

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 722/97

Date of Decision: 06.09.2001

Shri M.G. Sonawane.

Applicant(s)

Shri Suresh Kumar.

Advocate for applicant

Versus

Union of India & 4 others

.. Respondents

Shri K.d. Kelkar.

Advocate for Respondents

CORAM: SHRI S.L. JAIN.

MEMBER (J)

SMT. SHANTA SHASTRY.

MEMBER (A)

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

Shanta K
(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBEI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 722/97

THIS, THE 6th DAY OF SEPTEMBER, 2001

CORAM: SHRI S.L. JAIN. ... MEMBER (J)
SMT. SHANTA SHASTRY. ... MEMBER (A)

Shri M.G. Sonawane,
Survey No.26, Agarwal Chawl,
Bopodi, Pune-411 003. ... Applicant

By Advocate Shri Suresh Kumar.

Versus

1. Union of India
through Secretary,
Ministry of Finance,
New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Income TAX, Mayur Bhavan,
Indraprasta Marg,
New Delhi-110 001.
3. Chief Commissioner of Income Tax,
'Aykar Bhavan',
12, Sadhu Vaswani Marg,
Pune-411 001.
4. Commissioner of Income Tax,
60/61, Erandavane, Karve Road,
Pune-411 004.
5. Income Tax Officer (Vig),
Commissioner of Income Tax,
60/61, Erandevane, Karve Road,
Pune-411 004. .. Respondents

By Advocate Shri K.D. Kelkar.

O R D E R

Smt. Shanta Shastry. Member (A)

This application is against the rejection of
the mercy petition cum appeal dated 15.12.1993 decided
vide order dated 10.2.1994 in respect of the applicant.
He has also challenged the termination of his services
on 5.10.84 and has prayed for reinstatement.

2. The applicant was appointed as LDC on 15.11.1972 and worked till 10.12.1979. Thereafter, however, he did not attend office as according to him since 10.12.1979 he lost his mental balance and remained absent till 5.10.84. He submits that he regained his sense only around 1985 and realised that his services had been terminated. He was roaming around all over India during the period of absence with an unsound mind. Though issued with memos and charge sheets, he had not replied as he was not in Pune. He also states that he does not have any copies of these memos etc.

3. The applicant submitted his first representation on 2.11.19^h85 requesting to settle his dues as he was informed that reinstatement was not possible. His wife also made a representation on 15.7.1985 to consider the case of her husband on humanitarian grounds. The applicant once again represented on 23.9.1985 and preferred a mercy petition cum appeal for reinstatement on 7.11.1990. No reply was received. He had again sent further representations on 23.11.90 and had also demanded inspection of his service book vide letter dated 24.5.1990, but the same was not given to him. He was finally informed about the rejection of his representation on 10.2.1994.

4. It is the contention of the applicant that the respondents did not follow principles of natural justice. No proper enquiry was held prior to terminating his services. There was total non-application of mind and violation of Article 311 of the Constitution. The entire department knew that he was not in proper senses.

5. The respondents have raised the preliminary plea that the application is barred by limitation as his services were terminated in 1984 and he has approached this Tribunal in 1997. Even assuming that the OA filed in 1994 on the basis of a communication issued by the respondents on 10.2.1994, the applicant did not bother to come to the Tribunal till 1997. There is no explanation given for such inaction, it is sheer negligence. Even the Full Bench of the Supreme Court have laid down a dictum in Civil Appeal NO. 481/1989 that the Tribunal has no powers to condone the delay beyond the period of limitation.

6. The applicant remained continuously absent for nearly 4 1/2 years, a number of memos and show cause notices were sent to him, but they were not replied to. The applicant's services were terminated under Rule 5 (1) of the CCS (Temporary Service) Rules 1965. The applicant has failed to point out any infringement of the provisions of the said rules. Though the applicant has claimed that he was mentally imbalanced during the

period of his absence, there is no documentary evidence to prove the same. He has not produced any medical certificate. There was no communication either from the family, relatives or friends that he was mentally imbalanced even after memos were served. His statement that he was out of Pune is also not supported in the sense that during his absence two children were born to him as is evident from representation made by his wife. Further, in his first representation, the applicant gave the reason for his absence as due to domestic difficulties and mental worries. This story of the applicant is all concocted according to the respondents.

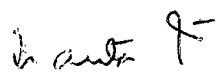
7. In regard to supply of the service book, the respondents never denied the inspection. It is the applicant, who failed to pursue the matter. The applicant has not denied having received various memos.

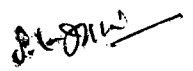
8. It is further submitted by the respondents that the applicant was not confirmed as he has not passed the typing test. The respondents have also produced the record of the applicant's case, wherein a decision to terminate the services of the applicant was taken.

9. We have heard the learned counsel for both the parties and have perused the pleadings. We agree with the respondents that the applicant has failed to produce any material in support of his submission that he was mentally unsound during the period of his absence from

1979 to 1984. There is absolutely no communication about his mental illness. On the contrary, it is seen from the record produced by the respondents that memos were served on the applicant and earlier also he had remained absent for a long period. The applicant was issued with the memos including warning notice for termination on 12.3.1980 and 5.9.84. The applicant has not been able to establish that he was genuinely mentally imbalanced during the period of absence. We, therefore, hold that the respondents' action in terminating his services, after issuing of the various memos and warnings is in order. In fact, even the applicant's performance was not satisfactory before he remained absent. There was no improvement. This is also gleaned from the record produced by the respondents. We also agree that the application is barred by limitation and deserves to be dismissed on that ground itself.

10. In the result, the OA being devoid of merit and is dismissed. No costs.


(SHANTA SHASTRY)
MEMBER (A)


(S.L. JAIN)
MEMBER (J)