

Central Administrative Tribunal
Principal Bench, New Delhi.

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OA-2061/2002

New Delhi this the 6th day of April, 2005.

Hon'ble Shri Shanker Raju, Member(J)
Hon'ble Shri S.K. Malhotra, Member(A)

G.S. Kataria,
S/o late Alam Singh,
C/o 20/403 East End Apartments,
Mayur Vihar, Phase-I Extension,
Delhi-96.

.... Applicant

(through Sh. V.P.S. Tyagi, Advocate)

Versus

1. Union of India through
the Controller General of
Defence Accounts,
West Block V,
R.K. Puram,
New Delhi-66.

2. The Controller of Defence Accounts,
(Western Command),
Sector-9C,
Chandigarh.

.... Respondents

(through Sh. Madhav Paniker, Advocate)

O R D E R

Hon'ble Shri Shanker Raju, Member(J) :-

By an order dated 22.07.2003, in the light of an undertaking given by the applicant in OA-2359/2000 not to pursue his grievance after the Appellate Authority passes an order, OA was dismissed as not maintainable.

2. Hon'ble High Court of Delhi in WP (C) 5814/2004 by an order dated 20.04.2004 remanded the case back to the Tribunal to be dealt on merits.

3. In the aforesaid backdrop, applicant impugns respondents' order dated 17.01.2002 rejecting the appeal against the removal as well as order dated 10.04.1987 where after the disciplinary proceedings

regarding penalty of removal from service was inflicted upon the applicant.

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4. Applicant, who was working as a Clerk and discharging his duties at Chandigarh, had absented himself after casual leave from 16.2.1984 till a chargesheet had been issued in 1985. Despite opportunity being not availed, enquiry was proceeded ex-parte and on finding of the guilt, applicant was imposed a penalty of removal from service. He preferred an appeal, which was dismissed as time barred. OA02359/2000 has been remanded back with a direction to the department to consider the appeal on merits. Accordingly, an order passed on 17.01.2002 rejected the appeal, giving rise to cause of action, which is assailed in the present OA.

5. Learned counsel of the applicant states that the enquiry is vitiated on the following grounds:-

- (i) Enquiry Officer was subordinate to the applicant in rank;
- (ii) Daily order sheets have not been served;
- (iii) Copy of the documents have not been furnished;
- (iv) Additional documents were taken into consideration by the Enquiry Officer under Rules 14 & 15 of CCS(CCA) Rules, 1965 (hereinafter referred to as rules) and non-compliance of Rules 14 & 18 of the Rules ibid;
- (v) Denial of submission of written brief;
- (vi) Penalty of removal from service is harsh and disproportionate to the charge; and
- (vii) Appellate Authority has not considered the grounds of proportionality and has not recorded any reasons thereof.

6. Respondents' counsel Sh. Madhav Paniker has vehemently opposed the contentions and stated that the applicant whose leave on ground of mother sickness was turned down yet the applicant had not joined the duties and without any reasonable basis had not participated

in the enquiry, which was held in accordance with rules. The documents were served upon him and the punishment imposed is proportionate and a reasoned appellate order has been passed.

7. We have carefully considered the rival contentions and perused the material placed on record.

8. In the light of decision of the Apex Court in Indra Bhanu Gaur Vs. Committee Management of M.M. Degree College & Ors. (2004(1)SC SLJ 3) wherein it was held that one who does not avail opportunity to defend cannot successfully assail orders on the ground of violation of principles of natural justice. Despite opportunity, applicant has not participated in the enquiry, as such, it was proceeded ex-parte in accordance with the rules ibid.

9. In so far as documents are concerned, applicant has been provided all the documents and an opportunity to submit his written statement of defence, which he failed to do so. We do not find any legal infirmity in the procedure.

10. As regards proportionality is concerned, this Tribunal while disposing of OA-2359/2000 had directed the Appellate Authority to pass a reasoned order on appeal including the proportionality of punishment. From the order of the Appellate Authority, it transpires that whereas the ground adduced for alleged absence was severe sickness of his mother who was ailing on account of heart problem and cancer and ultimately died of it but the respondents insisted the applicant to produce his medical certificates. In the appellate order except recording a finding while keeping in view the findings, the penalty imposed is commensurate with the charge but no other grounds have been assigned.

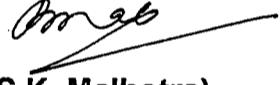
11. It is trite law, in the light of the decision of the Apex Court in Damoh Panna Sagar Rural Regional Bank & Anr. Vs. Munna Lal Jain (2005(1)SC SLJ 200) wherein it was held that a judicial review is

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permissible in the matter of penalty if the punishment shocks the conscious of the Court or there is non-application of mind in considering the proportionality of punishment.

12. Though leave cannot be claimed as a right to justify grounds and mitigating circumstances when reflected, it is incumbent upon the Appellate Authority to have gone into the same to judge whether the same absence was willful or not. As only willful absence, which is not justified and explained ^{by} cogent reasons entails punishment.

13. Be that may so, as the order passed by the Appellate Authority does not show application of mind on the proportionality of punishment and no reasons have been recorded, OA is partly allowed. Appellate order is set aside. Matter is remanded back to the Appellate Authority to record reasons on proportionality of *penalty* ^{to} and to pass an order within two months from the date of receipt of a copy of this order. No costs.


 (S.K. Malhotra)
 Member(A)


 (Shanker Raju)
 Member(J)

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