

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A. NO. 1279/89

New Delhi this the 6th May of 1994
Hon'ble Member Shri J.P. Sharma, Member (J)
Hon'ble Member Shri B.K. Singh, Member (A)
Shri Harbansh Singh, Son, Shri Shiv Narain,
Resident of Village & Post Office Kharawar,
District Rohtak,
Haryana ... Applicant

(Labourer)
Semi Skilled
Central Proof
Establishment,
Ministry of Defence,
Itarasi. M.P.

(By Advocate Shri A.K. Gupta)

Versus

1. The Union of India,
through the Secretary,
Ministry of Defence, Govt. of India,
New Delhi.
2. The Director General of Inspection,
Bharat Sarkar Raksha Mantralaya,
Nirikshan Mahanideshalaya, DHQ,
Dhakghar, New Delhi-110 011.
3. The Inspector of Armaments,
Government of India, a Ministry of
Defence Inspectorate of Armaments,
Varangaon (Maharashtra), 425 308.
4. Inspector,
Inspectorate of General Stores,
North India Ministry of Defence,
Government of India,
Anand Parbat, New Delhi-110 005.

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

ORDER

Hon'ble Member Shri J.P. Sharma, Member (J)

In this application under Sec. 19 of the A.T. Act filed on 5.6.1989 the applicant has assailed the Memo dated 10.1.1968 whereby a memo of chargesheet was issued to the applicant for certain misconduct while functioning as Viewer 'D' in the Department of

(8)

Inspectorate of General Stores. He has assailed the order of dismissal from service dated 18.9.1968 which was modified from dismissal to removal from service by the appellate authority by the order dated 13.9.1979. He has also challenged the order dated 21.2.1981 by which the applicant was offered an appointment of Jr. Examiner in the Grade of Rs.210/- per month in the pay scale of Rs. 210-290. He has also assailed the order dated 27.3.1984 by which he was issued a chargesheet while he was functioning as Jr. Examiner and said to have committed misconduct by remaining unauthorisedly absent from duty. On the basis of the above, departmental enquiry was held against him and the disciplinary authority by the order dated 9.3.1985 passed the order of imposing the penalty of stoppage of one annual increment when falls due with cumulative effect. The DG of Inspection reviewed this punishment dated 8.7.1985 and a show cause notice was issued to the applicant on 1.8.1985.

1. In the aforesaid showcause notice an enhanced punishment of removal from service was proposed and thereafter enhanced order dated 16.10.1985 by DG of Inspection. The Government of India by the order dated 9.3.1988 reduced the penalty from removal from service to that of reduction to a lower post of Labourer on ammunition duty on certain terms and conditions. These orders have also been assailed by the applicant. This Order of 9.3.1988 was further clarified by the order dated 28.4.1988 by which Para 5 of the earlier order was amended.

2. The relief claimed by the applicant are as follows:

a) That this Hon'ble Court may graciously be

pleased to issue a writ of Certiorari or a writ or order in the nature of certiorari or any other appropriate writ, order or direction calling for the entire records and proceedings relating to the chargesheet dated 27.3.1984. issued by the respondents No. 3 Orders dated 8.7.1985 and 16.10.1985 respondent No. 2 and orders dated 9.3.1988 and 28.4.1988 of respondent No. 1 and after going into the legality thereof quash and or set aside the same.

- b) Declare the chargesheets dated January 1, 1968 and 6.2.1968, the orders dated 18.9.1968 and 13.9.1979 and the order of appointment dated 14.5.1981 to be bad in law, void and of no effect;
- c) Declare that the applicant is deemed to be in continuous service of the respondents as Weaver-D/Junior Examiner since 18.9.1968 and is entitled for all consequential reliefs of back-salary/wages, allowances, seniority and promotion etc.
- d) Issue a writ of mandamus or a writ, order or direction in the nature of mandamus directing the respondents that the applicant had throughout been holding the post of weaver 'D' or its equivalent post of Junior examiner and is entitled to hold the said post, and declare that the applicant is entitled for salary/wages, allowance and other benefit of the said post throughout, and for promotion to higher posts in accordance with rules or regulation or policy of the respondents and to grant the said relief to the applicant for

the past and future period and to make payment for the period he was out of service as a result of impugned orders dated 18.9.1968, 13.9.1979, 16.10.1985 till he was reinstated on 11.8.1988 on the lower post of Labour (Semi-skilled) and to pay the difference of emoluments for the period from 11.9.1988 what he would have earned as Weaver D/Junior Examiner till he is restored to the position of Weaker-D/Junior Examiner with interest at the rate of 18% per annum calculated on month to month basis and to grant all other consequential benefits which the applicant would have enjoyed as Weaver-D/Junior Examiner through out the said period including seniority.

