

Central Administrative Tribunal
Principal Bench

O.A. 670/96

New Delhi this the 3rd day of February 2000

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J). 22

Shri V.P. Madan,
R/o 7, National Park,
Lajpat Nagar-IV,
New Delhi-110024.

Applicant.

By Advocate Shri Jog Singh.

Versus

1. Union of India & another
through Secretary,
Ministry of Defence,
Office of the BS (Trg.) & CAO,
C-11, Hutmants,
DHQ, PO New Delhi-11.

2. Chief Administrative Officer,
Ministry of Defence,
Office of the BS (Trg.) & CAO,
C-11, Hutmants,
DHQ, PO, New Delhi-11.

Respondents.

By Advocate Shri Harveer Singh proxy for Mrs. Pritma Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicant is aggrieved by the order passed by the respondents dated 9.11.1995 dismissing him from service.

2. The brief facts of the case are that this is the second application filed by the applicant, earlier one was O.A. 623/87. That O.A. was disposed of by the Tribunal's order dated 31.1.1994 (Annexure 'C') in which the Tribunal had quashed the impugned order dated 14.2.1986 of the disciplinary authority and directed the respondents to reinstate the applicant within a period of one month. The Tribunal had also given the liberty to the respondents to

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proceed against the applicant in the disciplinary proceedings in accordance with law. The SLP filed by the respondents against the Tribunal's order was dismissed by the Supreme Court by order dated 3.10.1994. In pursuance of the Tribunal's order, the applicant was reinstated in service. The respondents had also proceeded with the disciplinary proceedings.

3. The main contention of Shri Jog Singh, learned counsel for the applicant in the present Original Application is that the applicant has not been served with a charge-sheet and no reply has been given which is in violation of the provisions of Rules 14(4) and (5) of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules'). He has stated that under sub-rule (4) of Rule 14, the provision is that the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses and the Government servant may submit a reply within the specified period. Learned counsel has very vehemently submitted that after the applicant was reinstated in service on 20.10.1994, no charge-sheet had been served on him and the respondents could not proceed with the disciplinary proceedings which is, therefore, illegal and void. He has submitted that non-delivery of the charge-sheet by the disciplinary authority to the applicant is also against the principles of natural justice as he was not given an opportunity to admit or deny the charge. His contention is that it is only thereafter the respondents could have proceeded with the

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disciplinary proceedings. He has also submitted that after the Tribunal's order, the respondents straightway proceeded to appoint the Inquiry Officer and Presenting Officer and the charge-sheet was also given by the Inquiry Officer and not by the disciplinary authority, as required under Rule 14(4) of the Rules. According to him, the procedure as laid down under sub-rules (4) (5) and (6) of Rule 14 having not been followed by the respondents which defect vitiates the disciplinary proceedings and the penalty order passed thereafter which has been impugned in this O.A. He has also vehemently pleaded that the applicant was not allowed to call any witness, like his Doctor, in his defence.

4. Another ground taken by the applicant's counsel is that in the Memorandum dated 22.10.1985 issued to the applicant containing the articles of charge together with list of documents and list of witnesses in Annexure IV, the articles of charge framed are mentioned against Shri Vikram Rampal Computer whereas the applicant's name is V.P. Madan. This, he submits, shows non-application of mind.

5. Learned counsel for the applicant has also submitted that the impugned penalty order is harsh and disproportionate to the charges held proved against the applicant of unauthorised absence. He has also submitted that during the period of suspension, he has not been paid subsistence allowance. In the alternate prayer, the applicant has also submitted that he may be allowed to voluntarily retire from service as he has completed more than 21 years of service, excluding the period during which he was under deemed suspension i.e. from 1986 to 1994. Learned counsel has also stressed on the fact that the charge against

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the applicant for unauthorised absence should be viewed from the applicant's condition which had completely deteriorated from 1984 onwards to the extent that he had lost all control over his mental and other faculties and was not in a position to know where he was during that period. For these reasons, the learned counsel has prayed that the impugned penalty order dated 9.11.1995 may be quashed and set aside and the applicant may be permitted to voluntarily retire from service and he may be given the subsistence allowance for the entire period of his suspension.

6. We have seen the reply filed by the respondents and heard Shri Harveer Singh, learned proxy counsel. The respondents have submitted that in accordance with the Tribunal's order in OA 623/87, they had proceeded with the disciplinary proceedings. Accordingly, an Inquiry Officer was appointed to inquire into the case and the applicant participated in the inquiry proceedings. The Inquiry Officer submitted his report on 26.4.1995 in which it had been mentioned that the applicant had not produced any documentary proof/medical certificates justifying his absence and hence concluded that the charge of unauthorised absence was proved. Copy of the inquiry report was provided to the applicant who made a representation dated 7.7.1995 indicating mental illness as a reason for his unauthorised absence. After examination of the relevant facts and documents by the disciplinary authority, the charge of unauthorised absence was held as established who then imposed the penalty of dismissal from service. Against this dismissal order, the applicant had submitted an appeal which has also been properly considered by the appellate authority who has confirmed the punishment. Shri Harbir Singh, learned proxy

