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Central Administrative Tribunal
Principal Bench

O.A. No. 2567 of 2000

New Delhi, dated this the 1st JANUARY 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Kulbhushan Arora,
Ex-Technical Assistant 'B'
S/o Shri L.D.Arora,
R/o 67-A, DDA Flats,
Sunlight Colony, Ashram,
New Delhi. .. Applicant

(By Advocate: Shri Zakir Hussain)

Versus

1. Scientific Adviser to
Minister for Defence and
Director General, Research & Development,
Ministry of Defence,
Dept. of Defence Research & Development Org.,
Sena Bhawan, New Delhi-110011.
2. Director,
Defence Institute of Physiology & Allied
Sciences,
Ministry of Defence,
Lucknow Road, Timarpur,
Delhi-110054.
3. Shri M.A. Mohiuddin,
Sr. Administrative Officer for
Director,
Defence Institute of Physiology
and Allied Sciences,
Ministry of Defence,
Lucknow Road,
Timarpur,
Delhi-110054. .. Respondents

(By Advocate: Shri H.K.Gangwani)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the disciplinary
authority's order dated 7.12.99 (Annexure A-1) and
the appellate authority's order dated 31.5.2000
forwarded to him vide letter dated 17.4.2000
(Annexure A-1). He seeks reinstatement with

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consequential benefits.

2. Applicant was proceeded against departmentally vide charge sheet dated 31.3.98 on two Articles of charge relating to unauthorised absences from duty during 1995-96, 1997 and non submitting application to regularise his absence and absences from 1.7.97 onwards.

3. The E.O. in his report (copy on record) concluded that the charges against applicant stood proved beyond doubt.

4. Accepting the E.O's findings the disciplinary authority by impugned order dated 7.12.99 removed applicant from service. Applicant's appeal (Annexure A-11) was rejected by impugned order dated 31.5.2000 giving rise to the present O.A.

5. The first ground taken is that Shri M. Mohiuddin, Administrative Officer, who is Respondent No.3 unnecessarily interfered in the departmental enquiry by attending the proceedings on 23.2.99 and making suggestions to the Presenting Officer which was objected to by the Defence Assistant vide minutes of proceedings dated 23.2.99 (Annexure A-9). It is also contended that by letter dated 24.12.97 (Annexure A-4) by Shri Mohiuddin to applicant that the latter had been absenting himself since 2.7.97

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and if he failed to report for duty by 5.1.98 his services would be terminated without notice, the entire proceedings warranted being quashed.

6. Applicant has not satisfactorily explained how the presence of the Administrative Officer during the D.E. and his suggestions to the Presenting Officer has prejudiced him in his defence. The proceedings were not being held in camera, and unless applicant can establish that the suggestions made by Shri Mohiuddin prejudiced applicant in his defence, this ground has no merit. It would have been another matter if the Administrative Officer had made suggestion to the E.O. during the course of the enquiry but that is not the case here. Moreover we note that upon the protest by the defence assistant to A.O's presence, the proceedings were adjourned. Furthermore merely because the Administrative Officer in his letter dated 24.12.97 directed applicant to join by 5.1.98 after noticing applicant's continuous absence from duty from 2.7.97 failing which his services would be terminated, does not automatically establish that the disciplinary proceedings themselves were vitiated. Hence this ground fails.

7. The next ground taken is that applicant's absence was on account of his illness, and respondents should not have disregarded the medical certificates produced by applicant from his family doctor by insisting upon a medical certificate from the CGHS/Authorised Medical Attendant. It is

contended that if respondents had any doubt about applicant's illness, they could have referred him for a second medical opinion but that ^{was} also not done.

8. In this connection, it is noted that applicant was continuously absent unauthorisedly from duty from 2.7.97 to 4.10.98 that is over one year three months. Even if as claimed by him he sent an application for grant of leave from 2.7.97 to 30.7.97 on grounds of ill health as advised by his doctor under certificate of posting, no materials have been furnished to indicate that he made any prayer for extension of leave beyond 30.7.97. Furthermore, even if, vide DOPT's O.M. dated 7.10.97 (Annexure A-10.1), an application for leave supported by an M.C. issued by a registered medical practitioner was sufficient till 31.10.97, by aforesaid O.M. dated 7.10.97 the position underwent a change w.e.f. 1.11.97 and production of certificate from only authorised medical attendant became mandatory, which applicant did not furnish. Indeed applicant remained unauthorised absent from duty for nearly 11 months beyond 1.11.97 right upto 4.10.98 without producing any M.C. from authorised medical attendant justifying his absence. As pointed out by respondents the question of obtaining a second medical opinion may ~~not~~ have been relevant if there were any doubts about the accuracy of an M.C. furnished by the authorised medical attendant, but that is not the case here. Hence this ground also fails.

9. It has next been contended that respondents did not permit applicant to rejoin duty on 2.1.98 and again on 5.10.98 and in this connection a certain Government of India instruction is invoked which inter alia states that if during the course of the disciplinary proceedings the delinquent comes to rejoin his duties, he should be allowed to do so, without prejudice to the disciplinary proceedings. Even if respondents did not allow applicant to rejoin duty on 2.1.98, applicant has not explained why he sat quiet from that day onwards and again continued to absent himself till 5.10.98. Furthermore even if respondents did not permit applicant to rejoin duty, their ~~decision~~ ^{decision} was without prejudice to the disciplinary proceedings and would, therefore have no effect on the ~~proceedings~~ ^{findings} in the disciplinary proceedings. Hence this ground also fails.

10. It is next contended that the punishment is very harsh; but in Union of India Vs. Parmananda AIR 1989 SC 1185 the Hon'ble Supreme Court has held

"If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice, is a matter exclusively within the jurisdiction of the competent authority

11. In the present case there is nothing to establish that the conduct of the enquiry has been inconsistent with the rules or that there has been a violation of the principles of natural justice, such that applicant has not been given a fair hearing.

12. The O.A., therefore, warrants no interference. It is dismissed. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

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

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