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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: **76/91**

Transfar Application No:

DATE OF DECISION: **3.8.1994**

P.N.Wadnere

Petitioner

Shri P.K.Dhakephalkar

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri **Justice M.S.Deshpande, Vice-Chairman,**

The Hon'ble Shri **V.Ramakrishnan, Member(A).**

1. To be referred to the Reporter or not ? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *no*


(M. S. DESHPANDE)
VICE-CHAIRMAN

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No.76/91.

P.N.Wadnere.

.... Applicant.

V/s.

Union of India & Others.

.... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri V.Ramakrishnan, Member(A).

Appearances:-

Applicant by Shri P.K.Dhakephalkar.
Respondents by Shri P.M.Pradhan.

Oral Judgment :-

Per Shri M.S.Deshpande, Vice-Chairman Dt. 3.8.1994

By this application the applicant questions the order of compulsory retirement which was passed against him on 17.9.1990 and the appellate order by which his appeal came to be dismissed on 21.11.1990.

2. The applicant was appointed as an Oversear on purely temporary basis by the order dt. 9.1.1993 upto 30.6.1973. The applicant was a holder of a Diploma in Mechanical Engineering and ^{applied} on 27.8.1974 for the post of Junior Engineer with Maharashtra Telephones. He was selected on 6.11.1974. In respect of certain collections made while he was working as an Oversear with the Zilla Parishad from 9.1.1973 to 30.6.1973 certain charges were framed against him and others and the case was committed to the Court of Sessions on 21.10.1978. The Sessions Case No.1/77 was decided on 21.10.1978. The applicant appealed to the High Court and the High Court

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allowed the appeal and acquitted the applicant by its Judgment dt. 20.9.1984. During the pendency of the proceedings the applicant was under suspension from 21.10.1978 to 30.3.1982. He was dismissed from service w.e.f. 31.3.1982 as a sequel to the conviction by the Sessions Court. After the decision of the High Court he was reinstated on 3.4.1985. On 1.10.1985 he was served with a charge sheet because of having suppressed his previous appointment from 9.1.1973 upto 30.6.1973 in the application for the post of Junior Engineer which was filed on 27.8.1974. The applicant admitted in the proceedings that he was holding the post of Oversear between 9.1.1973 and 30.6.1973. The Enquiry Officer only on the basis of the documents which were before and him/in view of the applicant's admission found him guilty of having suppressed the fact of his previous appointment in 1973 as Oversear and the Disciplinary Authority by its order dt. 17.9.1990 ordered his compulsory retirement. The appeal against this order was dismissed on 21.11.1990 and the applicant has now approached this Tribunal questioning the order of compulsory retirement and the appellate order affirming the compulsory retirement.

3. The learned counsel for the applicant Shri P.K.Dhakephalkar urged that the fact that the applicant held an appointment in 1973 was known to the Respondents at least in October, 1978 when the case was committed to the Sessions. But no steps were taken until 1.10.1985 for nearly 7 years on the basis of a non-disclosure of the fact of employment. In fact the Sessions Trial was on the basis of the acts or omissions of the applicant during his employment ^{around} between January and June, 1973 and ~~nothing~~ prevented the department

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from initiating the departmental proceedings immediately after consignment of the employment came to their notice. Even thereafter, though the applicant had admitted the fact of the employment before the Enquiry Officer, the proceedings were delayed before the authorities until the order of compulsory retirement was passed on 17.9.1990. According to the learned counsel even the department did not consider the non-disclosure of the previous appointment on the basis of which he came to be charged in the Criminal Court was either significant or important because had they taken serious notice of the non-disclosure, the departmental proceedings would have been initiated immediately after 1978. It was only after the applicant came to be acquitted by the High Court on 20.9.1984 the applicant came to be reinstated on 3.4.1985, though the respondents thought of initiating a departmental action for non-disclosure of the previous employment in 1973, a fact of which they were aware at least from 1978. We find considerable force in the submission of learned counsel in view of the sequence of events which have been noted above. In respect of the acts of commission or omission in the year 1973 the applicant was ultimately acquitted by the High Court in 1984 that is about 10 years after the Judgment and we are distressed to see that the Respondents should have thought of taking action on the basis of something which was within the knowledge in 1978 in October, 1985. There is considerable force in the submission that the department thought of taking action only because of the acquittal of the applicant by the High Court was not to their liking.


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4. Considering all these events we find that the non-disclosure of the previous employment was not something of which the respondents should have taken notice about 7 years after the event and the departmental action taken against the applicant cannot be supported. We therefore, quash the order passed in the departmental proceedings i.e. the order of Compulsory Retirement passed on 17.9.1990 and the Order dismissing his appeal on 21.10.1990.

5. With regard to the relief, Shri Dhakephalkar, learned counsel for the applicant made it clear that he would not claim any monetary benefits for the period from the Compulsory Retirement until the date of his reinstatement in pursuance of our order and that he would only pray for being given the benefit of continuity of service during the entire period. We find that this is a very fair statement and we accept it.

6. In the result, we allow the application, set aside the order of compulsory retirement passed on 17.9.1990 and the order dismissing the applicant's appeal on 21.10.1990. The Respondents are directed to reinstate the applicant in his original job within two months from the date of communication of this order. The applicant will not be entitled to any monetary benefits from the date of his compulsory retirement until his reinstatement pursuant to this order. He will be entitled to have the entire period treated as continuous service for the purpose of pensionary benefits only. No order as to costs.


(V. RAMAKRISHNAN)
MEMBER(A)


(M. S. DESHPANDE)
VICE-CHAIRMAN

B.