

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 96193

Hon'ble ~~Vice Chairman~~ / ~~Member (J)~~ / Member (A)
may kindly see the above Judgment for
approval / signature.


V.C. / ~~Member (J)~~ / ~~Member (A)~~ (K/S)

Hon'ble ~~Vice Chairman~~

Hon'ble ~~Member (J)~~

✓ Hon'ble Member (A) (K/S)

M24
27/11/98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 96/93

Date of Decision: 21.1.1998

Biren Madan Mohan Das

Applicant.

Shri P.A.Prabhakaran

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

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

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *W*

R. G. Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 96 / 93.

Wednesday, this the 21st day of January, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Biren Madan Mohan Das,
28, Apartment House,
Hyderabad Estate,
Nepean Sea Road,
Mumbai - 400 036.

... Applicant.

(By Advocate Shri P.A.Prabhakaran)

V/s.

1. Union of India through
the Secretary, Ministry
of Information and Broadcasting,
Shastri Bhavan,
New Delhi - 110 001..

2. Superintendent,
Calcutta Railway Mail Service,
Calcutta - 700 001.

... Respondents.

(By Advocate Shri R.K.Shetty)

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. We have heard the learned counsels appearing on both the sides.

2. The facts necessary to the disposal of this application is as follows.

The applicant joined the Postal Department at Calcutta as a Sorter in 1960. It appears that during 1972-76 the applicant joined the Diploma Course in the Film Institute at Pune and obtained a diploma therein. He did this without informing the Postal Department and without taking any prior permission for taking that Course. Further, the applicant resigned the job on 31.5.1978 since he was selected as a Director in the Films Division at Bombay and he joined on 5.7.1978. He did not even inform the Films Division about his previous work as a Sorter in the Postal Department.

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The Postal Department did not accept the applicant's resignation on the ground that there is an outstanding balance due by him to the extent of Rs.1,244.75. The Postal Department wrote to him stating that unless the balance is paid, the resignation will not be accepted. The applicant has done ~~x~~ commendable work in the Films Division and Films directed by him got President Award and brought International reputation. He was even sent to Portugal to attend the International Film Festival. His work was appreciated and applauded even at the International Circles. He has participated in various Seminars. He informed the Films Division about his previous work as a Sorter and confessed the mistake committed by him in studying in the Film Institute without permission from the Postal Department. Then a Departmental Enquiry was held wherein the matter was closed by directing him to be cautious and careful in future. The Department was magnanimous in exonerating the applicant as a victim of circumstances. The applicant retired from service on 20.10.1995. The applicant's service as a Sorter in the Postal Department has not been regularised and has not been taken into consideration by the Films Division since his resignation has not been accepted by the Postal Department. The applicant has written to the Postal Department that he is willing to pay the balance due by him and his resignation may be accepted w.e.f. 30.5.1978. On these allegations the applicant has come to Court with a prayer that the Second Respondent may be directed to accept the resignation of the applicant dt. 30.5.1978 and the applicant may be given the benefit of the service prior to the date of resignation and to condone any break in service.

3. The First Defendant who is representing the Ministry of Information and Broadcasting has filed a written statement. It is stated that the applicant has suppressed the information of his earlier working in the Postal Department and his application to the U.P.S.C. was not sent through proper channel. He He has studied the Diploma Course at Pune without obtaining the permission and Leave from the Postal Department. It is only for the first time the applicant disclosed on 3.2.1989 about his previous service in the Postal Department. Then an enquiry was held against the applicant, but a lenient view was taken and the matter was closed by giving a warning to the applicant to be careful in future. This department could not take any decision regarding the past service of the applicant in the Postal Department since his resignation has not been accepted by the Postal Department. Therefore, his past service in the Postal Department cannot be considered for the purposes of retiral benefits. In view of the fact that the applicant has applied to the Job in the Ministry of Information and Broadcasting without routing the application through the proper channel he is not entitled to count the past service for the purposes of retiral benefits. Therefore, the applicant is not entitled to any of the reliefs prayed for.