- e) Issue a writ of mandamus or order of direction in the nature of mandamus commanding the respondents to frame service rules for civilians employed in defence like the applicant within a reasonable time allowed by the Hon'ble Tribunal.
- f) Issue any other writ or order or direction to the respondents which the Hon'ble Tribunal deems fit to meet the ends of justice and to remedy the wrong to which the applicant has been subjected by the respondents.
- g) Award costs of the position to the applicant.

3. A notice was issued to the respondents who contested this application and have taken the preliminary objection that the application is barred under Sec.20 and 21 of the AT Act, 1985 and that the application is misconceived and is not maintainable under law. The application is also defective as the applicant has asked plural reliefs in one application and therefore there is breach of Rule 4 & 7 of the CAT Procedure

Rules 1987. On merit it is stated that the Inspectorate of General Stores, New Delhi has its Lab known as Inspectorate of General Stores Lab wherein the various samples/stores supplied by the private entrepreneurs are tested and evaluated as per the laid down specifications etc. against the orders placed by the DGS&D meant for the use of the Indian Army. He was chargesheeted on 10.1.1968 for having trespassed in the Inspectorate of General Stores Lab without the permission of the Officer-in-Charge. On being told by the Officer-in-Charge that he is not permitted to go to any section of Inspectorate of General Stores Lab, the applicant disregarded the orders and walked across the whole lab in defiance of the orders of the Officer in-Charge. The applicant also used insulting language for officer-in-Charge. He was suspended on 2.2.1968 and an enquiry was ordered on which he was dismissed from service on 18.9.1968. After a number of appeals to the Government for review of penalty from removal from service the case was considered on a sympathetic ground and offered him fresh appointment of Junior Examiner at Inspectorate of Armaments, Varanasi in 1981. On this fresh offer of appointment one of the conditions was that he would submit a personal undertaking about his good behaviour in future. On the applicant giving the aforesaid undertaking he joined Inspectorate of Armaments on 14.5.1981. However, the applicant again disobeyed his superiors on various matters and tried to avoid technical work given to him on lame excuses and a warning was also given to him in August 1981. Thereafter, the applicant absented himself from duty for unusually longer period without having sufficient leave at his credit, and not following the leave regulations. From 14.5.1981 to 1.11.1985 the applicant remained absent

or on leave for a number of days details of which has been furnished in Page 8 of the counter which is reproduced below.

| <u>Nature of leave</u> | <u>From</u> | <u>To</u> | <u>No. of days</u> |
|------------------------|-------------|-----------|--------------------|
| EOL on Private Affairs | 19.6.81 | 3.7.81 | 15 |
| -do- | 4.7.81 | 1.8.81 | 28 |
| -do- | 14.9.81 | 19.9.81 | 6 |
| -do- | 3.10.81 | 28.11.81 | 57 |
| -do- | 29.11.81 | 26.12.81 | 27 |
| -do- | 30.12.81 | 31.1.82 | 33 |
| -do- | 1.2.82 | 28.2.82 | 28 |
| -do- | 1.3.82 | 26.3.82 | 26 |
| -do- | 1.4.82 | 30.4.82 | 30 |
| -do- | 1.5.82 | 31.5.82 | 31 |
| -do- | 1.6.82 | 22.6.82 | 22 |
| -do- | 29.6.82 | 28.7.82 | 30 |
| -do- | 29.7.82 | 28.8.82 | 31 |
| -do- | 29.8.82 | 25.9.82 | 28 |
| -do- | 1.10.82 | 30.10.82 | 30 |
| Absent | 31.10.82 | 5.8.82 | 309 |
| Absent | 2.9.83 | 26.2.84 | 178 |
| Sick leave | 2.4.84 | 3.4.84 | 2 |
| -do- | 14.6.84 | 16.6.84 | 3 |
| -do- | 9.8.84 | 13.8.84 | 5 |
| Commututed leaves | 14.8.84 | 18.8.84 | 5 |
| EOL on Pvt. Affairs | 10.9.84 | 2.12.84 | 84 |
| -do- | 20.1.85 | 1.2.85 | 13 |
| HPL | 2.2.85 | 21.2.85 | 20 |
| Sick leave | 16.9.85 | 17.9.85 | 2 |

