

(07)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 96/91

199

T.A. NO:

DATE OF DECISION 25-10-1991

Narayan Haribhau Jadhav

Petitioner

Mr.V.J.Kale

Advocate for the Petitioners

Versus

Union of India and Ors.

Respondent

Mr.R.K.Shetty

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. M.Y.Priolkar, Member(A)

The Hon'ble Mr. N.Dharmadan, 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*

mbm*

MD

[Signature]
(N.DHARMADAN)

(88)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.96/91

Narayan Haribhau Jadhav,
Quarter No.1/1, Type I,
Range Hills,
Pune 411 020.

.. Applicant

vs.

1. The General Manager
High Explosive Factory,
Kirkee, Pune - 3.
2. The Estate Officer,
Ordnance & Range Hills Estate,
Ammunition Factory,
Kirkee,
Pune 20.
3. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.

.. Respondents

Coram: Hon'ble Shri M.Y.Priolkar, Member(A)

Hon'ble Shri N.Dharmadan, Member(J)

Appearances:

1. Mr.V.J.Kale
Advocate for the
Applicant.
2. Mr.R.K.Shetty
Advocate for the
Respondents.

ORAL JUDGMENT:
(Per N.Dharmadan, Member(J))

Date: 25-10-1991

The applicant challenges the order of removal dtd. 12-9-1990 passed by the respondent pursuant to the disciplinary proceedings initiated against him for his unauthorised absence for a long period from 1987 to 1990.

2. According to the applicant he joined service as a Labourer in 1963 and he was promoted as a Compressor Attendant in 1978. When an action was taken against him and removed him from service after inquiry he approached the High Court challenging the order which was later transferred to this Tribunal and disposed of ~~the same~~. As per judgment dtd. 28-1-1987, This Tribunal took a lenient view and set aside the order of punishment after observing

that generally this Tribunal will not interfere with the quantum of penalty but, having regard to the facts and circumstances of this case taking a lenient view directed the reinstatement of the applicant in service. From the judgment it is seen that the learned counsel appearing on behalf of the applicant has undertaken not to remain absent without prior permission of the department in future. It was further stated in the judgment that "in case he so remains absent without such prior permission the respondents would be within their rights to take a serious view of such absence and take suitable departmental action which may lead to any penalty including removal from service."

3. Since contrary to the undertaking the applicant remained absent from 1987 to February, 1990 without taking prior permission of the respondents were compelled to take departmental proceedings against the applicant. They conducted an inquiry giving the applicant sufficient opportunity to participate in the same. Ultimately in the inquiry when the applicant was found to be guilty of the charges. Hence the impugned order of punishment dtd. 12-9-1990 was imposed on him by which the applicant was removed from service. The applicant is challenging this order of punishment on the ground that he was mentally ill during this whole period. It is also seen he has filed appeal against the punishment order.

4. The applicant has also filed an affidavit stating the reason for his absence from duty. According to the applicant he was suffering from some mental illness. According to him for reasons beyond his control he could not attend the duties for the whole period. He produced as annexure A-1 to A-3 medical certificates in support of the contention.

5. The respondents have filed their written statement and additional written statement denying all the averments and allegations made by the applicant. In this written statement filed by the respondents they have stated as follows:-

"At the outset, the Respondents submit that the above mentioned application is an abuse of due process of law and is filed in utter contempt of the undertaking given by the Advocate of the applicant Prof. Vijayrao J. Kale during the proceedings in O.A. No. 205/86 and 356/86. During the course of proceedings Prof. Vijayrao J. Kale Advocate stated that his client Shri N.H. Jadhav undertook not to remain absent without prior permission of the department. Contrary to the solemn undertaking given to this Hon'ble Tribunal, the applicant remained unauthorisedly absent as under:-

1987	-	63 days
1988	-	167 days
1989	-	172 days
1990	-	131 says
1991	-	

Consequently the respondents had to initiate disciplinary proceedings on him as per the observation of this Hon'ble Tribunal in para 7 of the Judgment dated 28-1-1987 in O.A. No. 205/86 and 356/86. In these circumstances the above mentioned application is liable to be dismissed with the cost by this Hon'ble Tribunal."

6. The applicant has neither filed any rejoinder to this written statement denying the above allegations nor did he file any application for amendment to the application challenging the appellate order which has been passed later disposing of his appeal confirming the order of the disciplinary authority.

7. We have heard the arguments of counsel appearing on both the sides. This is the second time that the applicant is approaching this Tribunal attacking the

disciplinary proceeding. In the earlier occasion when the department has initiated proceedings against him for his unauthorised absence and removal from service he has approached the High Court and the cases filed by him were transferred to this Tribunal and they had been disposed of by Annexure-A judgment. On a perusal of Annexure-A judgment it is clear that this Tribunal has taken a very lenient view and decided to give the applicant a chance to improve and co-operate with the department in the discharge of his duties without any wilful failure. He also gave an undertaking and obtained the benefit of reinstatement in service. He is not expected to violate that undertaking. The respondents in their written statement submitted that the applicant is not really interested in keeping his words and undertaking which he had given before this Tribunal while disposing of the earlier case. According to the respondents the applicant is not suffering from any ailment. His case of mental illness and he cannot attend to his duties are false statements. They submitted that he is doing some profitable business activities and making money out of it during all these period when he unauthorisedly abstained from duty. However, we are not going to these question at this stage. After careful consideration of this matter we are satisfied the applicant's case of mental illness cannot be accepted. The fact remains that the applicant has remained absent from duties from 1987 to 1990. He has not produced medical certificates from competent authority to establish that during the whole period he was mentally ill

and incapacitated for discharging the duties. He has no explanation why he did not obtain previous permission from the department atleast for some portion of his absence for this long period of absence from 1987 to 1990.

Moreover it is pertinent to note that he is not vigilant to challenge the appellate order which appears to have been passed during the pendency of this application.

8. The learned counsel for the applicant during the course of the argument sought permission to amend the application for incorporating his attack against the appellate order. Having regard to the facts and circumstances of the case we are not prepared to grant such a prayer. There was sufficient opportunity for the applicant to challenge the appellate order if he was really interested in prosecuting the matter by incorporating the necessary amendment in this application.


9. Having considered the matter in detail we are of the view that the conduct of the applicant requires a serious consideration. The learned counsel appearing on behalf of the applicant in the earlier proceeding categorically undertaken before this Tribunal that his client would not absent himself from duty without seeking prior permission from the department. On the basis of such an undertaking this Tribunal passed an order in his favour. The applicant is bound to comply with the undertaking in the spirit in which it has been given. In fact he has violated the undertaking. Violation of an undertaking made before a Court or Tribunal is really a contempt and the applicant has exposed himself to be proceeded against for contempt under the contempt of Court Act. But we are again compelled to restrain ourselves and take a very lenient view of this matter and decided not to proceed against the applicant for this action of contempt under the Contempt of Court Act.

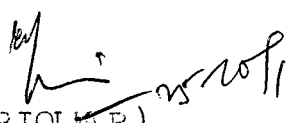
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10. We see no merit in this application. It is only to be rejected. We are of the view that in enquiry had been conducted validly and there is no irregularity vitiating the impugned order. It has also been upheld by the appellate authority. As indicated above taking a very lenient view of this matter we dismiss ~~this~~ the application with a cost of Rs.500/-. We are not taking any further action for proceedings against him for violation of the undertaking. The application is accordingly dismissed ~~of~~


(N.D. HARIMADAN) 26.8.91
Member(J)


(M.Y. PRIOLKAR)
Member(A)

MD