4. The learned counsel for the applicant submitted that the applicant has confessed the mistake committed by him and after due enquiry, the concerned Ministry has condoned the mistake by giving a warning and therefore, the same grounds cannot be used against the applicant for denying the benefit of past service in the Postal Department for the purposes of retiral benefits. It is, therefore, submitted that the Postal Department may be directed to

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accept the resignation of the applicant w.e.f. 30.05.1978 and give the benefit of past service for the purposes of retiral benefits. On the other hand, the learned counsel for the respondents contended that the applicant is not entitled to the benefit of past service in the Postal Department for retirement benefits since the resignation was not given in order to take up another appointment and further the application for appointment was not routed through proper channel. He also argued that the application is barred by limitation.

5. As far as the question of limitation is concerned, the plea is not taken in written statement. The question of limitation is not a pure question of law, but it is a mixed question of law and facts. When there is no plea of limitation in the written statement, the same cannot be pressed at the time of arguments.

Even otherwise, the cause of action for the applicant has arisen recently, when in 1989 the applicant gave a representation for the benefit of his past service. Then there was a correspondence between the Ministry of Information and Broadcasting and the Postal Department, when the Postal Department stated that it will not accept the resignation unless the balance due by the applicant is paid. Therefore, it is not a case where the cause of action arose in 1978. The cause of action has arisen recently when the Postal Department declined to pass an order on the resignation letter only on the ground that arrears are not paid. Now the applicant has sent the sum of Rs.1,244.75 to the Postal Department in November, 1995. If inspite of the payment of the amount, the Postal Department does not pass any order on the resignation letter, then strictly speaking cause of action arose to the

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in 1995 to direct the postal department to accept resignation letter since he has paid the full arrears. Therefore, we are not impressed by the argument of the learned counsel for the respondents on the question of limitation.

6. It is brought to our notice that during the pendency of this case, the applicant retired on 20.10.1995. Therefore, the only question is whether the applicant is entitled to the benefit of past service in the Postal Department for the purposes of retiral benefits.

It is true that contrary to the Pension Rules and the Service Rules, which were highlighted by the learned counsel for the Respondents, the applicant has studied in the Film Institute at Pune without taking prior permission and further he joined the Films Division as a Director by ^{suppressing} ~~surpassing~~ the fact of his past service in the Postal Department. Now, the question is as to what is the legal effect of these omissions and commissions on the part of the applicant. In our view, the matter has been concluded, since a departmental enquiry has been held against the applicant regarding the very same allegation about suppression of facts and attending the Diploma Course without prior permission. The applicant has submitted his explanation where in unequivocal terms he has confessed about the mistake committed by him and he has given some special reasons as to why he was obliged to do so. It appears that applicant was very much interested in Art and Literature. He hails from a SC community. The Postal Department was not willing to give leave to take the Diploma Course.

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In this circumstance, he has confessed that he was forced to join the Diploma Course by taking leave on fictitious grounds. This explanation was considered by the Ministry of Information and Broadcasting. Then an Official Memorandum dt. 21.3.1991 was issued on behalf of the Government of India where all these allegations are mentioned about the suppression of facts and about studying diploma course without prior permission of the Postal Department. Then the operative portion of the Official Memorandum reads as follows :

"The action of Shri Das is highly irregular and unbecoming of a Government Servant. But since he was a victim of circumstances and he could not have completed the course in FTII and applied for the post of Director in the normal way, a lenient view is taken of the errors committed by Shri Das. He is, however, cautioned to be careful and not to repeat such irregularities in future."

In para 1 ~~omissions~~ acts of omissions and commissions are mentioned. Then in para 2, the Government has taken a lenient view of the circumstances and just closed the matter by directing the applicant to be cautious and careful in future. If the same objections are again raised in the written statement on behalf of the 1st respondent, when the 1st respondent has already passed an order condoning the lapses on the part of the applicant and closed the matter with a warning, in our view, the same matter cannot be again raised here to deny the relief to the applicant. We are not for a moment accepting or appreciating the actions of the applicant. What we say is that rightly or wrongly he has done something and the department has condoned it and that too by using the words that he was a victim of circumstances and closed the matter without taking any action. The Government could have dismissed



the applicant from service or could have given any other punishment, particularly when the applicant had confessed all the facts in writing. In spite of that the Government has taken a magnanimous view and closed the matter without any further action. Therefore, in the peculiar circumstances of this case, we see that the same matter cannot be again re-agitated before this Tribunal.