4. Again the applicant was chargesheeted for his unauthorised absence from duty with effect from 31.10.82 to 5.8.1983 and 2.9.1983 to 26.2.1984. The applicant did not cooperate with the Enquiry Officer and on the

findings of the Enquiry Officer he was awarded the penalty of stoppage of one annual increment when fall due with cumulative effect by the order dated 9.3.1985. However, this penalty was revised by the DGQA after giving a showcause notice to the applicant and an order of removal from service with effect from 16.10.1985 was passed. However, on his review petition the penalty, from removal from service/to that of reduction to a lower post in the semi skilled category in the industrial grade by the order dated 9.3.1988 as amended by the subsequent order dated 28.4.1988 and the applicant was posted to CPE Itarsi as labourer vide letter dated 31.5.1988 and he joined at that place on 11.8.1988. The applicant has no case. The applicant has not filed any rejoinder to the aforesaid counter.

5. We have heard the learned counsel for the parties at length and perused the record. The application is bad for multiplicity of the reliefs claimed in the same application even regarding to the orders of punishment passed against the applicant on 18.9.1968, at that time the applicant was working as Weaver 'D'. This order was, however, was subsequently modified to one of removal from service by the appellate authority by the order dated 13.9.1979. Thus, the order has become final. The applicant has not challenged at any time before within the period of limitation before the competent authority for setting aside the orders of punishment. Since the applicant continued to file mercy petition to the Government of India then by the order dated 21.2.1981, he was given a fresh appointment as Jr. Examiner in the scale of Rs. 210-290 by the order dated 21.2.1981. The applicant had joined that post and he has never assailed this fresh appointment to

the post of Jr. Examiner. His claim how that he shall be deemed to be in continuous service in spite of the order of removal from post on 13.9.1979 cannot be accepted. The claim of the applicant is barred by delay and laches as well as by the principles of estoppel as the applicant has joined the post of Jr. Examiner alongwith the conditions of appointment. The relief in this regard, therefore, is both barred by limitation as well as delay and laches and be held by the Supreme Court in the State of Punjab Vs. Gurdev Singh reported in 1991 (4) SCC P 1 even in service matter the applicant should have given within the statutory period of limitation. Moreover, the Tribunal has no jurisdiction in such matters where a cause of action has arisen before 3 years of coming into force of the AT Act 1985.

6. The learned counsel, therefore, mostly confined his arguments to the order of punishment passed on the basis of the memo of chargesheet issued by the order dated 27.3.1984. The said enquiry has proceeded under Rule 14 of the CCS (CCA) Rules 1965. The contention of the learned counsel is that the CCS (CCA) Rules 1965 cannot be applied to the employees serving on a civil post in the Defence Establishment and are being paid from the Civil Defence Estimates. The learned counsel in this regard has referred to the case of Lekh Raj Vs. Union of India 1971 (3) SCR P 208 and Union of India Vs. K.B. Subramaniam 1988(2) Scale P 1548. By this the learned counsel pointed out that the protection of Article 311 is not applicable in the case of the applicant. Further contention of the learned counsel is that the case of the applicant is neither covered under Art. 309 under which the CCS (CCA) Rules 1965

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has been framed. The contention of the learned counsel is that the case of the applicant is covered under Art. 310(1) of the Constitution of India which embodies the doctrine of pleasure of the President and the applicants holds the office during the pleasure of the President. This matter has been considered by the Full Bench in the case of K.E. Gulahati Vs. Union of India in O.A. No. 2044/90 decided on 21.3.1994. The Bench has considered the ratio of the judgement in the case of K.S. Subramaniam (Supra) and other case. The Tribunal has come to the conclusion that it is not in every case that the application of the CCS(CCA) Rules 1965 can be dispensed with. Even if the contention of the learned counsel is accepted the principle of natural justice has been followed in letter and spirit and the applicant cannot have any grievance on that account. The case of the applicant shall be still weaker if it is covered by Art. 310(1) of the Constitution of India. In that case only the principle of natural justice have to be observed in passing an order in termination of service of an employee. The applicant has been given a showcause notice on the basis of certain misconduct alleged against him of disobedience of the order of the superior authorities as well as of unauthorised absence from duty for longer periods at different occasions. The applicant have not cooperated with the Enquiry Officer in spite of the fact that every attempt has been made to serve the applicant to join the enquiry proceedings. Thus, the applicant should not have any grievance on that account.

