

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1821/99

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 27th day of March, 2001

Inder Pal
s/o Shri Kalicharan
r/o House No.902, Khazan Basti
Nangalpuri
New Delhi - 46.

... Applicant

(By Advocate: Mrs. Meera Chhibber)

Vs.

1. Union of India through
Secretary
Ministry of Defence
South Block
New Delhi.
2. Vice Chief of Army Staff
South Block
New Delhi.
3. D.G. Ordnance Services
Master Gen of the Ordnance Branch
Army Head quarters, DHQ, PO
Delhi - 11.
4. Comandant
COD Agra.

... Respondents

(By Advocate: Shri A.K.Bhardwaj)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant was employed as Labourer in ordnance department. On account of his sickness he remained absent from duty w.e.f 3.12.1991 to 6.11.1994. A departmental enquiry had been held, wherein the applicant had been awarded a major punishment of compulsory retirement from service which was later on confirmed by the appellate as well as revisional authority. The above orders are under challenge in this OA. The applicant, after being declared fit for his duty voluntarily, vide letter dated 20.4.1994 have submitted the medical report as

well as the circumstances leading to the absent. The applicant was issued a memorandum alleging that the conduct of a Government servant by remaining absent from 3.12.1991 to 6.11.1994 without intimation to the competent authority is treated as a grave misconduct. It is further alleged that despite sending various communications he is neither reported to the duty nor he informed the department rather the communications received back undelivered with the remarks that the individual was not found. On 16.5.1995 the applicant had sent his reply to the charge sheet where he had appraised the respondents by quoting the letter dated 30.4.1979 and stated that the medical record issued to him is legally recognised by the Department. The applicant had also contended that he had not been served any of the documents along with the memorandum particularly the communications sent to him on 7.2.1992 and 5.4.1993. During the course of the enquiry the applicant was questioned by the presenting officer as well as by the enquiry officer on the basis of the material brought on record, the applicant has been held guilty of the charge of not seeking permission and failure to inform the department while leaving the station and consequently absenting himself for a period of about three years. A show cause notice was issued to the applicant whereby a major penalty of compulsory retirement was proposed to him by the disciplinary authority vide letter dated 27.7.1995 which was issued under Rule 19(ii) of CCS (CCA) Rules, 1965. In response to the show-cause notice a reply was filed and the disciplinary authority, according to the applicant, without taking into account his medical papers and his defence,

imposed the punishment of compulsory retirement. The same was carried in an appeal whereby the same was maintained vide order dated 29.3.1996. Thereafter on filing a revision petition the revisional authority vide order dated 3.8.1998 maintained the punishment. Hence, the applicant filed this OA.

2. At the outset, several contentions had taken by the learned counsel for the applicant. It has been contended, though not taken in the OA, that while issuing the show cause notice dated 27.7.1995 to the applicant the disciplinary authority had proposed which is contrary to the law laid down by the Hon'ble Apex Court in Managing Director, ECIL, Vs. B.Karunakar & Ors., JT 1993(6) SC 1. It is further contended that this pre-determined mind of the disciplinary authority to impose a punishment is illegal as per Rule 15(2) of CCS (CCA) Rules which is reproduced as under:

"[(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4)].

3. It is contended that the disciplinary authority has to furnish a copy of the enquiry report with an observation that a final decision is to be arrived at and on receipt of the reply to the same with a view to accord an opportunity to represent against the view taken by the enquiry officer. It is further stated that it is not legally permissible to indicate any penalty in the show cause notice in view of ratio laid down by Mohd. Ramjan's case and subsequently by the Constitutional Bench in ECIL's case supra.

4. The learned counsel for the respondents has mainly contested the OA on the ground that the same is barred by limitation and also that the applicant had committed a grave misconduct by absenting himself without reason for a period of three years that too without intimation. According to Shri A.K.Bhardwaj, learned counsel for the respondents, the appeal preferred by the applicant was rejected on 29.3.1996 as such he could have approached this Tribunal upto 22.3.1997 and as the OA was filed on 19.8.1999, the same is hopelessly barred by limitation. It is further contended by the learned counsel for the respondents that the applicant had not submitted the medical record in time and the communication sent to him clearly indicated that he was not available at his residence. According to him, the orders passed by the disciplinary authority and confirmed by the appellate and revisional authorities are in accordance with law.

5. We have carefully gone through the rival contentions of the parties and perused the material on record. As regards the question of limitation is concerned we find that the applicant being aggrieved with the penalty of compulsory retirement had preferred an appeal which was rejected on 29.3.1996. Thereafter, the applicant availed the statutory remedy of revision and the same was considered and rejected on merits on 3.8.1998. In our view, having considered the representation and rejected it on 3.8.1998 on merits and not on the ground of limitation, the cause of action has accrued to the applicant on 3.8.1998. As the applicant had filed the OA on 19.8.1999 the same is within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 as such the preliminary objection of the respondents is rejected. We hold that the present OA is within the limitation period. Though several contentions had been taken by the learned counsel for the applicant, we proceeded to dispose of this OA only on one legal issue and rest of the contentions of the applicant are not adjudicated. As this plea is purely a question of law the same can be entertained in view of the ratio laid down by Hon'ble Apex Court in 1993 SCC (L&S) 11.

6. We find from the show cause notice issued by the disciplinary authority on 27.7.1995 that instead of forwarding the finding of the enquiry officer to give an opportunity to the applicant to file a representation the disciplinary authority acceded his jurisdiction by proposing the punishment which is contrary to Rule 15(2) *ibid* and also contrary

to the ratio laid down by the Hon'ble Apex Court in Constitutional Bench of ECIL's case supra. The penalty proposed was later on confirmed by Disciplinary Authority and also by the appellate and revisional authorities. This clearly shows the pre-determined mind of the disciplinary authority to punish the applicant, even without waiting for his reply and without his defence on the finding. In our view, the disciplinary authority had already taken a view about the guilt of the applicant and a mere formality had been discharged to give him an opportunity. This clearly shows bias of the disciplinary authority, who had acted in derogation of the rules. On this score alone, the order of the disciplinary authority is liable to be declared illegal.

7. We also find during the course of the submissions made by the learned counsel for the applicant that despite submissions of medical papers and having been existed in the record of the disciplinary proceedings the disciplinary authority had wrongly observed that the medical record of the applicant had not been produced by the applicant. Though in the counter reply of the respondents, it is stated that the same was submitted on 7.8.1995, i.e., after completion of the oral enquiry as against the claim of the applicant that the same was tendered to the respondents on 20.12.1994 along with reply to the memorandum. Whatsoever may be the fact remains is that the medical record of the applicant and his reasons for remaining absent from duty were not been considered before taking into action by the

disciplinary authority. In this view of ours, we are fortified by an order passed by this Tribunal on 4.1.2001 in OA 2484/95 in Shri Brij Gopal Vs. Commissioner of Police & Others.

8. Having regard to the reasons and discussions made above, we set aside the impugned order of compulsory retirement dated 24.8.1995 as well as the appellate order dated 23.9.1996 and the order of revision dated 3.8.1998. The respondents are directed to reinstate the applicant forthwith in service. However the matter is remanded back to the disciplinary authority for passing a fresh order giving an opportunity to the applicant to present his case for filing a representation. The period intervening from the date of compulsory retirement to the date of reinstatement shall be decided by the disciplinary authority at the time of passing the final order in accordance with the rules and instructions on the subject. The applicant, if still aggrieved, is at liberty to seek appropriate remedy in accordance with law. The OA is accordingly allowed. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/

V.K. Majotra

(V.K. MAJOTRA)
MEMBER(A)