

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 738/97.

Date of Decision : 11.01.1999.

Nandu Krishna Wani, Petitioner.

Shri D. V. Gangal, Advocate for the  
Petitioner.

VERSUS

Union Of India & Others, Respondents.

Shri R. R. Shetty, Advocate for the  
Respondents.

CORAM : Hon'ble Shri Justice R.G. Vaidyanatha,  
Vice-Chairman.

Hon'ble Shri D.S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ? *W*
- (ii) Whether it needs to be circulated to *W*  
other Benches of the Tribunal ?

*R. G. Vaidyanatha*  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 738 OF 1997.

Dated this Monday, the 11th day of January, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,  
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Nandu Krishna Wani,  
Carriage & Wagon Khalashi,  
Ticket No. 2589 under  
Carriage and Wagon Superintendent,  
Railway Yard of Bhusawal.

Residing at -

Railway P O H Colony Kandari,  
Quarter No. 1203,  
Tal. Bhusawal,  
Dist. Jalgaon.

(By Advocate Shri D. V. Gangal)

... Applicant

VERSUS

1. The Union Of India through  
The General Manager,  
Central Railway, C.S.T.,  
Mumbai - 400 001.
2. The Asstt. Mechanical Engineer  
(C & W), D.R.M. Office,  
Central Railway, Bhusawal.
3. The Senior Divisional  
Personnel Officer,  
Central Railway,  
Bhusawal.

... Respondents.

(By Advocate Shri R. R. Shetty)

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application for quashing the  
charge-sheet and for payment of leave salary. The  
respondents have filed reply opposing the application.  
We have heard both counsels regarding admission.

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2. Though the applicant has taken number of grounds challenging the charge-sheet, in our view, we cannot go into the same, since it is now brought to our notice that the Disciplinary Authority has passed an order dated 03.09.1998 imposing the penalty of removal from service. When the charge-sheet is not pending and it has ended with the Disciplinary Authority passing the final order, the present application for quashing the charge-sheet does not survive. But the only contention of the Learned Counsel for the applicant is that, this order of punishment is not served on the applicant and therefore, it is not legal.

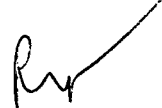
In our view, the validity of the order of punishment is not dependent on actual service on the applicant. The service on the applicant may be necessary to show that the order will come into effect on that day. ~~On behalf~~ <sup>At best</sup>, the applicant may claim the salary for the period even after the date of punishment till the date it was actually served on him.

3. In the present case, the respondents have filed an affidavit and have produced the records to show that attempts have been made to serve on the applicant but he refused it and there is further allegation that one copy of the order was affixed on the notice board in the presence of two witnesses. The respondents have also produced materials to show that the notice was sent by registered post to the applicant but it could not be served on him personally, since he was away from the house for many days, as noted by the Postman. The Tribunal directed the respondents to file an affidavit alongwith

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necessary records. It is now seen that the respondents have filed the impugned order of penalty alongwith an affidavit on 11.12.1998 and a copy is served on the applicant. Worst comes to worst, The date of order will be the date on which the copy of the affidavit alongwith the impugned order was served on the applicant's counsel. The validity of the order does not depend upon the actual service of the order on the applicant, though that may have some bearing on the question of the date on which the applicant was removed from service. But once when the competent authority has passed the order and it is now brought to the notice of the applicant in the present O.A., the applicant's remedy is to challenge the order of the Disciplinary Authority by preferring an appeal before the competent authority and in case he is not successful there, then he can challenge the same according to law. Therefore, in the facts and circumstances of the case, the main prayer in the O.A. no longer survives for consideration, since the charge-sheet is now merged with the impugned order of penalty dated 03.09.1998.

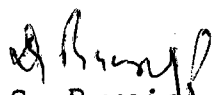
4. Then a submission was made that atleast the applicant is entitled to the relief of payment of salary for the period from 19.06.1995 to 09.02.1996. As pointed out by the Learned Counsel for the respondents, even this period mentioned in the application, was ~~not~~ subject matter of charge-sheet. Therefore, we cannot independently consider the applicant's claim for salary for this period unless the penalty order is set aside. The said period from 19.06.1995 to 09.02.1996 was the subject matter of enquiry and the allegation is that, it was unauthorised

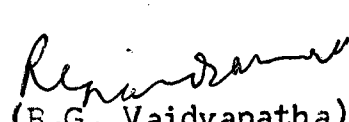


absence on the part of the applicant, though leave had been granted to him, since it is alleged that the leave was obtained on bogus certificate. Therefore, in our view, the question of grant of leave for the said period is inter-linked with the allegation in the charge-sheet and till the applicant successfully challenges the order of penalty, he will not be entitled to salary for that period.

5. In view of the above discussions, we hold that the present application is not maintainable. All contentions of the applicant on merits are left open. Liberty to the applicant to challenge the order of the Disciplinary Authority by approaching the proper Appellate Authority within four weeks from the date of receipt of a copy of this order and take all defenses open to him including the claim for salary for the said period. If such an appeal is received within the said period, then the Appellate Authority shall dispose of the appeal on merits.

6. In the result, the application is rejected at the admission stage subject to observations mentioned above. All contentions on merits are left open. M.P. No. 667/98 is allowed. In the circumstances of the case, there will be no order as to costs.

  
(D. S. Baweja)  
Member (A)

  
(R.G. Vaidyanatha)  
Vice-Chairman.