

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2881/97

(6)

New Delhi, this the 24th day of February, 1999

HON'BLE SHRI S.R.ADIGE, VICE-CHAIRMAN (A)

HON'BLE SHRI T.N. BHAT, MEMBER (J)

In the matter of:

S.C. Saxena,
s/o Shri Ram Charan Lal Saxena,
r/o House No. 830, Kucha Pati Ram,
Delhi.Applicant

(By Advocate: Shri B.B.Raval)

Versus

1. Union of India through

The Secretary,
Ministry of Home Affairs,
Government of India.
North Block, New Delhi.

2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.

3. Shri M.M.Kapoor,
Assistant Director,
Intelligence Bureau,
Ministry of Home Affairs,
North Block, New Delhi.Respondents

(By Advocate: Shri R.V.Sinha)

O R D E R

Hon'ble Shri T.N.Bhat, Member (J)

The applicant, who was working as U.D.C. in the Intelligence Bureau (hereinafter referred to as I.B., for short), has been awarded the major punishment of compulsory retirement from service by the order dated 27.4.1992 passed by the Assistant Director, I.B., New Delhi and the appeal filed by him against the said punishment order has also been rejected by the order dated 24.10.1997 by the Deputy

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Director, acting as the appellate authority as per the relevant rules. Aggrieved by both the aforesaid orders the applicant has filed this O.A.

2. The applicant had earlier also come to the Tribunal assailing the punishment order dated 27.4.1992 but that O.A was disposed of with a direction to the appellate authority to consider the appeal as and when filed by the applicant against the punishment order and while doing so to condone the delay in filing the appeal. It is in pursuance to the aforesaid direction of the Tribunal that the applicant filed the appeal and the appellate authority considered and disposed of the same.

3. The charge against the applicant was that he had absented himself from 7.7.1989. It is further stated in the charge memo that the applicant was transferred from I.B. Headquarters New Delhi to SIB Tezpur vide an order issued by the competent authority on 6.7.1989 but that instead of reporting for duty at Tezpur the applicant started submitting medical certificates and representations for cancellation of his transfer order on the ground of his illness as also the illness of his family members, which certificates and representations/applications were returned to him, as he was not on the roll of the Headquarters office, and he was accordingly advised to correspond directly with SIB Tezpur. The applicant, according to the charge memo, was also directed vide Memo dated 27.10.1989 to appear before the Medical Superintendent, Dr. R.M.L. Hospital, New Delhi immediately for his medical examination but that the applicant did not report to the Hospital immediately and it was only on 16.1.1990 that he presented himself at the hospital. At the request of the applicant he was afforded

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another chance to appear before the Medical Board which he eventually did in the month of February, 1990, and according to the report received from the hospital vide their letter dated 21.3.1990 the applicant was found suffering from some minor ailment and was accordingly certified to be fit for duty and posting anywhere in India. Even so the applicant did not join his duty at Tezpur and further requested for his posting either at I.B. Headquarters or some nearby places like Meerut, Aligarh etc. As there was no vacancy of UDC at either of the aforesaid two places the applicant was transferred to SIB Amritsar vide I.B. Headquarters office order dated 21.5.1990. Even after this he did not report for duty at Amritsar and continued to absent himself without authority.

4. A regular enquiry was held. However, the enquiry officer, namely, Shri K.L.Kataria, Section Officer, I.B Headquarters, New Delhi submitted his report according to which the charge of unauthorised absence was not "fully established" against the applicant.

5. Upon consideration of the report of the enquiry officer and the other facts and circumstances the disciplinary authority, disagreeing with the report of the Enquiry Officer, held the charge established against the applicant and passed the impugned punishment order compulsorily retiring the applicant from service.

6. As already mentioned, the applicant preferred an appeal which was disposed of by the appellate authority by the order dated 24.10.1997 whereby the appeal was rejected.

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7. The applicant has assailed the impugned orders mainly on the ground of mala fides on the part of the respondent no.3 who was for some time working as Assistant Director and who had initially issued some memos against the applicant for his alleged unauthorised absence and had also later issued the order of applicant's transfer to Tezpur. According to the applicant he had made several representations to higher authorities against the alleged harassment caused to him by respondent no. 3 but that his grievances were not redressed. According to the applicant the charge memo was issued by the disciplinary authority at the instance of respondent no. 3 and the final order of punishment on conclusion of the disciplinary enquiry was also passed by Shri Vibhakar Sharma, Assistant Director, at the instance of respondent no. 3. Apart from that, the applicant contends that no misconduct was disclosed even from the allegations made by the respondents as the applicant had been later transferred from Tezpur and thereby the respondents had admitted that applicant's transfer to Tezpur was illegal and against the rules. It is further averred by the applicant that this is a case of 'no evidence' and that the disciplinary authority has also not given any convincing reasons for disagreeing with the report of the enquiry officer. Much has also been sought to be made out of the fact that respondent no. 3 against whom specific allegations of mala fides have been made has failed to file his personal affidavit denying the said allegations.

