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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 408/93

Date of Decision: 22.8.97

S.D.Shete

Applicant.

Shri J.M.Tanpure

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.S.Karkera for Shri P.M.Pradhan.


Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. P.P.Srivastava, Member(A).

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


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 408 /93.

22nd, this the 22nd day of August 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

S.D.Shete,
60-61, Shaniwar Peth,
Kumbhar Lane, Talegaon Dabhade,
Tal - Maval,
Dist. Pune - 410 506.

... Applicant.

(By Advocate Shri J.M.Tanpure)

V/s.

1. Union of India through
the Secretary Ministry of
Communications, Department of
Posts, "Dak Bhavan" Sansad Marg,
New Delhi - 110 001.
2. Senior Superintendent of Post
Offices, Bombay City,
East Division,
Bombay - 400 014.
3. Director Postal Services,
Office of the Post Master General,
Bombay Region, Bombay - 400 001.
4. Chief Post Master General,
Maharashtra Circle,
Bombay - 400 001.

... Respondents.

(By Shri S.S.Karkera for Shri P.M.Pradhan)

O R D E R

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

Heard Shri J.M.Tanpure, counsel for the
applicant and Shri S.S.Karkera, for Shri P.M.Pradhan,
counsel for the Respondents.

2. In this O.A. the applicant is challenging
the impugned order dt. 20.10.1972 and also the Appellate
Order dt. 30.4.1990. The applicant was appointed as

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a Packer on 1.10.1951 at Chinchbundar Post Office, Bombay. He was declared permanent in 1954 and was absorbed in the post of a Postman in the Mazgaon Post Office, Bombay. He served as a Postman in Mazgaon and Sion Post Office till 14.12.1970. The contention of the applicant is that he could not attend the office due to the sad demise of his daughter by an accident and he remained absent for a period of 197 days from 16.12.1970 to 30.6.1971. After availing the leave, he approached the authorities for necessary sanction, he was not allowed to resume his duties for reasons not known to him. Due ^{to} the accidental death of his daughter his mental equilibrium was not at peace and the applicant was some how pulling on, even his wife fell ill, therefore he could not attend the office. Due to shock his wife also breathed her last in Bombay. Due to shock he isolated from the society. The applicant wrote a letter to the Respondent No.2 on 4.11.1987 regarding the exact position of service. On receipt of his letter the Respondent No.2 by his letter dt. 19.1.1988 sent the applicant's letter dt. 4.11.1987 to the Presidency Post Master, Bombay GPO, for further consideration of his request and intimated that further progress of the case will be intimated in due course of time. He did not receive any reply from the respondents. He preferred an appeal on 12.4.1989 to the Appellate Authority which has been duly considered by the Appellate Authority by order

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dt. 30.4.1990 ~~by~~ the Director, Postal Services, Bombay Division, Bombay rejected the appeal of the applicant which order is being challenged in this O.A.

3. During the course of the hearing, we asked the learned counsel for the respondents why there was inordinate delay in passing the appellate order. The counsel for the respondents submitted that the case of the applicant has been considered compassionately by the competent authority on the basis of the representation made by the applicant in 1987 after a lapse of nearly 15 years. The delay is not on account of the department, on the other hand, the department if there is any substance in applicant's contention wanted to help him if permissible and they produced the relevant service record of the applicant for our perusal. Since the applicant did not join duty despite notice, show cause notice and reminders and it is not the case of the applicant that he has not been given any opportunity. Sufficient opportunities have been given to him and on a perusal of the service record we find that all correspondence has been acknowledged by the applicant, but did not take the initiative in joining his duties or to apply for leave. He acknowledged the show cause notice against the ^{proposed} inquiry to be initiated on him on 16.9.1992. Since he did not care to attend the inquiry, the Enquiry Officer was perforced to complete the inquiry on the basis of the available records and came to the conclusion that his absence was not sanctioned by the Competent Authority. His

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dismissal order dt. 20.10.1972 was sent to him under Chinchbunder Post Office by Registered A.D., which has been acknowledged by him on 27.10.1972.

