



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 80/2014

M.A. No. 95/2014

M.A. No. 94/2014

New Delhi, this the 4th day of February, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Sarfuddin Khan, S/o late Shri Ali Khan,
Ex-Sr. Peon,
Under Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg, New Delhi-110 002.

Residential Address:-

A-1/129-C, Madhu Vihar,
Uttam Nagar, New Delhi-110059.

.. Applicant

(By Advocate: Shri Virendra Kumar for
Shri M.D. Jangra)

Versus

Union of India, through

1. The Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi-110 002.
2. The Sr. Administrative Officer (Estt.),
Office of the Comptroller & Auditor
General of India,
10, Bahadur Shah Zafar Marg,
New Delhi-110 002.

.. Respondents

(By Advocate : Ms. Priya Barua for Shri Gaurang Kanth)



O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant initially joined the Army as Gunner in the year 1980. Six years thereafter, he was declared as medically unfit, on account of his disability and, accordingly, was discharged from service by sanctioning Disability Pension. Three years thereafter, the applicant was appointed as Attender in the Office of the Comptroller and Auditor General of India (CAG), the 1st respondent herein. He was also promoted as Senior Peon in that office.

2. On 23.06.1998, the applicant was issued a Charge Memorandum, alleging that he remained unauthorisedly absent from 07.04.1997 to 15.01.1998, and that he raised a loan producing a false pay certificate, in an illegal manner. Not satisfied with the explanation offered by the applicant, the Disciplinary Authority (DA) appointed the Inquiry Officer (IO). It is stated that the applicant did not participate in the inquiry and, on 14.06.1999, the IO submitted his report



holding the articles of charge as 'proved'. A copy of the report was made available to the applicant, and on a consideration of the reply thereto, the DA passed an order on 17.09.1999, imposing the punishment of 'Removal from service'. In an appeal preferred by him against the order of removal, the Appellate Authority (AA) modified the same to the one of 'Compulsory retirement' in March, 2000.

3. Complaining that he is not paid any pension, despite the modification of the punishment, the applicant submitted a representation on 13.09.2000. The Office of the CAG replied on 22.09.2000, stating that his absence from 05.10.1998 to 17.09.1999 was treated as *dies non*. It was informed that if the period, which was treated as *dies non*, is excluded, he does not have to his credit, the minimum 10 years of service and, accordingly, he would not be entitled to be paid the pension. This O.A. is filed challenging the order dated 22.09.2000, and with a prayer to direct the respondents to grant the pension and other benefits, with interest.



4. The applicant contends that there was no basis to treat the period from 07.04.1997 to 15.01.1998 as *dies non*, and that the respondents have added one more spell, i.e. from 05.10.1998 to 17.09.1999 as *dies non*.

5. The respondents filed a counter affidavit in the O.A. It is stated that the period between 07.04.1997 to 15.01.1998 is not covered by any leave or permission and, in fact, the applicant did not have any defence for such absence. It is stated that even while directing removal of the applicant from service, the DA directed the period referred to above as *dies non*; and the AA did not interfere with that observation. It is also stated that the applicant is not entitled to be paid pension, since he did not have minimum 10 years of service.

6. We heard Shri Virendra Kumar, proxy for Shri M.D. Jangra, learned counsel for the applicant and Ms. Priya Barua, proxy for Shri Gaurang Kant, learned counsel for the respondents.



7. The applicant served the Indian Army for a period of 6 years and, thereafter, he was retired on medical grounds. Disability pension was also sanctioned. As a measure of rehabilitation, the applicant was appointed as an Attender in the Office of the CAG. The applicant, however, remained absent for about 9 months. In addition to that, he is said to have produced a fabricated medical certificate, at the time of joining the duties, after prolonged absence. The 3rd allegation was that he used fabricated pay certificate by using rubber stamp of Administrative Officer, for the purpose of raising loans. A Charge Memorandum was issued and the applicant submitted an explanation. Not satisfied with that, the DA appointed the IO. For reasons best known to him, the applicant did not participate in the inquiry and in his report, the IO held the articles of charge, as proved. Through order dated 17.09.1999, the DA directed his removal from service. It was also directed that the period of unauthorized absence from 07.04.1997 to 15.01.1998 shall be treated as *dies non*. The AA modified the punishment to that of 'Compulsory



Retirement', but did not interfere with the direction as to *dies non*.

8. The applicant was in service of the respondent organization for a period of about 10 years. Had he retired from service in usual course, he would have been entitled to get the pension. However, the applicant was compulsorily retired from service, and on exclusion of the period of unauthorized absence which, in turn, was treated as *dies non*, his active service stood less than 10 years.

9. This is not a case, in which the direction to treat the period of *dies non*, was issued in a routine manner. The charges framed against the applicant are very serious in nature. Firstly, the period of absence is not supported by any document. Secondly, he brought into existence, the fabricated medical certificate. Added to that, he indulged in fabrication of certificates.

10. Under these circumstances, we do not find any basis to give any relief to the applicant and, therefore, we dismiss the O.A. There shall be no order as to costs.



(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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