

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 706/91.

~~XXXXXXXXXXXXXX~~

DATE OF DECISION: 2.12.94.

Shri Ataur Raman Petitioner

Shri G. S. Walia, Advocate for the Petitioners

Versus

Union Of India, Respondent

Shri N. K. Srinivasan, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B. S. Hegde, Member (J).

The Hon'ble Shri M. R. Kolhatkar, Member (A).

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

  
(B. S. HEGDE)  
MEMBER (J).

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(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 706/91.

Sheikh Ataur Raman ... Applicant

Versus

Union Of India ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri G. S. Walia,  
Counsel for the Applicant.

2. Shri N. K. Srinivasan,  
Counsel for the Respondents.

JUDGEMENT

DATED : 2.12.96

¶ Per. Shri B. S. Hegde, Member (J) ¶.

1. The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985. He has challenged the impugned order dated 27.12.1989 and also prayed that he may be reinstated forthwith with all consequential benefits.

2. The brief facts are that the applicant was appointed as a Casual Khallasi under the Electrical Department and attained temporary status on 06.12.1982 and he was regularised as a Khallasi on 28.01.1984. His father died in the year 1975 and his mother died in the

year 1980 leaving behind the applicant and four sisters who are younger to the applicant. Since he belongs to a very poor family, he got an appointment in the Railways as a Khallaşı in order to support his family, on compassionate grounds. It is stated that during this period the applicant could not maintain good health on account of stress and strain and he has undergone treatment from various doctors and in the meantime his health deteriorated and he had to undergo hospitalisation. In the year 1988, the applicant was admitted in the Railway Hospital as Indoor Patient and he got treatment for psychological disorders. Later on, he also removed to Kripamayee Institute for Meadical Health/Miraj for treatment and rest.

3. During this intervening period, the applicant was served with charge-sheet dated 16.05.1988 to the effect that he remained absent from 19.1.1988 to 27.02.1988 without authority and again remained absent from 13.03.1988 without any authority. He was charged for unauthorised absence and non-observance of proper rules for obtaining leave. The Inquiry Officer conducted the enquiry in the year 1989. Although, the applicant was medically unfit, he attended the enquiry and explained the circumstances under which he was absent. He was subsequently admitted in the hospital on 08.09.1989 to 15.01.1990 and he was stated to be suffering from personality disorder. Though he recovered from this illness and resumed duty in the year 1990, the Respondent No. 3 removed the applicant from service vide Order dated 27.12.1989. In the circumstances,

the applicant challenged the Impugned Order dated 27.12.1989 on more than one ground. During the course of hearing, the Learned Counsel for the applicant, in support of his contention stated that the applicant being a poor person and on account of personality disorder, he could not resume duty immediately and intimated the authorities in time.

4. The only charge against the applicant was repeated unauthorised absence and non-observance of proper rules for obtaining leave. For both these grounds, he has explained the circumstances under which he could not attend ~~work~~ duty. Nevertheless, the Competent Authority did not take note of it, and removed him from service. The Learned Counsel for the applicant cited various decisions, in which a lenient view has been taken by the Tribunal and directed the Respondents to take him back into service. In support of his contention, he cited the following decisions :-

(i) O.A. No. 259/88.

Krishna Anant Lad V/s. Union Of India & 2 Others decided on 06.06.1993 wherein the Tribunal has directed the respondents to give a fresh appointment to the applicant as Casual Labourer within a period of two months from the receipt of a copy of this order. Since this is a fresh appointment, the applicant is not entitled to any back wages, etc.

(ii) O.A. No. 541/92

A. Prasada Rao V/s. General Manager, South Central Railway, Secunderabad & Others [1994 (2) ATJ 434] Hyderabad Bench, wherein the Tribunal has held that mere absence from

duty, though not authorised by grant of leave, cannot be treated as a misconduct so as to attract disciplinary proceedings.

(iii) O.A. No. 13/88.

Sandip S. Solanki V/s. Union Of India & Others decided on 18.06.1991.

After hearing the Counsels on both the sides, the Tribunal directed the Respondents to take him back ~~in employment~~ as a fresh entrant. The penalty of not getting any back wages would suffice, etc.

(iv) T.A. No.: 21/92.

Shri Chandrakant Laxman Bhatkar V/s. Union Of India & Others, decided on 28.06.1994 wherein the Tribunal has observed that the applicant should be granted a fresh appointment within 15 days from the receipt of a copy of this order. Whatever service he may have put in prior to order of removal shall count for pensionary benefits, etc.

5. We have heard the Learned Counsel for the parties and perused the pleadings. The Learned Counsel for the applicant, Shri G. S. Walia, urged that it is open to the Respondents to substitute any other punishment except removal, termination ~~and~~ dismissal and the applicant is prepared to forego all the backwages and also continuity of service and he will not claim any backwages for the period of absence and the same be treated as dies-non. On perusal of the pleadings, we are convinced that the applicant due to ill health, ~~was~~ to remain absent and not an intentional absence. It is on record that ~~the~~ enquiry

was conducted when he was sick and imposed penalty on 27.12.1989, against which he preferred an appeal on 28.06.1990 and the same has been disposed of by the Appellate Authority without taking into account the circumstances under which he was absent.

6. In the circumstances of the case, considering the plight of the applicant and the decisions cited by the Learned Counsel for the applicant in support of his contention that he may be given a fresh appointment foregoing the continuity of service already rendered and also the backwages, it is just and proper that the Respondents is given the following directions :

Directions :

We are satisfied that the grounds urged in the application are germane to the issue and accordingly we direct the Respondents to give a fresh appointment to the applicant <sup>Khallasi</sup> ~~as Casual Labourer~~ within a period of two months from the date of receipt of this order. Since the applicant will be appointed as a fresh Khallasi, he will not be entitled for any back-wages and his period of absence be treated as dies-non. (However, he is entitled to continuity of service only for the purpose of pension.)

7. The O.A. is disposed of in the light of the above but there will be no order as to cost.

*MR Kolhatkar*  
(M. R. KOLHATKAR)  
MEMBER (A).

*B. S. Hegde*  
(B. S. HEGDE)  
MEMBER (J).