

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 12/92

Date of Decision 10.6.96

Mallappa Ramappa Beramur Petitioner

Shri Y.R.Singh Advocate for the Petitioner.

Versus

AEN Central Rly & 3 Ors. Respondent


Shri V.S.Masurkar Advocate for the Respondents.

Coram:

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

The Hon'ble Mr. 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)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, PRESCOT ROAD, 4TH FLOOR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO.12/92.

DATED THIS 10th DAY OF MARCH 1996.

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

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

Mallappa Ramappa Berampur
(Advocate by Shri Y.R.Singh)
v/s.

... Applicant

1. AEN Central Railway,
Byculla Station,
Bombay.
2. DEN (HQ) Central Railway,
Divisional Office,
Engineering Department,
Bombay.V.T.
3. Senior DEN (HQ),
Central Railway,
Bombay V.T.
4. Divisional Railway Manager,
Central Railway,
Bombay V.T.
(Advocate by Shri V.S.Masurkar)

... Respondents.

I O R D E R I

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

Heard Shri Y.R.Singh for the applicant and
Shri V.S.Masurkar for the respondents and perused the
pleadings.

2. The short point for consideration in this OA is that the applicant is claiming payment of backwages from the date of dismissal till he was reinstated in service. The facts of the case are the applicant was dismissed from service as Khalasi working in IOW(M) Bombay V.T. with effect from 1/10/91 under Rule 14(11) of the Railway Servants (D&A) Rules 1968 on the ground that he has committed a serious misconduct in assaulting Shri S.S.Pardeshi, Senior Personnel Inspector of DRM's office on 30.9.91 on the 3rd floor of Annexe Building causing physical injuries to him. Thereafter, Shri Pardeshi filed an FIR with the Police. On the basis of the FIR

the applicant was prosecuted by the police before Criminal Court. Against the dismissal order, the applicant preferred an appeal on 21/10/91, the appeal was disposed of by Appellate Authority on 3/12/91 rejecting the appeal. In the meanwhile, Metropolitan Magistrate, Bombay delivered judgement dt. 13/11/92 acquitting the applicant/accused under section 332, 353 of IPC and further ordered that his bail bond shall stand cancelled.

3. Thereafter, the respondents vide their letter dt. 7/12/92, passed the following order:-

"Considering the Court verdict issued by the Metropolitan Magistrate, 35th Court, V.T. Bombay and there after the appeal received from Shri Mallappa Ramappa who was dismissed from service with effect from 1.10.91, I hereby decided to take back Shri Mallappa Ramappa on duty as Khalasi under ICW(M) VT in his original capacity with immediate effect.

The period of absence i.e. from 1.10.91 to till the day he reports to duty shall be treated as leave without pay."

4. The main contention of the respondent's Counsel Shri Masurkar is against this order though it is a appealable order, the applicant has not preferred any appeal under Rule 18(F)2 of the D&A Rules, 1968, whereby the application filed by applicant is premature. Since the respondents have passed the order by applying his mind, in the facts and circumstances of the case the applicant is not entitled to backwages. He is duty bound to prefer an appeal against that order, which he did not do so.

5. The Learned Counsel for the applicant, Shri Singh relies upon the decision of the Supreme Court decisions.

1. 1995-SCC (L&S) 206 - Suresh Sakharam Chaugule and others v/s. Parel Cotton Press Factory Pvt. Ltd.
2. 1995-SCC (L&S) 193 - Manorama Verma(Smt) v/s. State of Bihar and Others.

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3. 1995 SCC (L&S) 196 - Sulekh Chand and Salek Chand v/s. Commissioner of Police and others.

- (1) The first decision relates to claim for backwages and bonus by workers dismissed from service without obtaining approval. The order was withdrawn by the Management by making a statement before the Industrial Tribunal. Labour Court not justified in rejecting their claim on ground that there was no specific order withdrawing the dismissal, etc.
- (2) The second decision relates to termination is found to be illegal consequential order of grant of back wages must follow unless there are reasons justifying a departure from normal order. Appellant not gainfully employed elsewhere during the period of termination till reinstatement granted.
- (3) The third decision relates to Criminal prosecution culminating in acquittal on merits - In such circumstances, the said prosecution, held, could not furnish the basis for denying promotion - More so, when the departmental enquiry was dropped. Hence, promotion w.e.f. the date of promotion of his immediate junior direction - Prevention of Corruption Act, 1947.S.5(2).

