

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO.3388/2001

This the 20th of November, 2002.

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Lalit Mohan S/O Gurditta Mal,
R/O E-16/1269 Khalsa Nagar,
Karol Bagh,
New Delhi-110005.

... Applicant

(By Sh.C.B.Chandera Shekhar with Sh.L.M.S.Bist, Adv.)

-versus-

Union of India through
Secretary to Govt. of India,
Dept. of Atomic Energy (DAE),
Anushakti Bhawan, C.S.M.Marg,
Mumbai-400089.

... Respondent

(By Ms. Meenu Mainee, Advocate)

O.R.D.E.R. (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant has assailed penalty of compulsory retirement from service with immediate effect imposed upon him in disciplinary proceedings initiated against him under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, vide memorandum dated 17.10.1996. The following charges were levelled against him :

"Article-I

Shri Lalit Mohan, Scientific Officer (SE), Waste Management Projects Division, Bhabha Atomic Research Centre (BARC), is highly irregular in his attendance. He attends office late/leaves early and is seldom available at the work spot. He is in the habit of remaining absent from duty unauthorisedly and very frequently without prior permission or intimation. During the years 1994 and 1995 he has remained absent from duty on 7 occasions totalling to 68 days.

By his aforesaid conduct, the said Shri Lalit Mohan has exhibited lack of devotion to duty and has acted in a manner unbecoming of a Government servant thereby controvenering the provisions of sub-rules (i)(ii) and (i)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-II

The said Shri Lalit Mohan is in the habit of signing in the incoming/outgoing register and deserting duty place due to which he is unable to complete the duties allotted to him by his superiors.

By the aforesaid conduct, the said Shri Lalit Mohan has exhibited lack of integrity and acted in a manner unbecoming of a Government servant thereby contravening the provisions of sub-rules (i)(i) and (i)(iii) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964."

2. At the outset, the learned counsel of respondents objected to the jurisdiction of the Principal Bench of this Tribunal over the matter. He stated that applicant's official address is Mumbai. Respondents are also based in Mumbai. Therefore, no cause of action has occurred in favour of applicant to file this OA in the Principal Bench at New Delhi. He further stated that applicant also has not filed any petition for transfer to file the case in the Principal Bench.

3. On behalf of applicant it has been stated that since services of applicant have been terminated by imposition of the punishment of compulsory retirement, he can maintain his residence anywhere. As he now resides in Delhi, he has filed the present OA in the Principal Bench. Rule 6(2) of the Central Administrative Tribunal (Procedure) Rules, 1987, reads :

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"(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

As applicant has been compulsorily retired and ordinarily resided in Delhi at the time of filing the application, respondents' objection regarding jurisdiction of the Principal Bench is rejected.

4. The learned counsel of applicant stated that neither the chargesheet was served upon applicant nor was copy of the enquiry report supplied to him. Respondents conducted ex parte enquiry against applicant without giving a reasonable opportunity to applicant to defend his case, thereby violating the principles of natural justice. The learned counsel stated that the punishment has been awarded with mala fide intention. He further stated that applicant has not been paid any salary for the period June, 1994 to August, 1994 and from January, 1995 to March, 1999. Applicant has sought quashing of the chargesheet, enquiry proceedings, findings of the enquiry officer and orders of the disciplinary and reviewing authorities. He has further sought reinstatement in service with full backwages as also release of pay and allowances for the period June, 1994 to August, 1994 and from January, 1995 till date.

