

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 629/93

Date of Decision: 24.6.1999

U.B.Lohar

Applicant.

Sh.G.S.Walia

Advocate for
Applicant.

Versus

U.O.I. & ors.

Respondent(s)

Sh.S.C.Dhawan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice K . M. Agarwal, chairman

Hon'ble Shri. R.K.Ahooja, Member(A)

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

Km
(K.M.AGARWAL)
chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

O.A. No. 629/93

THIS THE 24TH DAY OF JUNE, 1999.

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN
HON'BLE MR. R.K. AHOOJA, MEMBER(A)

U.B. Lohar
Khalasi Helper
Smithy Shop
N.G. Central Railway Workshop
Kurduwadi, Dist.: Sholapur
Maharashtra.
C/o G.S. Walia
Advocate, High Court
16, Maharashtra Bhavan,
Bora Masjid Street,
Fort, Bombay-400 001.

.... Applicant

(BY ADVOCATE SHRI G.S. WALIA)

vs.

1. Union of India, through
General Manager,
Central Railway,
Bombay V.T.
Bombay-400 001.
2. Chief Workshop Manager,
Parel Workshop
Central Workshop
Bombay-400 012.
3. Works Manager
Central Railway Workshop
Kurduwadi
Dist: Sholapur
Maharashtra.

... Respondents

(BY ADVOCATE SHRI S.C. DHAVAN)

ORDER(ORAL)

JUSTICE K.M. AGARWAL:

By this O.A., the applicant has made a prayer for quashing the order dated 23.7.1992, Ex-'A' treating it as an order of removal from service and ^{Claimed} a declaration to the effect that he continues to be a Skilled Grade-I Fitter from the date of removal.

For

2. Briefly stated, the applicant was working as Skilled Grade I Fitter with the respondents. For his unauthorised absence from 23.11.1984 to 7.1.1985, he was chargesheeted, found guilty and accordingly removed from service with effect from 21.12.1985 by order dated 21.12.1985 which is also filed and collectively marked as Exhibit 'A'. The appeal preferred against the order of removal was also dismissed. The applicant thereafter filed a mercy petition on 30.6.1987 which is filed as Exhibit 'E'. On that basis the applicant was re-appointed which is described as reinstatement by the applicant and, fresh appointment by the department. It appears that the order of re-appointment was challenged by filing a review petition to treat him continuing in service instead of treating him as a fresh appointee. That appeal or review petition was rejected by the impugned order dated 23.7.1992 and, therefore, this O.A. has been filed for the aforesaid reliefs.

3. After hearing the learned counsel for the parties and perusing the record, we find that the initial order of removal from service had become final after appeal against it was dismissed. This position also does not appear to have been disputed earlier by the applicant in his mercy appeal dated 30.6.1987, Exhibit 'E'. He made a specific request to take him in service as a fresh entrant. The prayer clause of the mercy appeal is as follows:-

" I request you to kindly take a sympathetic view and I may please be reinstated in service at least as a fresh entrant and allow me to serve

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you once again. I assure your honour that I will be regular at work and I will not give a chance for such complaint in future."

(Emphasis supplied).

It would thus appear that the applicant himself used the word, reinstatement as a fresh entrant in his mercy appeal. The order of fresh appointment, filed as Exhibit 'F' states that the mercy appeal dated 30.6.1987 of the applicant was very carefully considered by the competent authority who was pleased to make the following order:-

"Can be reinstated as a Khalasi in existing vacancy of KVV only."

After quoting the order made by the competent authority, the said order Exhibit 'F' further says:-

" In view of the above orders you are appointed as Khalasi as new entrant for all purposes in scale Rs. 750-940(RP) on Rs.750/-p.m. in KVV Workshop. If you agree to accept the post of Khalasi as new entrant...."

Taking advantage of the word "reinstated" used in the order of the competent authority, the learned counsel for the applicant submitted that his appointment could not be as a fresh Khalasi. The initial order of removal must be deemed to have merged with the order of the competent authority made on his mercy appeal and accordingly he must be deemed to have continued in service. In support of his contention, he cited ~~two~~ judgements of this Tribunal: (1) P.C.Pandey vs. Union of India, (1996) 33 ATC 1; (2) S.P.Badgujar vs. Union of India, OA No.238/94 decided by the Mumbai Bench on 8.8.1994.

For

He has also cited one judgement of the Supreme Court in Nyadar Singh vs. Union of India, AIR 1988 SC 1979.

4. After careful consideration of the arguments of the learned counsel for the applicant, we are of the view that the word, "reinstated" was casually used by the competent authority for further appointment, otherwise its order would not have further wanted to say that the applicant be reinstated or re-appointed as a Khalasi in existing vacancy of KWV. As earlier stated, the applicant has also made a prayer in his mercy appeal for his reinstatement in service as a fresh entrant. If the order of the competent authority is interpreted in the context of the prayer made in the mercy appeal then also the only conclusion that can be reached is that the prayer made in the mercy appeal was allowed by the competent authority. Prayer was for taking him in service as a fresh entrant and that was allowed by the competent authority. May be the word, "reinstated" was used by the competent authority, because the same word was ^{also} used in his mercy appeal filed by the applicant.

5. It is settled principle of law that the order of the lower court or lower authority merges with the order of appellate court or the appellate authority. The order of removal passed by the disciplinary authority was challenged before the appellate authority and the appellate authority earlier dismissed the appeal and, therefore, the order of removal passed by the disciplinary authority has already merged with the appellate order, which has dismissed the appeal of the applicant. Only because there is no provision in the rules for mercy appeal, there is

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a provision for review, it cannot be allowed to be argued that the mercy appeal should be held to have been treated as review petition and the order passed on mercy appeal to be an order on appeal. It is well settled that the review is allowed only where patent error or error apparent on the face of the record of any order is shown. No error was pointed out against the order of removal passed by the disciplinary authority and affirmed by the appellate authority itself. The appellate authority/could not have sat on judgement over its own judgement or order and, therefore, mercy appeal could not be treated as a second appeal against the appellate order of the appellate authority. The mercy appeal may, therefore, be treated as a mercy revision or mercy appeal to the reason and wisdom of the competent authority for giving him fresh appointment against any vacant post. All the authorities cited before us by the learned counsel for the applicant are distinguishable on facts and do not advance the case of the applicant. We do not want to burden this order by discussing them at length only for the satisfaction of parties to this list. We have also a decision of this tribunal before us cited and relied upon by the learned counsel for the respondents in Smt. Jubeda Mohammad Iqbal vs. U.O.I. & ors, 1994(2) A.T.J. 648 to say that a mercy petition by its nature is a matter of administrative decision by the department concerned. Such a decision cannot be interfered with by the tribunal. We, therefore, find no merit in this OA. Accordingly it deserves to be dismissed.

For

6. In the result, this OA fails and it is hereby dismissed
but without any order as to costs.

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(K.M.AGARWAL)
CHAIRMAN

R.K.Ahooja
(R.K.AHOOJA)
MEMBER (A)