

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2583 OF 2015**

Karamveer Tarachand Tusamad

@ K.T. Tusamad

.. Petitioner

V/s.

The Deputy Secretary

(Administration) & anr.

.. Respondents.

Ms Radhika Samant i/b Mr. Pradeep Havnur for the Petitioner.

Mr. V.H. Kantharia a/w. M.B. Bhardwaj for the Respondents.

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 30 AUGUST 2016.

P.C.

1] The petitioner, in this petition instituted in the year 2015, impugns the order dated 13 December 2001, by which, the petitioner was dismissed from his services with Bhabha Atomic Research Centre (BARC) on the ground of unauthorised absence.

2] In the year 1986, the petitioner was appointed as Safaiwala at the BARC. On one occasion, the petitioner was chargesheeted for misappropriation, but was let of with some minor penalty. Thereafter, the petitioner was charge-sheeted for unauthorised absence of 311 days in the year 1992 and 126 days in the year 1993 and the penalty of reduction in pay was imposed upon him. However, as there was no improvement, in the year 2001, once again chargesheet was served upon the petitioner for

unauthorised absence. The record concerning absence of the petitioner since the year 1991 (both authorised as well as unauthorised) reads as follows:

Year	No. of days
1991	171
1992	311
1993	126
1995	255
1996	227
1997	289
1998	363
1999	330
2000	208
2001	346

3] There was a departmental enquiry held against the petitioner and there is really no complaint about violation of any principle of natural justice and fair play. Ultimately, the petitioner, by order dated 13 December 2001 was dismissed from the services. The appeal instituted by the petitioner was dismissed on 19 March 2002.

4] For almost eight years, since dismissal of the petitioner, there was no reaction from the petitioner. On 11 August 2010, however, the petitioner caused a legal notice to be served upon the respondents complaining against the dismissal. On this occasion, the petitioner, on basis of Medical Certificate dated 30 July 2010, claims that he has been suffering from “*refractory phobic disorder*”, since 1992. In the petition, the petitioner has elaborated to state that this disorder induces mental depression. On basis of

such certificate, the petitioner claims that he suffers disability more than 40% and therefore, in terms of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995 (1995 Act), the dismissal of petitioner's services was improper and is required to be interfered with, at this point of time.

5] In our judgment, there is really no case made out to entertain the present petition. In the first place, this petition has been instituted after inordinate and unexplained delay and laches, which extends to well over 14 years. There is no explanation in the petition, for such inordinate delay. Secondly, if the service record of the petitioner, as reflected in the chargesheet is perused, it is apparent that right from the year 1991 and until his dismissal from the services in 2001, the petitioner has hardly attended any duties. The dismissal of the petitioner was preceded by a departmental enquiry and there is no reason to disbelieve the case of the respondents that principles of natural justice and fair play were complied with, before order of dismissal was made. There is, accordingly, no case made out to interfere with the dismissal order.

6] The Medical Certificate dated 30 July 2010, hardly inspires any confidence. Such Certificate has surfaced only in the year 2010, i.e., almost nine years after the petitioner was dismissed from the services. If, the petitioner was indeed suffering from some disorder since 1992, nothing prevented the petitioner from

getting himself examined and producing on record the necessary Medical Certificate whilst in service or at least whilst disciplinary proceedings were pending against the petitioner. On basis of such a belated Medical Certificate, which in any case, only makes reference to “*refractory phobic disorder*”, it is not possible to extend to the petitioner the provisions of 1995 Act. In fact, we are not even satisfied that the provisions of the 1995 Act, at all apply in the facts and circumstances of the present case

7] For the aforesaid reasons, this petition is dismissed. There shall however, be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)