

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 718/2002

(Q)

New Delhi this the 9th day of December, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

B.S. Rana,
R/o Qr. No.23/Type-II,
BTPS Staff Colony, Badarpur,
New Delhi-110044.

-Applicant

(By Advocate Shri K.L. Bhandula)

-Versus-

1. Union of India through
Secretary to the Govt. of India,
Department of Production & Supplies,
Ministry of Defence, Govt. of India,
South Block, New Delhi-110011.

2. The Chairman & Director General,
Ordnance Factory Board,
Ministry of Defence, Govt. of India,
10-A, Auckland Road,
Calcutta-700001.

3. The General Manager,
Ordnance Factory,
Ministry of Defence,
Govt. of India,
Muradnagar (Distt. Ghaziabad) -Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Mr. Shunker Raju, Member (J):

In this OA applicant impugns order dated 5.6.2001, imposing upon him a major penalty as well as appellate order dated 25.1.2002 upholding the punishment. He seeks quashment of the same with all consequential benefits with further direction to treat the absence period as leave due and admissible.

2. Applicant was working as Chargeman Grade II in OLF at Dehradun. He proceeded on four days sanctioned leave from 19th 21st 22nd and 23rd February 1995 with permission to leave the headquarters to visit his home town at Meerut. He further sent application for extending the

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leave and requested for his release on transfer to Muradnagar in absentia.

3. Applicant insists upon implementation of his transfer order and ultimately filed OA-533/97 where directions have been issued to release applicant. Ultimately in contempt petition No.353/97 by order dated 15.12.97 specific orders have been passed to General Manager, Ordnance Factory to accept the joining report of applicant.

4. Before that applicant was served upon a chargesheet on 1.7.96.

5. LPC of the applicant was withheld and on the directions of the Central Administrative Tribunal, Allahabad the same has been released. Enquiry was resumed where the applicant has been held guilty of the charge. An ex parte order has been passed on 5.6.2001, imposing upon applicant a penalty of reduction in pay by two stages for a period of one year with cumulative effect with loss of increment, which on appeal was affirmed by the appellate authority, by an order dated 25.1.2002, giving rise to the present OA.

6. Learned counsel of the applicant Sh. K.L. Bhandula impugned the punishment on the following grounds:

i) request of the applicant for engaging a legal practitioner as Defence Assistant has been turned down without recording reasons.

ii) Documents required for defence have not been furnished.

iii) Request for change of enquiry officer has not been acceded to without any justification.

iv) Ex-parte proceedings held by the enquiry officer are to victimise him and on account of bias the chargesheet is liable to be set aside as the earlier charge-sheet issued on 1.7.96 for absence is continued after three years without any justification and the applicant was on authorized leave on medical grounds under the authority of K.P. Singh, General Manager, on whose directions applicant has remained on compulsory waiting.

v) The punishment and the appellate orders are non-speaking, without affording him a reasonable opportunity and dealing with his contentions. It is stated that applicant remained away from Dehradun on account of threat to his life as a consequence of matrimonial dispute and the chargesheet has been issued malafidely to harass him.

vi) Applicant's transfer was advised by Sh. K.P. Singh, General Manager and the information regarding transfer order has not been communicated to him, whereas Sh. K.P. Singh recommended the case of applicant to General Manager on compassionate grounds and his leave was authorised upto 31.8.95. The action by K.P. Singh is motivated on instigation by one property dealer with ulterior motives.

vii) Sh. Bhandula further states that Sh. K.P. Singh while working as General Manager, Opto Electronics Factory, Dehradun has not proceeded with the charge memo dated 1.7.96 but later on when he took over the charge at Muradnagar he revived the charge memo which was based on flimsy grounds to harass applicant.

viii) Applicant was on authorized leave on medical grounds on the authority of Sh. K.P. Singh from 24.2.95 to 1.7.96. Leave application sent by the applicant along with the medical record has not been specifically refused by Sh. K.P. Singh.

ix) The chargesheet was not specific and clear in terms. There is discrepancies between the findings recorded by the disciplinary as well as appellate authorities.

x) Despite Sh. K.P. Singh's letter dated 30.7.99 initiating enquiry from the point where the transfer of the applicant was effected, no fresh charge-sheet was issued.

7. On the other hand, respondents' counsel Sh. V.S.R. Krishna vehemently opposed the contentions of the applicant and stated that applicant who went to his native place for marriage on expiry of leave has not responded to the notices sent. His father by his application dated 9.3.95 in response to a telegram stated that his son is missing and was traced only on 24.4.95 but is in an abnormal condition. Leave application upto 29.6.95 was received with medical record which was further requested to

be extended till 29.8.95 the fitness certificate was stated to be produced at the time of joining duty. After 31.8.95 applicant wilfully and unauthorisedly absented himself for which he was issued a chargesheet on 1.7.96. The charges have been denied. In the interregnum he filed a case for effecting his transfer, which on contempt, has been disposed of with direction to applicant to report at Calcutta and liberty to resume the proceeding was also accorded in CP-239/97 by an order dated 22.9.97. He preferred another CP and in compliance of which enquiry was proceeded for unauthorized absence from 24.2.95 to 1.7.96 and from 7.11.96 to 17.12.96. Enquiry Officer held applicant guilty of the charge, after according him all the opportunities. Applicant absented himself without any justification.