5. On the other hand, the learned counsel of respondents stated that applicant had refused to accept the chargesheet when the same was served on him in his

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office. Copy of the chargesheet was sent to him at his local address under registered A/D which too was returned undelivered. Later on a copy of the enquiry report was also sent to him vide memorandum dated 24.4.1998 for submitting written representation, if any, against the enquiry report. Applicant refused to accept this memorandum as well and as such, no written representation was received from applicant against the enquiry report. In the circumstances, respondents had no alternative except to proceed ex parte against applicant. The UPSC was also consulted in the matter which on due consideration of records, advised vide their letter dated 17.2.1999 to impose a penalty of compulsory retirement from service. The President in exercise of powers conferred under rule 15(4) of the CCS (CCA) Rules, 1965 imposed a penalty of compulsory retirement from service on applicant with immediate effect, vide order dated 9.3.1999 (Annexure A-1). Applicant made a review petition under rule 29-A of the CCS (CCA) Rules to the President of India (Annexure-2) stating that he was required to visit his native place Ambala frequently during 1994-95. He used to apply for leave in advance but the administration started harassing him and stopped his salary. In the review petition, applicant stated, "I do not intend to delve into the merits of the case". He stated that his immediate controlling officer started refusing his leave whenever he applied alleging, "perhaps my superior had developed bias against me". In the review orders dated 21.12.2000 (Annexure A-3), it has been observed that applicant had not brought out any new material or facts in his review petition which could

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change the nature of the case and that his case does not merit review.

6. From the material on record, it has been established that applicant had refused to accept the chargesheet when the same was served on him in his office. It was again sent to him at his local address under registered A/D which too was received back undelivered. A copy of the enquiry report was also sent to applicant vide memorandum dated 24.4.1998 for submitting written representation against the enquiry report. This too applicant refused to accept. In the circumstances, applicant did not participate in the enquiry proceedings on his own volition and the enquiry officer had no alternative except to proceed *ex parte* against him. However, he filed review petition after the disciplinary authority imposed a punishment of compulsory retirement from service upon him. We find that applicant had not brought out any new facts and material in the review petition.

7. We find that whereas applicant had refused to accept the chargesheet and the enquiry report, he did not participate in the enquiry. He neither participated in the enquiry nor did he submit any written representation against the enquiry report. In the circumstances, respondents were in the right to proceed *ex parte* against applicant. Applicant did not bring out any new facts and material before the reviewing authority nor has he established any mala fides against the authorities. Through the present proceedings

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applicant is seeking to put the clock behind which is just impossible due to applicant's own conduct. He has been personally responsible in refusing to accept important communications related to the proceedings against him. He cannot shrug away the consequences of his own sins. It is his own admission that he used to submit applications for absence and leave which were not being sanctioned. Leave is not a matter of right. When his leave applications were not being sanctioned, he remained absent from duty frequently. Apart from the disciplinary action, he could not have been paid salary for such periods. Respondents have fairly stated that salary was due to applicant for the period June-December, 1994. Salary for the months of June, July and September, 1994 was drawn through a supplementary bill but applicant did not collect the salary and the cheque had to be cancelled. Salary for the month of August, 1994 was not drawn. Salary for October, 1994 to December, 1994 was drawn but applicant failed to collect his salary. The unauthorised absence of applicant w.e.f. 1.3.1995 to 17.3.1999 has been treated as dies non. Having regard to this, we find that salary has been due to applicant during the period June-December, 1994 which could not be paid to applicant because of his own conduct.

8. Having regard to the reasons and discussion made above, we do not ¹⁶ find any infirmity in the proceedings against applicant. Respondents had taken appropriate action as per law and rules in conducting the disciplinary proceedings against applicant. Applicant did not avail himself of the reasonable opportunity

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provided by respondents to him to defend his case. Respondents have not violated any principles of natural justice and have not erred in conducting ex parte enquiry against him. We do not find any justification for interfering with the punishment imposed upon applicant in disciplinary proceedings against him. However, applicant is entitled to pay and allowances for the period June-December, 1994. Respondents are directed to pay the same to applicant with interest at the rate of 10% per annum within a period of two months from the date of communication of these orders.

9. The OA is disposed of in the above terms. No costs.

V. Majotra
(V. K. Majotra)
Member (A)

V. S. Aggarwal
(V. S. Aggarwal)
Chairman

/as/