

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2038/97

195

T.A.No.

DATE OF DECISION 24-10-2000

Jagdish(deceased) through hisPetitioner(s)
wife Sarla

Sh.Yogesh Sharma

.....Advocate for the
Petitioner(s)

VERSUS

UOW and Ors

....Respondent

Sh.V.S.R. Krishna

.....Advocate for the
Respondents.

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

The Hon'ble Sh. V.K.Majotra, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal etc.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O. A. 2038/97

New Delhi this the 24 th day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri V.K. Majotra, Member(A).

Jagdish (deceased) through his wife Sarla
S/o Shri Baljeet Singh,
R/o Gaur Bhawan, Gali No. 40,
Sadh Nagar-II, New Delhi-45. Applicant.

(By Advocate Shri Yogesh Sharma)

Versus

1. Union of India through
The Secretary, Ministry of Defence,
Govt. of India, New Delhi.
2. The Director General,
Ordnance Factories Board,
10-A, Aukland Road, Calcutta (WB).
3. The General Manager,
Ordnance Factory,
Muradnagar, Distt-Ghaziabad (UP). Respondents.

(By Advocate Shri V.S.R. Krishna).

O R D E R

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

The applicant is aggrieved by the penalty orders passed by the respondents removing him from service, namely, the disciplinary authority's order dated 8.3.1995, the appellate authority's order dated 18.6.1996 and the order passed by the revisional authority dated 15.9.1999. These penalty orders have been passed against the applicant after holding a disciplinary inquiry under Rule 14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules').

2. The relevant portion of the allegations against the applicant as given in the Inquiry Officer's report reads as follows:

82

"Shri Jagdish T No.1062/1324/CM Fitter 'Gen' (SSK) was detailed in 'G' Tubewell from 6 AM to 3 PM on 8.7.94. On completion of his duty in 'G' Tubewell, he was expected to report in C.M. Section to sign his attendance register as well as to take monthly wages till the payment of monthly wages was scheduled at 3 p.m. on 8.7.94. Shri Jagdish after completion of his duty did not report neither to take his wages nor to sign the attendance register. The JWM/CM on noticing that Shri Jagdish was not available in the Section deleted the T.No. of said Shri Jagdish from the Gate Pass given to IES whose duty was finished at 3 PM. JWM/CM waited Shri Jagdish upto 4.15 P.M. till the payment of wages completed and when Shri Jagdish did not report in C.M. section at all, arranged to search him at G. Tubewell, but he was not available there too. Next day, JWM/CM reported his missing from the place of his duty vide Memorandum No.1/CM/94 dated 9.7.1994 also giving a reference of his missing under the similar condition on 14.6.94".

Part of the charge dated 22.8.1994 further reads as follows:

"Gross-Misconduct - Remaining absent from duty place unauthorisedly, leaving duty place again and again and unbecoming of a Government servant by indulging in an indecent act in so far as the said Shri Jagdish, on 8.7.94 while detailed for duty at 'G' tubewell from 6.00 A.M. to 3.00 PM remained absent from there unauthorisedly. Therefore, he neither turned up to receive his wages nor on completion of his duty time i.e. upto 3.00 PM reached at C.M. Section. He was also found absent unauthorisedly from his duty place on 14.6.94 and by this, it seems that he is habitual of leaving his place of work unauthorisedly. Such a conduct of Shri Jagdish is highly objectionable, indisciplined and in violation of Rule 3 of the CCS (Conduct) Rules, 1964".

