an free
for order on 29/6/93
per 28/6/93

O.A. No. 630/91 Dt. 18.6.93

None for the applicant.

Shri J.G.Sawant for the respondents.
Misc. Petition No.433/93 disposed of
with a direction that the amount due
to the applicant be paid within six
weeks from today.

U. Kawade
(USHASAVARA)
MEMBER (A)

(M.S.DESHPANDE)
VICE-CHAIRMAN

B.

Per Tribunal
Applicant in person / by
Advocate / Respondent by Mr J.G.Sawant
Counsel for Ward A. S. S.
The matter adjourned to 11/7/94
for Order a C8 30/94

Date 29/6/93

Dy. Registrar

Per Tribunal
Applicant in person / by
Advocate Respondent by Both Parties
Counsel by Counsel of Both
The matter adjourned to 5/7/94
for Order

Date 11/7/94

Dy. Registrar

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5.9.1994.

Shri K. B. Talreja,
counsel for the applicant.

Shri J. G. Sawant,
counsel for the respondents.

The Learned Counsel
for the applicant submits
that he has served a copy
of contempt Petition to the
respondents, who may file
their reply within three
weeks.

S.O. to 26/9/1994.


(R. RANGARAJAN)

MEMBER(A)


(B. S. HEYDE)

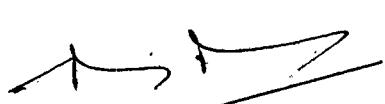
MEMBER(J)

Dated: 26/9/94

The applicant is present in
person. Sh. J. G. Sawant for the
respondents states that he has not
yet been served with the copy of
the C.P. though the applicant says
that the copies have been served
and the acknowledgements are with
his advocate who is not present
today. If the copies have not
already been served, he should
serve the copies on Sh. Sawant
within a week.

Reply within four weeks, thereafter
the case be listed for considering
the question of admitting the C.P.
on the next date of hearing.

Adjourned to 11/11/94.


(K. J. Saha)

MCAI


(M. S. Deshpande)

V/C

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11/11/94

4 Applicant by Shri Taleja.

Respondent by Shri Dhawan.

Heard the counsels. It is apparent from the reply filed that the payments have already been made to the applicant. The applicants grievance is that they are not correctly ~~paid~~ and if that is so, the applicant should approach the tribunal by filing a separate O.A because the cause of action would be from the date the amount was calculated wrongly, and was sought to be paid to the applicant. liberty to applicant to file a fresh O.A if he so desires challenging the correctness of the payment CP-59/94

11/11/94
order/Judgement despatched
to Applicant/Respondent(s)
on 30/11/94

is dismissed. No orders to costs.

~~(P.P. Srivastava) (M.S. Deshpande)~~
M(A) V.C.

11/11/94