6. He further submitted, the ratio laid down in these decisions would squarely apply to the facts of this case. However, during the course of hearing the Learned Counsel for respondents draws our attention to the reply filed by respondents at para-4 which reads as follows:-

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"4. As stated earlier, on 30.09.1991, the applicant assaulted the Sr. Personnel Inspector, Shri Pardeshi, as a result of which Shri Pardeshi sustained injury on his face. The assault took place in the office premises. The applicant also threatened others present in the office with dire consequences. Shri Pardeshi, thereafter went to the office of the G.R.P. and lodged his F.I.R. Shri Pardeshi also reported the matter to D.R.M., BB V.T. on the following day. The matter was then referred to Assistant Engineer (Works) BB, who is the Disciplinary Authority of the applicant. The disciplinary authority made an independent enquiry and considered the circumstances and came to the conclusion that the applicant did perversely assaulted Shri Pardeshi Sr. Personnel Inspector, without any provocation. The disciplinary authority also found that due to fear of the applicant, witnesses were not coming forward to give the evidence, as they were afraid of the applicant. Everyone in the office who could have given the evidence was threatened by the applicant of dire consequences. In the circumstances, the disciplinary authority recorded a note, stating that it was not practicable to hold an enquiry and decided that the applicant was not a fit person to be retained in Railway Services and therefore imposed upon him the penalty of dismissal from railway service with immediate effect under the provision of the said rule 14(II) of D & A Rules, 1968."

7. The applicant in para 4 of the O.A., page-3 states as below :-

"The applicant states that the services of 50 Khalasis employed by the Central Railways at Bombay V.T. had been terminated on 30.06.1991 and the Sthaniya Lokadhikar Samiti had made several representations to the concerned authorities for the reinstatement of the said Khalasis. The applicant submits that the applicant was on sanctioned leave from 30.09.1991 to 01.10.1991. He also stated that he was deputed



by the Sthaniya Lokadhikar Samiti on 30.09.1991 to enquire into the case of the said 50 khalasis. The applicant submits that the applicant represented the case of these 50 Khalasis to Shri A. C. Lankeshwar A.P.O. (M), Bombay, etc. etc."

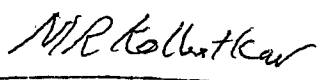
When we asked the Learned Counsel for the applicant, what prompted him to go to the Administration Section while he was on leave and assault Shri Pardeshi, there is no convincing reason adduced by the applicant. The applicant has taken advantage of the acquittal by the Criminal Court. However, the fact that the accused has obstructed the complainant in discharging his duties as a Public servant, has not been denied.

8. It is well settled principle, that in order to prove the criminal conduct of the applicant or the guilt of the applicant under criminal law, the charges shall have to be proved beyond reasonable doubt, whereas, under disciplinary proceedings, it is only preponderance of evidence. In the instant case, it is not denied that the applicant though on leave on 30.09.1991 did go to the Administration and had tussle with Shri Pardeshi. Consequent thereupon, he filed an F.I.R. with the police. Further, the respondents could not convene a regular disciplinary enquiry as no one was forthcoming to participate in the enquiry, as such, the respondents was perforced to resort to Rule 14(ii) D & A 1968, on the basis of the fact finding enquiry. Therefore, it is not open to the applicant to take advantage of the Criminal Court's findings in order to seek backwages from the date he was dismissed from service till he was reinstated. Further, it is not the case that the Service Rules have not been complied in this case, as a

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matter of fact, on the basis of the complaint by Mr. Pardeshi, a fact finding enquiry was conducted and in view of the peculiar facts and circumstances of the case, a regular enquiry was not ordered and he was dismissed from service by resorting to Rule 14(ii) of Disciplinary & Appeal Rules, 1968, which is in exceptional cases. We are of the opinion, that the judgements cited by the Learned Counsel for the applicant in the facts and circumstances of the case under consideration, does not lay down any ratio which would be applicable in the present case. His conduct is not above board and he has not preferred an appeal against the order passed by respondents dated 17.12.1992.

9. In the facts and circumstances, we do not see any merit in the O.A. and the O.A. is dismissed with no order as to costs.


(M. R. KOLHATKAR)
MEMBER (A).


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

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