3. Shri Yogesh Sharma, learned counsel for the applicant has submitted that the charge-sheet dated 22.8.1994 is vague and not specific. He has submitted that the details of applicant's absence unauthorisedly from duty place on 14.6.1994 have not been given in the charge-sheet and hence, the respondents could not have taken into account this absence. He has also submitted that in the charge-sheet itself, they have stated that the applicant has

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left his duty place again and again and the details of these incidents have not been given, excepting the vague reference of his absence from duty place on 14.6.1994. He has submitted that the applicant was not absent from duty on 8.7.1994 while detailed for duty at G. Tubewell from 6 AM to 3 P.M. He has pointed out that in the charge-sheet, it is mentioned that as the applicant neither turned up to receive his wages nor on completion of his duty time, that is upto 3.00 P.M. reached C.M. Section to sign the register, the respondents have assumed that he was absent from duty. He has pointed out that it has only been reported that the applicant has not turned up on completion of his duty as he has not come to the CM Section but it cannot be assumed that the applicant was absent from duty place unauthorisedly till 3 p.m. Learned counsel has submitted that the payment was to start by 3 p.m. and since by that time he had received a message that his wife was unwell, he had rushed home. He has also submitted that if the Inquiry Officer was taking into account the past record of the applicant, the details of the absence on 14.6.1994 mentioned in the charge-sheet ought to have been provided in accordance with the Govt. of India O.M. dated 28.8.1968, which is mentioned below Rule 15 of the Rules, which has also not been complied with by the respondents. He has also submitted that the sole defence witness, namely, Shri Harkesh was produced by him but his submissions have not been believed or considered and no reasons have been given for it. He has, therefore, submitted that the conduct of the Inquiry Officer is contrary to the principles of natural justice.

4. Another ground taken by the learned counsel for the applicant is that in the present case, the charge against the applicant was that he was absent from duty for one day and on that charge, a penalty of removal from service has been imposed which is, therefore, disproportionate. He has submitted that the applicant has put in about 23 years of service and in the charge sheet only two dates have been given when it is alleged that he was unauthorisedly absent from duty. He has submitted that the penalty order of removal from service for being absent only for one day is excessive and disproportionate. He has relied on the judgement of the Supreme Court in **U.P. State Road Transport Corporation and Ors. Vs. Mahesh Kumar Mishra & Ors.** (AIR 2000 SC 1151). He has also submitted that all the relevant copies of documents relied upon in the charge-sheet have not been given to the applicant, which has been denied by the respondents who have stated that the relied upon documents have been supplied to him.

5. The applicant has also submitted that as he has already been punished in the past for any misbehaviour or misconduct, he cannot again be punished as this would amount to doubt jeopardy. He has relied on **Satpal Singh Vs. State of Haryana & Ors.** (1999(2) SLR P-321). In this case, the Punjab and Haryana High Court has held that the Inquiry Officer as well as the punishing authority have taken into account the earlier periods of absence for which the petitioner had already been punished. In the above circumstances, it was held that the same cannot be made the subject matter of the enquiry and the petitioner cannot be dismissed from service taking into account the earlier absence and the principles of double jeopardy would apply.

In that case, the petitioner had died and the Court had ordered the respondents to pay all consequential monetary benefits to the legal representatives of the deceased from the date of dismissal to the date of his death and also grant them family pension. Learned counsel has, therefore, prayed that the punishment orders may be quashed and set aside with consequential monetary benefits, including family pension to the legal representatives of the applicant, who has unfortunately passed away during the pendency of this O.A.

6. The disciplinary authority in his order dated 8.3.1995 has stated that a copy of the Inquiry Officer's report dated 22.8.1994 was furnished to the applicant, but he did not make any representation on the same. He has stated that after considering the relevant factors and circumstances of the case, he has imposed the penalty of removal from service. The appeal filed against the punishment order was disposed of by the appellate authority vide order dated 18.6.1996, who had also held that the charges have been held proved in the departmental inquiry based on the evidence. In this order, he has also stated that a copy of the complaint dated 9.7.1994 had been supplied to the appellate along with the charge-memo and a copy of the memo dated 14.6.1994, which reference had been given in the said complaint dated 9.7.1994. The appellate authority has stated that the "Past offences have been incorporated in the charge-sheet as per laid down procedure" and the appellant himself admitted that he was punished from time to time for missing from duty place, which shows that he is a habitual offender. The appellate authority confirmed the order of removal from service of the applicant

82.

and rejected the appeal. The revision petition filed by the applicant was also rejected by order dated 15.9.1999 which is also impugned by the applicant in the amended O.A.