4. The counsel for the applicant was not able to give any cogent reasons for his absence except stating that due to the sudden death of his daughter and wife his mental peace had gone whereby he could not attend the office. It is an admitted fact that the applicant remained absent without leave being sanctioned by the competent authority nor any medical certificate had been adduced by the applicant in this behalf. He was given sufficient opportunity to substantiate his contention which he failed to do so, whereby we do not find any infirmity in the order passed by the Disciplinary Authority, as well as, the Appellate Authority. In the Appellate Order it is clearly stated that the Enquiry Officer in his Memo dt. 28.6.1972 had made it clear that if the applicant fails to attend the inquiry on 12.7.1992, the enquiry will be conducted ex-parte. Despite the intimation the applicant though he had prior intimation that the inquiry will be held 12.7.1992, the applicant had not participated. The Enquiry Officer, had therefore, held the enquiry on 12.7.1972 ex-parte as the applicant was not present inspite of intimation. Further, even after the receipt of the dismissal order, the applicant did not care to make any appeal as per the Rules nor produced any certificate in support of his absence for nearly 16 years. The Appellate Order was passed though it was belated on the basis of his service rendered

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and the representation made by the applicant. The counsel for the Respondents Shri Karkera draws our attention to the decision of the Tribunal in V.V.Patil V/s. Union of India & Ors. (O.A. No.594/91 decided on 12.10.1994) wherein, the Tribunal has held despite reasonable opportunities were given to the applicant, the applicant by his own conduct deprived himself of the opportunity to defend himself at the departmental inquiry. Accordingly, it was observed that he cannot now make a grievance that he was not given an opportunity to defend himself. The application was therefore dismissed. The facts of the present case would squarely fall within the same ambit. Further, in view of the settled position of law by the Apex Court in Govt. of A.P. V/s. B.Ashok Kumar ((1997) 5 SCC 478) wherein it has been held that the imposition of the penalty is the right of the disciplinary authority consistent with the magnitude and the misconduct imputed and the evidence in support thereof. The Tribunal has no power to direct the appellant to reconsider the matter.

5. In the light of the above, we do not find any merit in the O.A., the same is dismissed. No Orders as to costs.


(P.P.SRIVASTAVA)
MEMBER (A)


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

B.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO. 89/97 in OA.NO.408/93

5th this the ~~12th~~ day of November 1997

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

Shrikrishna Damodar Shete ... Applicant
V/S.

Union of India & Ors. ... Respondents

Tribunal's Order By Circulation

The applicant has filed a Review Petition against the decision of the Tribunal dated 22.8.1997 seeking review of the order of the Tribunal. In the review petition, the applicant admits that he remained absent without leave being sanctioned by the competent authority. He has given explanation that due to sudden death of his daughter and wife he was granted leave for 197 days from 16.12.1970 to 30.6.1971. Therefore, he submits that the said statement is not correct and requires review. Respondents in their communication dated 26.7.1988 have reiterated that after verification of service book, it revealed that the official was on Extra Ordinary Leave for 197 days without medical certificate from 16.12.1970 to 30.6.1971. He admits that he has not participated in the departmental enquiry and ex-parte inquiry held. He contends that it was obligatory on the Presenting Officer and Inquiry Officer to verify the charge. He contends that due to mental disturbances, he could not appear in the departmental enquiry. His contention is

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that he was in fact on sanctioned leave but this fact was over looked by the competent authority as well as by the Tribunal. Therefore, instead of dismissing him from service, he should have been asked to retire compulsorily so that he would have received the fruits of his ^{21 years of} service by way of pension.


2. However, on perusal of the judgement we find that there was inordinate delay in passing the appellate order. The counsel for the respondents submitted that the case of the applicant has been considered compassionately by the competent authority on the basis of the representation made by the applicant in 1987 after a lapse of nearly 15 years. The delay is not on account of the department, on the other hand, the department if there is any substance in applicant's contention wanted to help him if permissible and they produced the relevant service record of the applicant for our perusal. He did not join duty despite notice, show cause notice and reminders etc. According to the applicant, he was not given any satisfactory reply ~~for~~ his absence except stating that he was mentally ^{sick} ~~weak~~. Therefore, he could not produce any medical certificate etc.


3. The question for consideration is whether it is open to the Tribunal to reapp^{rise} the decision taken by the competent authority in their wisdom. In this connection we have quoted two judgements. As regards penalty to be imposed, the Tribunal has no power to direct the respondents to reconsider the matter if there has been one enquiry

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consistent with the rules and in accordance with the principles of natural justice. What punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion or that of the authority.

4. In the light of the above, we do not find any error apparent on the face of record or any new points are brought to our notice for reconsidering the judgement rendered earlier. Therefore, we are of the view that the Review Petition is devoid of merit and the same is dismissed.


(P.P. SRIVASTAVA)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J)

mrj.

24/5/92
Order/Judgement despatched
to Applicant/Respondent (s)
on 13/11/92


20/11/97