

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 043/00456 of 2016

Date of Decision: This the 15th Day of March 2019**THE HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER****THE HON'BLE MR. NEKKHOMANG. NEHSIAL, ADMINISTRATIVE MEMBER**

No 5450016 Shri Dharamvir Singh
 S/O Randhir Singh
 Resident of
 Village-GradhiVichitra
 Post office – Karahara
 District – Agra, U. P, PIN- 283015.

...Applicant

By Advocate: Mr.U.K.Nair, Sr. Advocate, J. Kalita & N. Shyamal

-Vs-

1. The Union of India, represented by the
 Secretary to the Government of India
 Ministry of Home Affairs, North Block
 New Delhi, Pin -110001.
2. The Director General
 Assam Rifles (Mahanideshalaya)
 (The Directorate General Assam Rifles)
 Shillong, Meghalaya, PIN – 793011.
3. The Sector Commander, 21 Sector,
 The Assam Rifles
 C/O 99 APO, PIN – 932421
4. The Commandant, 21 Sector,
 The Assam Rifles, C/O 99 APO, PIN – 932421.

...Respondents

By Advocate: Mr.R.Hazarika, Addl.C.G.S.C.

ORDER (O R A L)

NEKKHOMANG NEIHSIAL, MEMBER (A):

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act 1985, with the following reliefs:-

“8.1 To set aside and quash the impugned order dated 25/03/2016 vide Order No. 112015/A (Discp)/HT- 21Sect/2016 issued by **Sri HJS Sachdev, the Lieutenant General, Director General Assam Rifles (Annexure – E)**

8.2 To direct the respondents to reinstate the applicant in his service with all consequential benefit forthwith.

8.3 To regularize the period w.e.f the date of passing of the order dated 25/03/2016 till the date of reinstatement as on duty with all consequential benefit.”

2. Mr.U.K.Nair, learned Sr. counsel for the applicant submitted that the applicant was Hindi Typist appointed on 26.06.2000 against the existing vacancies of 16 Assam Rifles Battalion. He was sanctioned 15 days of Casual Leave with effect 12.08.2013 on account of his elder daughter's sudden illness who has been suffering from mental disorder. The applicant's wife had expired prematurely in July 2012

leaving behind three children and the elder daughter being the one who is mentally ill. While he was on leave, he also suffered from acute back pain and was completely bed ridden. He reported District Hospital, Agra, on 22 August 2014 for necessary treatment. As consequence of this, he reported back and resumed duty on 09.10.2014. Due to the above long absence, the respondent authorities issued show cause notice to the applicant dated 15.9.2014 as to why the disciplinary action should not be taken against him for his absence without intimation to Superior Officer. The show cause notice was replied by the applicant vide his representation dated 25.9.2014. A proposal to conduct a preliminary enquiry on 29.9.2014, HQ 29 Sector, Assam Rifles was intimated to the applicant vide letter No.Estt/A-Discp/2014/03 dated 25th September, 2014 under signature of Col. Sital Singh. The Inquiry Report, however, has been submitted under the signature of Col. B.B.Yadav, SC.SM. as Enquiry Officer. There is no date of Enquiry Report. The Enquiry Report contains the opinion of the Enquiry Officer

justifying genuine reasons of the overstaying the leave by the Charged Officer, keeping in view of the premature death of his wife and his inability to treat his elder daughter and acute financial hardship faced by him. The Inquiry Officer also recommended penalty of withholding one yearly increment and suggested as to how the period of absence may be regularised by grant of leave etc. Consequent to this, the Disciplinary Authority vide his order No.12015/A(Discp)/HT-21 Sect/2016 dated 25.3.2016, without reference to the Enquiry Report after stated due application of mind to the facts of the case, imposed major penalty of removal from service under CCS(CCA) Rules 1965. It was also further ordered that the period of absence to be treated as unauthorised absence from duty and penalised by recovering from his pay, the whole amount of pecuniary loss caused by his absence to the Government.