7. We have seen the reply filed by the respondents and heard Shri V.S.R. Krishna, learned counsel. In the reply, the respondents have referred to a series of penalties imposed on the applicant, late Shri Jagdish, for his misconduct, such as that he was censured for negligence towards his duty, withholding of increment of pay and reduction in pay for consuming alcohol while on duty, withholding of increment of pay for indiscipline and carelessness in his duty, imposed by order dated 3.6.1993, reduction in pay again for negligence of duty by order dated 14.2.1994 followed by the present penalty order of removal from service w.e.f. 8.3.1995 for being absent from duty unauthorisedly. Learned counsel has submitted that the applicant has been provided reasonable opportunity to defend his case in the charge-sheet filed against him for being absent from duty on 8.7.1994. He has submitted that taking into account the past conduct of the applicant and the various penalties imposed on him as given in detail in the reply, the penalty of removal from service is not excessive. He has submitted that none of the grounds taken by the applicant in the O.A. is sufficient to set aside the penalty orders. He has submitted that in the charge-sheet, it has been stated that he had been found absent from duty unauthorisedly and leaving duty place "again and again" and hence, there was nothing wrong in the disciplinary authority taking into account his past conduct. He has also submitted that the Tribunal should not go into the evidence so as to reassess the same or to arrive at a decision based on

13

sympathy. He has submitted that since the penalty orders have been passed by the competent authorities taking into consideration all the relevant factors and after holding the disciplinary proceedings in accordance with the Rules, he has prayed that the O.A. may be dismissed.

8. In the rejoinder filed by the applicant, he has reiterated his stand taken in the O.A. that he has performed the duty, as required from 6 A.M. to 3 P.M. on 8.7.1994. He has submitted that the co-worker Shri Harkesh had told him that his wife was not well and he should reach home immediately. Therefore, the applicant had left the queue where he was standing for receiving his payment, forgetting also to take the Gate Pass to leave the duty. Learned counsel has, therefore, submitted that there has been no misconduct on the part of the applicant.

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

10. In the charge-sheet dated 22.8.1994 issued by the respondents, they have referred to the applicant being absent from duty place unauthorisedly and leaving duty place "again and again," which is unbecoming of a Government servant by indulging in an indecent act in so far as on 8.7.1994, he had been detailed for duty at G. Tubewell from 6 AM to 3 PM and he had remained absent from there unauthorisedly. After making these allegations, it is stated that he neither turned up to receive his wages nor on completion of his duty time, i.e. upto 3 P.M. reached the C.M. Section. The conclusion that the applicant had remained absent from duty at G. Tubewell on 8.7.1994 seems to be based on the fact

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20

that he had not turned up on completion of his duty at 3 P.M. or thereafter as he had not reached the C.M. Section. The reference to his unauthorised absence from duty place on 14.6.1994 has also not been sufficiently explained in the charge-sheet. In the brief history of the case given by the respondents in their reply, there is also no reference regarding his absence from duty on 14.6.1994 or to the penalty imposed on the applicant for his alleged misconduct of that date. In the facts and circumstances of the case, we find force in the contentions of Shri Yogesh Sharma, learned counsel, that the charge-sheet issued to the applicant on 22.8.1994 is vague and does not comply with the requirements of the provisions of the Govt. of India O.M. dated 28.8.1968. The charge-sheet has not mentioned any details of the periods he was found absent from duty unauthorisedly repeatedly on previous occasions. The details given in the brief history of the case by the respondents also appear to be for other alleged misconduct, but does not say that he has been again and again absent from duty place unauthorisedly, which is what has been alleged in the charge-sheet in question dated 22.8.1994. In the facts and circumstances of the case, the charge-sheet is vague and not in accordance with the relevant rules and instructions, i.e. Rule 15 of the Rules read with the Govt. of India O.M. dated 28.8.1968.