8. As far as legal request for engagement of a legal practitioner as a Defence Assistant is concerned, as neither the PO nor EO were legally trained or legal practitioner the request was not acceded to under Rule 48-A of CCS (CCA) Rules, 1965. In so far as documents are concerned, the same have been served upon him and his request for change of EO was not found substantiated and no justified reasons have been accorded. As such the same was turned down.

9. Applicant absented on his own except the waiting period from 8.11.97 to 10.11.97. His LPC was issued at Muradnagar on his joining. The charges have been proved on the basis of the material produced in the enquiry. As such a long absence without any explanation

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and moreover despite sufficient notice his absence in the enquiry shows that the applicant has himself abandoned the enquiry and has no defence to produce.

10. The orders passed are reasoned, dealing with all the contentions of the applicant and moreover the punishment imposed is commensurate with the misconduct alleged.

11. As the applicant who has been advised through several communications to report for duty has not complied with the directions and remained absent unauthorisedly and wilfully. The enquiry was legal and justified and was re-opened on the direction of the court and as applicant without any reasonable cause failed to cooperate, ex-parte proceedings have been resorted to on 29.9.97.

12. It is denied that absence of the applicant was considered as authorised. Complaint dated 27.2.95 and FIR lodged by the maternal uncle of the applicant to IG clearly shows the conduct of applicant.

13. We have carefully considered the rival contentions of the parties and perused the material on record.

14. In so far as his legal contention regarding appointment of a legal practitioner as Defence Assistant is concerned, as neither the presenting officer nor the enquiry officer were legal practitioner, request of

applicant has been rightly turned down by the enquiry officer, which is in-consonance with Rule 14 of the Rules ibid.

15. In so far as the plea of non-furnishing applicant the documents prayed for is concerned, relied upon documents have been served upon him and he himself has not cooperated in the enquiry despite several communications sent to him and as it was found that enquiry has been avoided without any justified reasons the same has been proceeded ex parte, but before this reasonable opportunity of defence has been accorded to applicant. Relied upon documents have been served upon him and have been validly proved in the enquiry and as such no prejudice has been caused to him and as he himself chose not to cooperate in the enquiry and participated, the findings of guilt has been arrived at on the basis of evidence tendered in the enquiry which does not suffer from any legal infirmity.

16. In so far as the plea that the earlier chargesheet was issued by Sh. K.P. Singh was found on fictitious charges and subsequent action of resuming the proceedings of an earlier proceeding without issuing a fresh one despite recording this fact by the enquiry officer is concerned, the same does not suffer from any legal infirmity as while disposing of CP-239/97 liberty has been accorded to proceed with the enquiry to the respondents and as such the earlier chargesheet which has been issued for the unauthorized absence has been resumed.

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17. The next contention that applicant's absence upto 31.8.95 was recommended as per the note by Sh. K.P. Singh is concerned, applicant was found unauthorisedly absent from 24.2.95 and despite several communications of 8.3.95, 28.3.95, 10.7.95 as well as 8.8.95 he has not reported for duty despite being informed through telegrams. The absence from 24.2.95 was unauthorized which has been alleged against him through specific charge and the enquiry was proceeded as per rules. No orders have been passed as to authorisation of absence period as leave by the management of OLF before transfer of the applicant at Muradnagar. Had this been so applicant would not have been issued the chargesheet on 1.7.96. As per FIR lodged on 19.3.95 a missing report of applicant was lodged at police station Civil Lines Meerut which shows his bent of mind.

18. The disciplinary authority on the basis of the findings arrived at by the enquiry officer after according ample opportunity of defence to applicant on his failure to produce the same proceeded ex-parte and proved the charge of unauthorised absence. Respondents served upon applicant a copy of the enquiry report and on consideration of his representation imposed upon him a major penalty by agreeing with the findings of the enquiry officer, which is a detailed one after assessing the evidence. Applicant admittedly has not joined OLF, Dehradun after 22.3.95 till 10.7.95 and thereafter as well and has not participated in the enquiry. As applicant cannot claim leave as a matter of right and cannot remain absent without sanctioned leave the charge alleged has been proved.

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19. In the matter of judicial review this court cannot go into the truth or correctness of the charge and once the findings arrived at are on the basis of evidence the same are not to be interfered with. Moreover, no legal infirmity has been established by the applicant which could have vitiated the enquiry.

20. Moreover, we find that the order passed by the appellate authority on 25.1.2002 has dealt with all the contentions of the applicant and also gone into the proportionality of punishment. The punishment has been found to be commensurate with the misconduct.

21. We are also of the view that the issue of transfer and unauthorized absence cannot be inter-linked as the respondents have directed the applicant to report for work. Mere cooperation rendered by the respondents cannot be an act of sanctioning the leave and would not be construed as an approval of the disciplinary authority. The aforesaid absence despite notice to report for duty certainly amounts to misconduct and in absence of any defence adduced in the enquiry by the applicant despite opportunity the findings cannot be interfered with.

22. We also do not find any merit in the contention of the applicant that he had a life threat at Dehradun, as such he has not joined. As the applicant despite notice should have reported at Dehradun but his failure without any justified cause and the discrepancies as well as different explanations tendered and moreover the report submitted by the father of the applicant regarding

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his missing from his native place clearly throws doubt over his defence now adduced in the OA, which is an after thought and cannot be relied upon.

23. In the result and for the foregoing reasons we do not find any merit in the present OA, which is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)

Member (J)

M.P. Singh
(M.P. Singh)

Member (A)

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