

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 250/95

DATE OF DECISION: 20/4/2000

Shri Surajbhai B Halpati Applicant.

Shri G.S.Walia

-----Advocate for
Applicant.

Versus

Union of India & Anr.

-----Respondents.

Shri V.S.Masurkar

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri B.N.Bahadur, Member(A)
Hon'ble Shri S.L.Jain, Member(J).

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *no*
3. Library. *yes*

P.S.J.
(S.L.JAIN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:250/95
DATED THE 20th DAY OF APRIL, 2000

CORAM : HON'BLE SHRI B.N.BAHADUR, MEMBER(A)
HON'BLE SHRI S.L.JAIN, MEMBER(J)

Shri Surajbhai B Halpati,
Formerly working as
Fitter Grade I
Western Railway's
Carriage Workshop at
Lower Parel,
Bombay - 400 012.

... Applicant.

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
General Manager,
Western Railway,
Churchgate,
Bombay - 400 001.

2. Chief Workshop Manager,
Western Railway's
Parel Workshop,
Parel,
Bombay - 400 012.

... Respondents.

By Advocate Shri V.S.Masurkar

(ORDER)

Per Shri S.L.Jain, Member(J).

This is an application under section 19 of the Administrative Tribunals Act 1985 for a declaration that the applicant is entitled to full back wages from 26/6/89 to 3/11/92 and such period should be treated as 'on duty' for all consequential benefits alongwith costs.

2. The respondents issued chargesheet to the applicant on 23/5/90 for unauthorised absence, the enquiry proceeded exparte, applicant was removed from service vide order dated 29/11/90, an

P. J. M.

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appeal against the same is rejected vide order dated 4/11/91 but revision against the same was allowed vide order dated 16/10/92 which was conveyed to the applicant vide letter dated 8/11/92.

3. There is also no dispute in respect of the fact that applicant was absent from duty since 23/6/89, he was arrested by the police on 26/6/89 in respect of a criminal case under section 302/34 I.P.C. which ended in acquittal on 7/7/91.

4. The applicant claims that as his mother was ill, he went to his native place Udwada on 23/6/89 and was arrested there on 26/6/89 in respect of said criminal case on 26/6/89. He further alleged that he has not been given full wages for the period for which he was alleged to be unauthorised absence, which was not wilful and beyond the control of the applicant. He is not aware how the said period of absence has been treated by the respondents and what payments has been made to the applicant in respect thereof. Even enquiries from the office of respondents did not serve the purpose. The office of the respondents threatened that if he claimed full back wages, the officer would get angry and he would again be removed from service.

5. In view of the said facts the applicant claims that the action of the respondents is violative of Article-14 and 16 of the Constitution of India, improper, unwarranted, unconstitutional and he is entitled to full backwages.

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6. The claim is resisted by the respondents on the ground that it is premature in view of Section-20 of the Act as the applicant has not exhausted the remedies before the Departmental authorities, salary was paid to the applicant from the date of removal to the date of reinstatement i.e. 29/11/90 to 16/11/92 treating him on duty for all purposes. It is further alleged that claim in respect of salary for the remaining period is barred by limitation as OA is filed on 9/2/95 while he was reinstated on 16/10/92. In para 13 of written statement, it is alleged that

"The period from 23/6/1989 to 28/11/1990 was not paid to the applicant as the said period is not decided by the Respondent No.1 and therefore as per the rules, the same instituted as unauthorised absence. This matter is already referred to the office of the General Manager by respondent No.2's letter dated 27/11/92 followed by reminder dated 24/5/93. Moreover, the office of the Respondent No.2 has deputed the Chief Clerk to get information regarding the appeal preferred by the DSP/BL, against the trial Court judgement. The information collected by the Chief Clerk from DSP and also from Public Prosecutor was referred to the office of the General Manager by Respondent No.2's letter dated 11th May, 1994. The respondent No.1 by its letter dated 27/5/1994 as advised the Office of the Respondent No.2 to depute somebody to find out further progress with regard to the criminal case against the applicant. The clerk was deputed to Ahmedabad to collect the required information and the position was advised to office of the Respondent No.1 that the relevant documents have not received from the High Court and the same will be advised in writing as and when the Secretary will be free from the work and accordingly the office of the Respondent No.2 advised position by its letter dated 15/7/94 to the office of Respondent No.1 request for further course of action to be taken by this office in the matter and the reply from office of the respondent No.1 is still awaited."

Hence payed for dismissal of the OA alongwith costs.

7. The applicant filed the rejoinder affidavit in which the payment is not disputed. for a while, it can be imagined that

Ans /

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10. Ordinarily, we must have not considered the question of costs awarding in favour of respondents but in view of the false pleas, OA being premature, it is a fit case where applicant ~~is~~ to be saddled with a costs payable to the respondents as incurred by the respondents in defending the case which in our opinion cannot be less than Rs.1000/-.

11. In the result, OA is liable to be dismissed and is dismissed with the liberty to the applicant to agitate the issue after the decision by the respondents in accordance with law.

S.L. Jain
(S.L.JAIN)
MEMBER(J)

B.N. Bahadur
(B.N.BAHADUR) 20/4/2000
MEMBER(A)