11. In the reply filed by the respondents, they have referred to a series of penalties which have been imposed on the applicant for misconduct. The High Court of Punjab and Haryana in **Satpal Singh's case (supra)** has observed that the principle of double jeopardy will apply to the facts of the case as the petitioner had also been awarded punishment for

21

his absence for the earlier period, the same cannot be made the subject matter of the inquiry and the order of dismissal from service cannot be imposed taking into consideration the earlier absences. In the circumstances of the case, since no detail of unauthorised absence from duty on 14.6.1994 has been given in the charge memo dated 22.8.1994 or what punishment, if any, was imposed for that misconduct, it appears that for the alleged absence from duty for one day i.e. on 8.7.1994, which is also disputed by the applicant, a penalty of removal from service has been imposed on the applicant. The applicant has stated that he had rendered 23 years of service and even in the charge-sheet only two dates of absence from duty have been mentioned. Shri V.S.R. Krishna, learned counsel has submitted that the place of duty of the applicant has to be considered, that is, the Tubewell in the Ordnance Factory which is very essential and, therefore, the punishment imposed is not to be considered as excessive or unwarranted. However, taking into account the facts and circumstances of the case, we are unable to agree with this contention of the respondents. In the charge-sheet there is a clear reference to absence from duty for one day, that is 8.7.1994 on the ground that he did not turn up to receive his wages on completion of his duty, that is upto 3 p.m. at the C.M. Section to receive his payment. As mentioned above, the details of absence from duty on 14.6.1994 have not been given in the charge-sheet and, therefore, the charge-sheet is defective. In this view of the matter, even if it is taken that the charge against the applicant that he was found absent from duty w.e.f. 8.7.1994 is held proved, as concluded by the Inquiry Officer, the disciplinary authority and the appellate authority, the punishment imposed of removal from service is harsh and excessive. The appellate authority in his order

dated 18.6.1996 has taken into account the past offences, which again is erroneous as the reference is only to one incident of absence from duty on 14.6.1996. Therefore, in the facts and circumstances of the case, the penalty orders of removal from service imposed on the applicant deserve to be quashed and set aside.

12. In U.P. State Road Transport Corporation's case (supra), the Supreme Court has quoted with approval the relevant portion of the earlier three Judges Bench judgement of the Apex Court in B.C. Chaturvedi Vs. Union of India (1995(6) SCC 749) wherein it has been held:

"A review of the above legal position would establish that the disciplinary authority and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion or penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof".

13. The penalty orders imposed by the disciplinary authority and the appellate authority on the applicant for being absent from duty on 8.7.1994 indeed shocks our conscience. Therefore, normally we would have remitted the case to the appellate authority to reconsider the matter and impose a more appropriate penalty on the applicant in accordance with law and having regard to the observations of the Supreme Court in B.C. Chaturvedi's case (supra). However, in the present case, the applicant has expired

P2

during the pendency of this O.A. During the hearing, Shri Yogesh, learned counsel has submitted that the legal representatives of the applicant do not claim any back wages but would be satisfied if they are granted family pension, after quashing the penalty orders of removal from service. Accordingly, in the circumstances of the case, we quash the impugned penalty orders of removal from service passed against the late Shri Jagdish. Further, it is ordered that the respondents shall treat the applicant as compulsorily retired instead of removed from service with effect from the same date with consequential monetary benefits.

14. In the result, for the reasons given above, the O.A. is allowed and the impugned penalty orders dated 8.3.1995, 18.6.1996 and 15.9.1999 are quashed and set aside. The respondents are directed to pay all consequential monetary benefits to the legal representatives of the applicant from the due dates, including granting retiral benefits and family pension payable to his dependents, in accordance with the relevant law, rules and instructions. No order as to costs.

V.K. Majotra

(V.K. Majotra)
Member(A)

Lakshmi Swaminathan

(Smt: Lakshmi Swaminathan)
Member(J)

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