

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 742/94.

Date of Decision: 25.6.99.

Mohd. Anwar

Applicant.

Shri D.P.Talankar

Advocate for  
Applicant.

Versus

Union of India & 30rs.

Respondent(s)

Shri V.S.Masurkar

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?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

abp.

  
(R.K. AHOOJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI-400 001.

ORIGINAL APPLICATION NO:742/94.

DATED THE 25<sup>th</sup> DAY OF JUNE, 1999.

CORAM:HON'BLE SHRI JUSTICE K.M.AGARWAL, CHAIRMAN.

HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

Mohd.Anzar, Ex-permanent  
Way Inspector(PWI),  
Grade-III, Western Railway,  
Bombay Division, Bombay Central,  
Bombay - 400 008  
(C/o.Shri D.R.Talankar, Advocate,  
High Court, Chamber No.23(UBC)  
111-A, M.G.Road,  
(Opp.University)Fort,  
Bombay - 400 023.

... Applicant

By Advocate Shri D.R.Talankar.

v/s.

Union of India through:-

1. General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.
2. Additional Divisional Railway Manager(G),  
Western Railway, Bombay Division,  
Bombay Central,  
Bombay - 400 008.
3. Sr.DE(N), I Western Railway,  
Bombay Division,  
Bombay Central,  
Bombay - 400 008.

... Respondents.

By Advocate Shri V.S.Masurkar

I O R D E R I

I Per Shri R.K.Ahooja, Member(A) I

The applicant joined service of the Railways as Assistant Permanent Way Inspector(APWI). He states that on 11/8/86 he received a message that his father was seriously sick in native place in Uttar Pradesh. The applicant thereafter submitted an application for leave

to the permanent way inspector in charge, who acknowledged the application. The applicant states that on reaching his native place, the applicant had to take care of his father who was admitted in the hospital but the latter could not survive. Due to pressure and shock, the applicant suffered a stroke of paralysis and he was confined to bed for a long time. It was only on or about 28/4/1991, that he could recover fully and was fully declared fit by the Medical attendant. When the applicant came to Bombay to resume his duties he learnt that he had been removed from service. In his appeal he pointed out that he had not been served a charge sheet. He also explained the reasons why he could not attend to his duties being a victim of circumstances. He also pointed out that he had been removed from service without holding an enquiry. As his appeal was not accepted, he filed an OA before this Tribunal and the same was allowed by an order dated 13/10/92 part of the order reads as follows:-

"The impugned order dated 1/6/87 passed by the punishing authority is quashed. Order of the appellate authority too is quashed. The punishing authority shall initiate fresh proceedings on the basis of charges which was sent to the applicant and which was returned unserved. The applicant shall appear before the disciplinary authority on 27/11/92. It will be open to the disciplinary authority to pass such orders as it considers just and expedient. We make it clear that it will not be necessary for the respondents to send any notice to the applicant."

*de*

3. The respondents thereafter conducted a denovo enquiry on charges of unauthorised absence from 11/8/86, non-observance of proper rules for obtaining leave and leaving the headquarter without permission. Findings the chares were proved, the Disciplinary Authority by order dated 15/10/93 imposed the penalty of removal from service. The following appeal was also rejected by order dated 28/3/94. This has now led to the present round of litigation.

4. The order of Disciplinary Authority and the Appellate Authority are challenged on the ground that the enquiry has not been fairly conducted in as much as the Enquiry Officer did not consider all the evidence on record, that the absence of applicant was not wilfull and also that the penalty imposed is dis-proportionate to the alleged misconduct of the applicant.

5. The learned counsel for applicant Shri Anantha, based his arguments on two grounds. His first argument is that the respondents had acted malafide and illegally in issuing the order that the applicant was deemed to be under suspension with retrospective effect right from the date of the alleged absence from duty. Relying on the judgement of Calcutta Bench of this Tribunal in Kartick Chandra Bose v/s. Union of India & Ors reported at [ (1989)9ATC 128 ] he submitted that once the Tribunal had quashed the first order of penalty, the alleged period of absence had to be treated as spent on duty. We have perused the aforesaid judgement but we do not find that it helps the case of the applicant,

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In Kartick Chandra Bose v/s. Union of India & Ors(Supra) the first order was quashed in 1958. The respondents issued a second charge sheet in 1976. The applicant also came to be acquitted in the disciplinary proceedings on the second charge sheet. The Tribunal had in these circumstances observed that the order of continued suspension from 1958 to 1976 was unwarranted. In the presentcase, the Tribunal quashed the order of first penalty in 1992 while the second order of penalty was passed in 1994. The applicant was admittedly absent from duties from 1986 to 1991. By the impugned order in the second disciplinary proceedings also the applicant has not been exonerated of the charges against him. Consequently, his case does not fall within the ratio of Kartick Chandra Boase v/s. Union of India(Supra). In any case we do not see how the order of retrospective suspension affects the validity of the Impugned penalty order.

6. The learned counsel for applicant then argued that the absence of the applicant had not been wilfull as he was sick and it cannot be deemed as unauthorised in terms of the law laid down by Supreme Court and various judgements of this Tribunal. In this connection, he cited the case of (T.Subbarao v/s.Union of India & Ors) reported at [(1992)19 ATC 3] (Hyderabad Bench), (Gobardhan v/s. Union of India & Ors) reported at [1988(8)ATC 833 ] (Calcutta Bench).

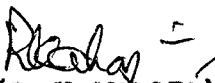
The learned counsel for applicant submitted that the applicant through out had been sending applications regarding his illness and need for grant of leave and he

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produced postal receipts to show that he had sent such applications. While we agree with the applicant that if the absence is justified on grounds of sickness it cannot be treated as unauthorised as it would not be wilfull absence from duty but the essential point here is that the enquiry officer on the basis of evidence before him has come to a contrary conclusion. It is not within the domain of the Tribunal to re-appreciate the evidence. Therefore we are not in a position to go into the veracity or otherwise of the claim of the applicant on the point that he was actually sick or that he had sent periodical leave applications for extending his leave.

7. It was finally contended by the learned counsel for applicant that the punishment imposed was dis-proportionate to the alleged misconduct. The scope of interference by the Tribunal in regard to penalty is also limited. Unless the penalty imposed is so disproportionately <sup>as to</sup> shocking as to be the conscience of the Tribunal, the Tribunal cannot intervene. In the present case, the charge against the applicant <sup>is</sup> of absence from duty for over 5 years. The punishment is removal from service. We do not consider the penalty imposed could be regarded as dis-proportionate when there is a finding that the applicant was absent from his duty unauthorisedly for such a long period.

8. In the result, we find no merit in the OA. It is accordingly dismissed without any order as to costs.

  
(R. K. AHOOJA)  
MEMBER (A)

  
(K. M. AGARWAL)  
CHAIRMAN