7. In the written statement of 2nd respondent, the same allegations are made about applicant joining the Diploma Course without permission and his joining the service under the Ministry of Information and Broadcasting without permission of the Postal Department. Here again they have stated that the applicant has not paid the dues and therefore the resignation could not be accepted. As far as the payment of arrears are concerned, it is now admitted that the applicant has paid the arrears to the department by ~~sending~~ M.O. in ~~November~~, 1995.

As far as the allegations of not informing the Postal Department for joining the diploma course at Pune and not sending the application for job ^{through} proper channel, the Postal Department are concerned, the same is covered by the earlier order mentioned above passed by the Ministry of Information and Broadcasting.

Here, the 2nd respondent is only an Officer of the Government of India. The order at page 27 of the paper book is passed by the Government of India. Whether a particular Officer belongs to Postal

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Department or Ministry of Information and Broadcasting, there is no doubt that both of them work under Government of India. If in the facts and circumstances the Government of India passes an order condoning the lapses, the same is binding on all Departments of the Government of India. The Postal Department ^{cannot} again say that it is not bound by the order passed by the Ministry of Information and Broadcasting. For legal purposes Union of India is one and the same. ^{But} That for the purposes of convenience, it may work through different Departments. Hence, in our view, the reasoning given by us earlier on the basis of the O.M. dt. 21.3.1991 holds good even regarding the stand taken by the Postal Department.

8. We may notice that the applicant was working as a Sorter in the Postal Department which is a Class.III post. It is an ordinary un-skilled job which can be done by anybody. On the other hand, the post of Director of Films Division is a Technical job which involves more responsibility, imagination and enterprise. In the circumstances, we feel that the 2nd Respondent should have accepted the resignation of the applicant in the post of Sorter and the only objection was that he ~~is not~~ has not paid a small amount of Rs.1,244.75. Even according to Instruction No.2 in page 53 of Swamys Pension Compilation (1993 Edition), under Rule 26, ~~is~~ that normally resignation should be accepted and an unwilling government servant should not be continued in service. Therefore, in our view, the Postal Department should ^{have} ~~in~~ all fairness ~~accepted~~ the resignation of the applicant and if necessary could have taken action to recover whatever amount that is due by him according to law. But, now that question does not arise since the applicant has

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already paid the arrears. No doubt the applicant has committed a mistake of not taking permission for studying diploma course nor routing the application for job through the Postal Department. The Government of India has condoned this lapse and closed the matter with a warning. So, in these circumstances, we feel that the Postal Department should pass appropriate orders on the resignation letter dt. 31.5.1978 and about giving the benefit of past service of the applicant for the purposes of retiral benefits. The Postal Department can take all the facts and circumstances into consideration and pass appropriate orders according to law and in the light of the observations made in this order and further taking into consideration the Government order dt. 21.3.1991 where magnanimously the Government of India has itself has condoned the lapses on the part of the applicant.

9. In the result, the application is allowed as follows :

(1) We direct the 2nd respondent, the Superintendent of R.M.S., Calcutta to consider and pass appropriate orders on the resignation letter of the applicant dt. 31.5.1978 according to rules and in the light of the observations made in this order. After passing the orders on resignation letter, the 2nd respondent shall inform the same to the 1st Respondent and send the Service Book for the purposes of reference. The 2nd Respondent shall pass orders on the question of resignation within a period of 2 months from the date of receipt of the order.

(2) After receipt of the orders of the 2nd Respondent on the resignation letter, the 1st respondent shall decide on the question of giving the benefit of

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past service to the applicant for the purposes of retirement benefits in the light of the observations made in this order. The 1st respondent shall pass appropriate orders within one month from the date of receipt of the orders from the 2nd respondent.

(3) In the circumstances of the case, there will be no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

R.G. Vaidyanatha

(R.G. VAIDYANATHA)
VICE-CHAIRMAN

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