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counsel has submitted that the applicant has been afforded a reasonable opportunity of hearing in accordance with the Rules in the disciplinary proceedings conducted against him. He has also submitted that the competent authorities have fully appreciated the facts and circumstances of the case and there is no arbitrariness in the impugned order. He has drawn our attention to the Memorandum dated 22.10.1985 issued to the applicant in which it has been stated that the period of absence for the period from 24.4.1984 to 22.5.1984 and 3.6.1984 to 16.6.1984 has been regularised by grant of leave. However, the applicant had not submitted any leave application for the period from 23.5.1984 to 2.6.1984. He has also submitted that since the applicant did not plead guilty to the charge of unauthorised absence levelled against him, further action was taken to conduct the proceedings in which the applicant had also participated. He has submitted that in the inquiry report, the Inquiry Officer had also mentioned that the charged employee had informed him that he did not wish to inspect any additional document nor did he wish to examine any witness in his defence, excepting himself as a witness. The learned proxy counsel has submitted that the applicant's counsel cannot now take the grounds that the applicant was not allowed to produce his witnesses as he himself had mentioned otherwise before the Inquiry Officer at the time of the inquiry. He has, therefore, submitted that as the departmental proceedings have been held in accordance with the Rules and the applicant has been given a reasonable opportunity of hearing, there is no merit in this O.A. and the same may accordingly be dismissed.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

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8. One of the main grounds taken by Shri Jog Singh, learned counsel is that the penalty of dismissal imposed on the applicant has been done without even issuing a charge-sheet to him in the departmental proceedings. We are unable to agree with this contention. In the previous application (OA 623/87) which was filed by the applicant, the Tribunal in its order dated 31.1.1994 had observed that "refusal to accept a registered document, is good service. In that view of the matter, the charge-sheet should have been taken to have been served on the applicant". Further, the Tribunal had directed the respondents to reinstate the applicant and left it open to them to proceed against him in the disciplinary proceedings in accordance with law. Thereafter, the respondents have issued Memorandum dated 22.10.1985 to the applicant along with articles of charge which has been issued by the Deputy Chief Administrative Officer. This Memorandum also contains the list of documents and list of witnesses by which articles of charge were proposed to be prepared. The mention of the wrong name, namely, Shri Vikram Rampal, Computer in this document in Annexure-IV, instead of the applicant's name at that place by itself does not vitiate the proceedings as it is clear from the rest of the paragraphs that the charge relates to the applicant, Shri V.P. Madan, Computer whose name has been correctly mentioned.

9. It is seen that after the Tribunal's order in O.A.623/87, the respondents have passed an order dated 16.12.1994 in which it has been stated that he was reinstated in service vide order dated 20.10.1994. By this order, the Deputy Chief Administrative Officer (P) has stated that the

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disciplinary proceeding which had been initiated against the applicant vide Memo dated 22.10.1985 is to be continued which is also in terms of the Tribunal's order dated 31.1.1994. Accordingly, the competent authority has appointed the Inquiry Officer as well as Presenting Officer to proceed further with the departmental inquiry.

10. The applicant's contention that he had not been served with the charge-sheet before holding the departmental inquiry in pursuance of the Tribunal's order dated 31.1.1994 appears to be an after thought as this plea had not been taken by him during the proceedings held against him by the department in which he had also participated. At the time of hearing it was stated that no reply was given by the applicant and the inquiry was held on four days when the applicant was present and had stated, inter alia, that he did not wish inspect the additional documents or examine any witnesses excepting himself. In the circumstances, the very vehement contention of Shri Jog Singh, learned counsel that the applicant was not allowed to call his Doctor and other witnesses in the departmental proceedings and was, therefore, not given a reasonable opportunity of hearing is without any basis and is accordingly rejected.

11. The applicant's counsel has submitted that the applicant should have been allowed to voluntarily retire from service and the penalty is too harsh. Taking into account the facts and circumstances of the case, we are unable to agree with this contention. It is settled law that unless the penalty imposed is so harsh and shocking, normally the Tribunal should not interfere with the quantum of punishment which has been imposed by the competent authority after

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taking into account the relevant facts, evidence and documents placed before it. In the present case, it is seen from the impugned order that the disciplinary authority had taken into account the leave application submitted by the applicant for part of the period i.e. 23.5.1985 to 2.6.1984. According to the learned counsel for the applicant, from 1.7.1984 the applicant had lost his memory and had wandered away from his house. All these facts and the other contentions raised by the applicant's counsel have been taken into account by the competent authority while holding that the charge of unauthorised absence is proved from the documents on record. In the facts and circumstances of the case, therefore, we are unable to agree with the contentions of the learned counsel for the applicant that the quantum of punishment is too harsh or shocking to warrant any interference in the matter, taking into account the settled law on the subject of exercise of powers of judicial review in such cases. (See the observations of the Hon'ble Supreme Court in **Union of India Vs. Parma Nanda** (AIR 1989 SC 1185), **B.C. Chaturvedi Vs. Union of India** (JT 1995 (8) SC 65) and **Government of Tamil Nadu Vs. A Rajapandian** (AIR 1995 SC 561)). We have also considered the other contentions raised by the learned counsel for the applicant but do not find any of the grounds sufficient to justify setting aside the impugned dismissal order passed by the competent authority dated 9.11.1995.

12. Learned counsel for the applicant has submitted during hearing that the respondents have failed to pay the subsistence allowance during the period the applicant was under suspension. If this is so, it should be got verified by the respondents from the records, and the due amounts

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payable as subsistence allowance to the applicant for the period of his suspension should be paid to him without any further delay.

13. In the result, for the reasons given above, O.A. fails as regards quashing of the impugned penalty order dated 9.11.1995 dismissing him from service. However, any amount due to the applicant as mentioned in paragraph 12 above shall be paid to him, in accordance with the rules and instructions, within two months from the date of receipt of a copy of this order.

No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

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(S.R. Adige)
Vice Chairman (A)

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