8. The respondents have contested the O.A. by taking the plea in their counter that there was sufficient evidence establishing the alleged misconduct of the applicant and that not only the appellate authority but also the disciplinary authority had given cogent and convincing

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reasons for holding the applicant guilty. The respondents have further taken the plea that the applicant not having assailed at the appropriate time the order of transfer he cannot now be heard to say that the transfer order was contrary to the rules or was not in public interest.

9. The applicant has also filed a detailed rejoinder in which he has reiterated the contentions made in the O.A.

10. We have heard the learned counsel for the parties at length and have also perused the material on record.

11. The learned counsel for the applicant has been at great pains to emphasize the points relating to the alleged irregularities in the transfer order dated 6.7.1989. In this regard it is contended that the order was not issued in public interest nor was there any reason given for passing the transfer order in mid session. According to the learned counsel even the enquiry officer had admitted in the report that the transfer was unusual as normally subordinate staff are not transferred to far off stations. In reply, the learned counsel for the respondents has argued that the question of validity of the transfer not having been questioned by filing appropriate proceedings this plea cannot be allowed to be raised by the applicant in the instant O.A. Upon consideration of the rival contentions we find ourselves in agreement with the respondents. It is too late in the day for the applicant to find fault with the transfer order issued on 6.7.1989.



12. However, the learned counsel for the applicant has sought to press this point to support the plea that the issuance of the chargesheet was actuated by malice on the part of the respondent no. 3 who was also the person who had issued the order of transfer which itself was in contravention of the rules. In this regard, the learned counsel for the applicant has further argued that the allegations of mala fides are proved as respondent no. 3 has not filed his personal affidavit to deny the charge. We have carefully considered this contention and find no force in it. The reason is quite simple. Not a single order which would be relevant to the disciplinary proceedings appears to have been issued by the respondent no. 3. The applicant has filed the copies of a large number of documents and orders but none of these documents seems to have been issued by Shri Kapoor (respondent no. 3). The first document on which reliance is placed by the applicant is the one dated 16.2.1989 by which the applicant was asked to immediately join his duty, or else disciplinary proceedings would be initiated against him, though it was further stated that if the applicant is ill he should produce a medical certificate issued by an authorised medical attendant. This letter has been issued by somebody other than respondent no. 3. Similarly, another letter relied upon by the applicant is the one dated 2.3.1989 which also has been issued by Shri R.K. Vadhera and not by respondent no. 3. The order transferring the applicant to SIB Tezpur also has been issued by one Shri C.S. Paarcha though the same has been endorsed to the applicant under signatures of respondent no. 3. It is only the relieving letter dated 6.7.1989 that has been issued by respondent no. 3 stating therein that the applicant stood relieved w.e.f. 6.7.1989 (AN) with a direction to report to the Assistant Director (E) IB



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Headquarters, New Delhi. We further notice that the charge sheet has also been issued by one Renuka Muttoo and the impugned order of punishment has also been passed by one Sh. Vibhakar Sharma and not by respondent no. 3. Even in the representations made by the applicant against the alleged harassment the mention of respondent no. 3 has not been made. In these circumstances there is no material on the file which could even prima facie show that respondent no. 3 had any role to play in initiating the departmental enquiry against the applicant. Therefore, there was no need for respondent no. 3 to file his personal affidavit. Furthermore, the main allegation was against the disciplinary authority and the appellate authority and on their behalf a counter reply has come wherein it is emphatically denied that respondent no. 3 had anything to do in the matter relating to the disciplinary enquiry held against the applicant.

13. The main contention raised by the applicant in the OA which has also been reiterated by the learned counsel for the applicant during the course of his arguments is that, since after the issuance of the order of applicant's transfer to Tezpur the matter was reconsidered at a later stage and the applicant was transferred to SIB Amritsar the charge of unauthorised absence against the applicant would stand demolished. This contention also devoid of any merit. It is not the case of the applicant that he had at any time after 6.7.1989 presented himself at Tezpur to which station he had been transferred or even at SIB Headquarters, New Delhi from where he had been transferred. Admittedly, he did not attend any office during that period. The action of the respondents in considering the request of the applicant for posting at New Delhi or a place nearby supports the contention of the respondents that they have been very fair in their treatment

to the applicant. Even when the applicant failed to comply with the orders of transfer to Tezpur the respondents considered his request and transferred him to a station nearer to Delhi. It is amply proved that even this order of transfer was not complied with by the applicant and he continued to remain absent. This fact is not denied by the applicant. His only contention is that he was ill. We notice that the enquiry officer has also mentioned in the minutes of the proceedings (daily order sheet) dated 15.4.1991, as at Annexure A-15, that the applicant had sent as many as 33 medical certificates from time to time. But when the applicant was asked as to why he did not present himself at Dr. R.M.L. Hospital, New Delhi for 2 1/2 months after being directed to do so vide the memo dated 27.10.1989 the applicant replied that he was "seriously ill" during that period. But when he eventually did appear after the respondents gave him the indulgence of once again requesting the hospital authorities to examine him, the Doctors reported that the applicant was fit to serve anywhere in India even though he was suffering from some ailment described as "Minimal Osteoarthritic Knee Joint with Injuinal Hornia". We are not concerned with what this term would mean but the report given by the hospital authorities clearly showed that the applicant was fit enough to work at any place in India. Even so, the applicant continued to remain absent, perhaps in the hope and expectation that his transfer to Tezpur would be cancelled or modified. But as already mentioned, even after the modification of the transfer order the applicant did not comply.

14. Learned counsel for the applicant has sought to bring out that since the order of transfer was later modified the applicant's not joining at Tezpur could not be held to be

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unauthorised absence. We are afraid, this contention of the applicant cannot be accepted. Non-compliance of a transfer order itself amounts to insubordination apart from constituting unauthorised absence. The applicant could have pleaded equitable grounds for absence for the aforesaid period had he joined SIB Amritsar when the second order of transfer was issued by the respondents, but he did not comply even with that order. Therefore, whatever equities might have been in favour of the applicant at that time would get washed out and he could not take any benefit of the same later, during the course of the departmental enquiry.

15. We also do not find any merit in the contention that since the applicant had submitted medical certificates he could not be held to be absent from duty. There is no such rule which exempts a person from duty simply on the ground that he has submitted a medical certificate. There are specific instructions which provide that leave on medical ground should be supported by medical certificates which should be submitted prior to joining the duty or at any rate soon thereafter. Here is a case where the applicant remained absent continuously for years together at a stretch and all that he did was to collect medical certificates from all and sundry, but not from a hospital or an authorised medical attendant which could have been accepted on its face value by the respondents. When he did once condescend to appear before the doctors at Dr. R.M.L. hospital all that he could manage to get was a certificate that he was fit for service anywhere in India. In our considered view the mere submission of the medical certificates, however large the number of those certificates might be, would not effectively rebut the charge of unauthorised absence. It clearly appears that the applicant had made it a question of prestige not to

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abide by any order of transfer issued by the competent authority unless he was taken back in service at the headquarters located in New Delhi. In these circumstances, the disciplinary authority was perfectly justified in holding the charge proved against the applicant despite the fact that the enquiry officer had submitted a report which was slightly favourable to the applicant, in that, the enquiry officer found the charge not "fully established", which would in other words mean that it was "partly established".

16. That leads us to the question as to whether adequate reasons have been given by the disciplinary authority and the appellate authority for disagreeing with the report of the Enquiry Officer. We have carefully gone through both the impugned orders and find that cogent and convincing reasons have been given by both the disciplinary authority as well as the appellate authority for holding the view that the charge against the applicant was fully established. We find no ground whatsoever to disagree with the aforesaid views expressed by the respondents.

17. Learned counsel for the applicant also sought to raise the question of alleged contravention of the principles of natural justice in this case. According to him, the applicant's request for copy of the preliminary enquiry held by the department was not furnished to the applicant and thereby the respondents denied to him reasonable opportunity to defend himself. There is, no doubt, an order passed by the disciplinary authority stating that a copy of the report of the Enquiry Officer could not be given to the applicant. But the disciplinary authority has given valid reasons for the same. It has been stated in the order that the preliminary enquiry was conducted by the

Welfare Branch to only ascertain the facts and the enquiry was a confidential one which was held only for the purpose of satisfying the competent authority before taking recourse to departmental enquiry. In our considered view this was a good reason for not furnishing copy of the preliminary enquiry report to the applicant, particularly so in view of the fact that during the course of the so-called preliminary enquiry no witnesses are shown to have been examined nor is that report one of the documents relied upon in the departmental enquiry.

18. In the conspectus of the facts and circumstances discussed hereinabove we find no merit in this O.A. As regards the quantum of punishment, we are not competent to interfere even if we hold the view that the punishment was too harsh, since the Tribunal is not sitting as a court of appeal over the findings of the disciplinary authority and the appellate authority.

19. In the result, this OA is hereby dismissed, but without any order as to costs.

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(T.N.BHAT)
Member (J)

Arvind
(S.R.ADIGE)
Vice-Chairman (J)

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