

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No.: 1439/95.

Date of Decision 29.3.1996

Shri B. S. Yadav, Petitioner

Shri V. S. Masurkar, Advocate for the Petitioner.

Versus

Union Of India & Another, Respondents


Shri R. K. Shetty, 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).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR
PRESCOT ROAD, FORT, BOMBAY-400 001.

ORIGINAL APPLICATION NO.: 1439/95.

Dated this 29th the March day of March, 1996.

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

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

Shri B. S. Yadav ... Applicant
(Advocate by Shri V. S. Masurkar).

Versus

Union Of India & Another ... Respondents
(Advocate by Shri R. K. Shetty).

: O R D E R :

[PER.: SHRI B. S. HEGDE, MEMBER (J)]

1. Heard Shri V.S. Masurkar for the applicant and Shri R. K. Shetty for the respondents. After hearing both the parties, we are of the view, that the O.A. can be disposed of at the time of admission itself.

2. In this O.A. the applicant has prayed for quashing of the order passed by the respondents on 15.03.1984 and to pay all consequential benefits and also to reinstate him in service with full gratuity, etc.

3. The undisputed facts are that the applicant has joined the respondents' department in the year 1959 as a Labourer. Later on in the year 1980 he was promoted as a Mate and thereby, he completed 25 years of service before the order of compulsory retirement issued by the respondents vide dated 15.03.1984 (Annexure R-3). The same was

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communicated to the applicant vide respondent's letter dated 10.10.1995. It is an admitted position that the order of compulsory retirement was passed by the respondents by way of punishment pursuant to the conviction by the Session Judge, Pune, under Section 323 of the I.P.C. The applicant preferred a Criminal Appeal before the High Court by filing a criminal appeal no. 144/83 on 21.03.1983 and the said appeal was disposed of by the High Court on 29.04.1992. While disposing the said appeal, the High Court has observed as follows :-

"However, it has to be noted that as a result of the incident, Shantabai lost her life and Sundarabai came to be injured. In the fitness of things, it is necessary to compensate them to the extent possible. We feel and think that while reducing the sentence of imprisonment to the sentence already undergone, we should enhance the fine imposed on them.

The Learned Counsel appearing for the applicants also submitted that as a result of order of conviction, the service of Applicant No. 2 may be affected and he referred to a decision of the Supreme Court in the case of Rajiv V/s. State of Haryana, A.I.R. 1985 S.C. 1278. There Their Lordships of the Supreme Court at the end of the judgement were pleased to observe that in the peculiar facts and circumstances of the case, the conviction should not affect his service."

The Learned Counsel for the applicant urged that similar observation is made in the Writ Appeal also. The appeal was partly allowed. The order of conviction under Section 325 I.P.C. of appellant No. 1 and the order of conviction under Section 323 I.P.C. of appellant no. 2 is confirmed. The order of sentence is modified by altering it to the sentence of imprisonment already undergone. The fine amount is raised from Rs. 200/- to Rs. 2,500/-. On realisation of the fine amount, the sum of Rs. 2,500/- is to be paid to the heirs of Shantabai and Rs. 2500/- to be paid to Sundarabai.

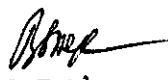
4. In the light of the above, the Learned Counsel for the applicant submits that pursuant to the decision of the High Court, he made a representation to the respondents and also had meeting with the respondent no. 2 for his reinstatement but no reply was given by the respondents. In this connection, it may be noted that the High Court did not quash the order passed by the Session Court but only confirmed the order of the Session Court. The only observation made by the High Court in this case is since the applicant has already undergone the punishment, no further imprisonment is called for. Imposition of fine was enhanced to Rs. 2,500/- instead of Rs. 200/-, so as to reimburse the same to the deceased family. During the course of hearing, the Learned Counsel for the respondents Shri Shetty, draws our attention to Annexure R-3 wherein while passing the order under Rule 19(i) of the Central Civil Services (C.C.A.) Rules, 1965 stated that the applicant was compulsorily retired from service from the date on which this order is served on him i.e. on 10.03.1984. Subsequent to the order of compulsory retirement, they directed the applicant to complete the pensionary documents as at annexure R-4 and R-5. Despite the same, the applicant did not adhere to the directions of the respondents and continued to reiterate that he should be reinstated in service.

5. The short question for consideration is, whether it is incumbent upon the respondents to modify the order already passed in the year 1984 subsequent to the decision of the High Court in the year 1992. The answer is in the negative. As stated earlier, the respondents pursuant to

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the passing of the order of compulsory retirement, asked the applicant to complete the pensionary papers, which he did not do so. Therefore, in our view, the respondents are not obliged either to reinstate him in service or to modify the order already passed pursuant to the decision of the High Court. Accordingly, the earlier order passed by the respondents holds good and it is upto the applicant to comply with the directions issued by the respondents to fill up the required forms, so as to enable him to get the pensionary benefits as per law.

6. In the result I find ~~that~~ there is no merit in the O.A. which is liable to be dismissed.


(B.S. HEGDE)
Member(J)

7. I am inclined to agree with my learned brother Member(J) but I would like to add following supplementary remarks. The applicant has relied on the Supreme Court Judgment in Rajbir v. State of Haryana, AIR 1985 SC 1278. Secondly the applicant has taken the stand that not only the High Court had relied on the Supreme Court ^{Judgment} while disposing the criminal appeal and criminal revision application(vide para 11." In the facts and circumstances of the case, the order of conviction should not affect the service of applicant No.2) but the applicant himself ~~has~~ not received the copy of the order of compulsory retirement passed by the respondents. Thirdly the respondents themselves had taken the ambiguous stand regarding the penalty imposed ^{whether} ~~that~~ of compulsory retirement or removal/dismissal because the respondents have used the word termination. In my view the facts of the case in



were
Rajbir ~~was~~ different. The Supreme Court was specifically concerned with Rajbir's application relating to extension of benefit of ^{probation of} Offenders Act to him on the ground of first conviction. The Supreme Court permitted the application while maintaining conviction and observed that in the peculiar facts of the case the conviction should not affect his ~~service~~. In the instant case the question of application under ^{probation of} Offenders Act does not arise. Secondly the applicant had suppressed the fact of his having been retired compulsorily from the High Court. Thirdly the respondents/Govt. respondent was not ^a party to the proceedings before the High Court. Forthly, it is not correct to say that applicant was not aware of the penalty of compulsory retirement. The advocate's notice dt. 17-8-95 states as below:

"On the basis of the said Criminal case No.172 of 1982 departmental charges were framed against Bachilal Sharda and he was ordered to have compulsarily retired from service with effect from 15-5-1984."

Thus the contention of the applicant that he was not aware of the penalty is also not correct. I am, therefore, of the view that the reliance placed by the applicant on the Supreme Court judgment in Rajbir's case is of no avail.

8. In the result, I find that there is no merit in the O.A. which is liable to be dismissed.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

O R D E R

9. In the result, we do not see any merit in the O.A. and accordingly, while admitting the O.A., the same is dismissed at the admission stage itself. No order as to costs.

M. R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
Member(J)