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DATE OF DECISION 16.10.92

Petitioner

Advocate for the Petitioners

Union of India and others.

Respondent

Advocate for the Respondent(s)

The Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman.

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No.873/92

Shri Yashwant Vithu  
V/s.

... Applicant.

Union of India through  
The General Manager  
Western Railway,  
Bombay.

The Divisional Signal  
Telecommunication Engineer(II)  
Bombay Central Railway Station  
Premises, Bombay.

... Respondents.

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

Appearance:

Shri Y.R. Singh, counsel  
for the applicant.

ORAL JUDGEMENT

DATED: 16.10.92

(Per Shri S.K.Dhaon, Vice Chairman)

The applicant, a Khalasi, was removed from service after due enquiry. The charge was that he was absent from duty without any leave. He preferred an appeal, which was dismissed. He came to this Tribunal by means of OA 90/89 which was decided finally on 3.6.91. This Tribunal directed the appellate authority to re-hear the appeal and give its decision after passing a reasoned order. The appellate authority, in pursuance of the direction of this Tribunal, on 22.12.91 passed a fresh order. It however dismissed the appeal of the applicant. The last order of the appellate authority is being impugned in the present application.

The first submission made in support of this application is that, this Tribunal in its order dated 3.6.91 having found that a copy of the Enquiry Officer's report had not been given to the applicant by the punishing authority, the appellate authority should have set aside the order of the disciplinary authority

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with the direction that, if it desired, it could re-initiate the disciplinary proceedings from the stage of giving the report of the Enquiry Officer. We may note that dis-satisfied with the order passed by this Tribunal on 3.6.91 in OA 90/89, the applicant had preferred a review petition No.4/92, which was dismissed on 3.2.92. Having read the two orders of this Tribunal, we are satisfied that the proceedings should not be vitiated on account of the failure of the disciplinary authority to furnish Enquiry Officer's report to the applicant. This Tribunal took note of the fact that, since a copy of the Enquiry Officer's report had not been furnished to the applicant, it had no option but to direct the appellate authority to re-hear the appeal and decide the same in the light of the directions given by this Tribunal. The defect, if any, lay in the order passed by this Tribunal finally disposing of the OA 90/89. The applicant allowed that order to become final. The order operates as resjudicata as against the applicant on the point decided by the Tribunal. The appellate authority, therefore, committed no illegality in not setting aside the order of the punishing authority on the mere ground that it had failed to furnish a copy of the Enquiry Officer's report to the applicant before passing the order of punishment.

The second contention advanced is that the punishing authority had no jurisdiction to pass the order of punishment as it was not empowered to do so. We have gone through the impugned order passed by the appellate authority and we find that no such argument was advanced before it. An application seeking the amendment of the application has been filed today. In it also we do not find any whisper of an averment that any such argument was advanced before the appellate authority.

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The controversy raised is not a pure question of law. At best it is a mixed question of law and fact. Such a question cannot be entertained for the first time in this O.A..

The last argument advanced is that Enquiry Officer's report is perverse. We have gone through the report and we find that he had applied his mind to the charge that the applicant remained absent from duty without any leave with effect from 24.4.86. He recorded the finding that the applicant had accepted the charge. He also recorded the finding that the admission of the application stood corroborated but the leave record and time which had been produced before him. It is stated by the learned counsel that the Enquiry Officer's report does not disclose the period during which the applicant was alleged to have been absent. The answer is to be found in the memorandum of appeal of the applicant, a true copy of which have been filed as an annexure to this application. Therein, the applicant has admitted that he was charged with unauthorised absence from 22.4.86 to 4.6.86. Counsel says that in annexure 'C' (the memorandum of appeal) there is a typing error. Be that as it may, nothing will turn on the typographical error. The fact remains that the applicant was absent for a certain time without any leave. We are not sitting on a court of appeal to examine the propriety of the punishment awarded to the applicant. It has neither been argued nor can it be argued that the punishment awarded to the applicant is not proportionate to the guilt attributed to him.

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No other arguments has been pressed before us.

This application has no substance. It is  
dismissed summarily.



(M.Y. PRIOLKAR)  
MEMBER (A)



(S.K. DHAON)  
VICE CHAIRMAN

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