3. Learned counsel submitted that the impugned order dated 25th day of March 2016 vide memo no – I.12015/A(Discp)/HT-21 Sect/2016 is arbitrary, illegal and

violation of the principles of natural justice and the same is accordingly liable to be set aside and quashed.

4. Learned counsel further submitted that for non consideration of the Appeal submitted by the applicant on for his reinstate in service is whimsical, arbitrary and illegal and as the same is liable to be set aside and quashed.

5. Learned counsel further submitted that the respondent authorities has failed to appreciate the case of the petitioner which compelled him to overstay after his leave period was over and the impugned order dated 25/03/2016 passed by the respondent is bad in law which is against the principle of natural justice as well as the violation of the Assam Rifles Rules.

6. Learned counsel submitted that the enquiry officer having not found the applicant guilty of the charges framed against him, the Disciplinary Authority, without any disagreement and opportunity to the applicant to meet the grounds set out therein could not have proceeded to impose the penalty as imposed vide order dated

25/03/2016. Accordingly, the order dated 25/03/2016 is not sustainable and liable to be set aside and quashed.

7. Learned counsel further submitted that for non communication of the inquiry report to applicant forthwith after the inquiry officer submitted its report and which was in favour of the applicant is violation of the departmental rules and violation of the principle of natural justice and as such the action on the part of the respondents are bad in law.

8. According to the learned counsel for non consideration of the inquiry report submitted by the Inquiry Report IC50996, Col B B Yadav, SC, SM and the impugned order passed by the respondent without considering the finding of the Inquiry Officer is bad in law and liable to be set aside and quashed.

9. The Respondent Authority submitted their written statement on 07.09.2017.

10. The Respondents have stated that the applicant, from the service records, was habitual offender of frequent

un-authorised absence. In Para 4.2, the Respondents have stated that the applicant had absented himself for 1359 days during the period of 22nd October 2017 to 09 Sept. 2014. They have also stated at Para 4.3 that the applicant did not make any attempt to establish any communication with any of the authority about his claim of illness. They also stated in the Medical Fitness certificate as “it is not valid for court in any circumstances”.

11. The applicant submitted his rejoinder on 27.11.2017. In the rejoinder he elaborated once again his inability to resume his duty after the expiry of his sanctioned leave. He contended that he never voluntarily absent himself from his service. He also pointed out that the Enquiry procedure which was adopted during the whole course was not as per the prescribed procedure enumerated in CCS (CCA) Rules, 1965. The Inquiry Officer has been continuously engaged himself in bringing out the past records of the Government servant which were not the subject matter of Article of Charges. The procedure of

bringing the past records is violative and the whole procedure is nullity from inception and void ab-initio. The applicant also pointed out that the notice was confusing and the double writing from the notice of conducting Preliminary Inquiry to be held on 29.09.2014. The applicant further contested that the decision of the order of the Disciplinary Authority under order No.112015/(DISP)/HT-21Sect/2016 dated 25th March 2016 reflects biased, fixed, pre-set and pre-determined intentions of the authorities and is bad in law and liable to be set aside and quashed.

12. We have gone through the records placed before us and considered the pleadings and submissions made. We are of the definite view that though a semblance of disciplinary proceedings was attempted against the charge official, but no proper inquiry was actually conducted. He was neither given any opportunity to defend himself nor record of his pleadings guilty of the charge is found. As such, we found that the inquiry purported to have been conducted by the respondent authorities was highly

vitiated, bad in law and liable to be set aside. Accordingly, the Disciplinary Authority's order No.112015/A(Discp)/HT-21Sect/2016 dated 25.03.2016 is hereby set aside and quashed. The applicant may be reinstated with immediate effect with all consequential benefits. The period of absence, however, may be settled by granting him leave as admissible to the applicant.

13. O.A. stands disposed as above without order to the costs.

(N.NEIHSIAL)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER