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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1656/2000

New Delhi this this 14th day of May, 2002

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

Virender Pal Singh
S/O Shri Shis Pal Singh
R/O Vill. & P.O. Khorl,
District Rewari (Haryana)

..Applicant

(By Advocate Shri Yogesh Sharma)

VERSUS

1. Union of India through the
Secretary, Ministry of Defence
South Block, Govt. of India,
New Delhi.
2. The Commander
Headquarters, Base workshop Group,
Meerut Cantt.
3. The Commandant,
505, Army Base Workshop,
Delhi Cantt-10

..Respondents

(By Advocate Shri Madhav Panikar)

O R D E R (ORAL)

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

A penalty of compulsory retirement in disciplinary proceedings has been assailed in this case. Learned counsel of the applicant has contended that whereas the past records of the applicant relating to his previous absence from duty has not been a part of the charge-sheet, the disciplinary authority and the appellate authority have taken into consideration the past records of the applicant relating to his absence from duty as the basis for holding him guilty and also punishing him with a major penalty of compulsory retirement. Learned counsel has also stated that the punishment inflicted upon the applicant is not commensurate with the misconduct alleged against the applicant.

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2. On the other hand, learned counsel of the respondents has stated that the applicant joined service with the respondents w.e.f. 12.4.1989 and as per the charge sheet, he had absented himself from duty without prior permission/sanction of leave for a period of 309 days. He has stated that the applicant had admitted the charge in his statement made before the Enquiry Officer; that the past records of the applicant have not been taken into consideration while holding him guilty of the charges and also imposing the aforesaid penalty of compulsory retirement.

3. We have gone through the materials on record. From Annexure A-1 which are orders of the disciplinary authority against the applicant, we find that the disciplinary authority had taken into consideration, apart from the Inquiry report and the statement of defence submitted by the applicant, the past record to find that the applicant was habitual of absenting himself from duty without prior permission/sanction of leave. The appellate authority vide Annexure A-2 has also observed "the appellant was in the habit of absenting himself from duty and had already been awarded "Censure" and "Reduction in pay for one year" during the years 1992 and 1993. Even after the above punishments, the appellant did not improve himself. Obviously the disciplinary authority and the appellate authority had taken into consideration the past records of the applicant regarding absence from duty. We also find from the reply of the respondents that they have stated in Para 6 of their reply as follows:-

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"The conduct of the applicant exhibited lack of devotion to duty even after having been

punished twice there by having failed to improve himself. Therefore the said penalty has been imposed by the Disciplinary Authority after taking into due consideration all the offence committed by him as well as the past record of the applicant".

The respondents have clearly stated in the reply as above that the penalty of compulsory retirement had been imposed by the disciplinary authority on the applicant after taking into consideration apart from the charge sheet against him, the past records of the applicant. We are of the view that if the respondents had not taken into consideration the past records of the applicant, probably they would have come to a different conclusion with respect to the quantum of punishment to be imposed on the applicant.

4. What the quantum of penalty should be imposed on the applicant falls within the jurisdiction of the disciplinary authority/appellate authority and not that of the Tribunal. However, considering that the respondents have gone beyond the charge-sheet to impose the penalty on the applicant, we find that it would be in the interest of justice to remand the case to the respondents to re-consider the aspects of penalty to be imposed on the applicant, taking into consideration the relevant facts and without taking into account the past records of the applicant in accordance with the relevant law, rules and instructions on the subject. We direct accordingly. Annexure A-1 dated 13.11.1999 and Annexure A-2 dated 1.4.2000 which are the orders passed by the disciplinary authority and the appellate authority respectively, are quashed and set aside. Respondents are directed to reinstate the applicant in service within one month from the date of receipt

of a copy of this order. The respondents shall also pass appropriate orders relating to the intervening period from the date of compulsory retirement to the date of reinstatement, in accordance with the provisions of the Fundamental Rules. Respondents shall pass appropriate orders, in terms of above directions within two months from the date of receipt of a copy of this order. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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