7. Now coming to the merit of the departmental enquiry, the applicant was chargesheeted for his unauthorised absence from duty with effect from 31.10.1982 to 5.8.1983 and 2.9.1983 to 26.2.1984. The applicant was given adequate opportunities to participate in the enquiry but he did not cooperate with the Enquiry Officer even though the Enquiry Officer was changed at his request and Shri Y.S. Negi was appointed as Enquiry Officer vide order dated 6.2.1985. The applicant was also given repeated opportunities to name his defence assistant but the applicant did not care and every time sought adjournment by making one pretext or the other. The case of the applicant was only of unauthorised absence from duty and mainly based on scrutiny of documents, even then the enquiry was adjourned time and again but the applicant did not nominate any defence assistant. Ultimately, when the enquiry proceedings were held on 22.2.1985 the applicant again made submissions for employing defence counsel from COD Delhi cantt. The enquiry therefore was adjourned till 1.3.1985. The enquiry proceedings were held on 1.3.1985 but the applicant did not cooperate and there was no option left with the Enquiry Officer but to proceed ex-parte and finalise the enquiry proceedings. It is, therefore, evident that the applicant did not cooperate with the Enquiry Officer and the only defence appears to be that he applied for leave for this period but whenever the applicant was granted leave the intimation was given to him vide letter dated 6.3.1982, 15.5.1982 and 2.11.1982. When the applicant was refused leave, the same was also communicated to him by the letters mentioned above as also by the letters dated 9.9.1982 and 13.11.1982. The leave applications of the applicant were also forwarded to DGI as Head of the Establishment can only grant leave for a maximum period of three months as per (leave rule 1972 No. 32(2)(a)). The applicant

admittedly was unauthorisedly absent but he wants to justify his absence on certain grounds. The administration has considered those grounds separately in the leave applications submitted by the applicant and those were not found sufficient grounds to sanction leave. The respondents have also considered the facts that the applicant after he has joined afresh as Jr. Examiner with effect from 14.5.1981 he had given an undertaking to remain of good conduct for a period of two years. The applicant continued to be on probation as immediately after his fresh appointment he remained continuously absent from duty for about 143 days. His performance therefore, during this absented period could not be judged. In any case since the applicant did not appear before the Enquiry Officer and he was duly informed about the misconduct, in ~~such circumstances~~ the findings of the Enquiry Officer cannot be faulted with.

8. The applicant was awarded the punishment of stoppage of one increment by the disciplinary authority with cummulative effect vide letter dated 9.3.1985. However, DGQA Headquarters the aforesaid order was found too lenient by the Revisional authority and after going through the record he came to the conclusion that the penalty awarded is not proportionate to the gravity of the charges proved against the applicant. The DGQA has issued a showcause notice for enhancement of punishment in view of the fact that the applicant remained absent for 279 days on expiry of 30 days EOL sanctioned to him from 1.10.1982 to 31.10.1982 and again remaining absent for 178 days from 2.9.1983 to 26.2.1984 for violation of rules 16(ii)(a) of Leave Rules for defence industrial employees. The applicant was duly informed by the Inspector I of A Varangaon by the letter dated 13.11.1982 that his request for grant of extention of

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leave on private affairs has not been considered and he was directed to report for duty forthwith. Thus, the applicant in spite of complying with the rules on the subject ~~and maintained discipline~~ did not join. In these circumstances DGQA came to the *prima facie* conclusion that the applicant is not a fit person to be retained in the service and enhanced the punishment to that of removal from service after considering the representation on a showcause notice which was issued to the applicant. The applicant has duly furnished his reply to the showcause notice dated 30.8.1985. Therefore, the Revisional authority passed the order dated 16.10.1985 imposing the penalty of removal from service on the applicant. The applicant has filed a review against the above penalty of removal from service on which again a sympathetic view was taken and by the order dated 9.3.1985 the President in exercise of the powers reduced the penalty from removal from service to that of reduction to a lower post of Labourer on ammunition duty in the pay scale of Rs.210-290 which is a fedder grade for the post of junior examiner. The period between 16.10.1985 and the date of reinstatement will be treated as 'dies non' which would be ^{be} not qualified period for the purpose of pension. His continuance in service on reinstatement will be subject to a special review of his performance. Another clarification of this order was issued on 28.4.1988 whereby ^{to which the applicant was reverted} the lower post is semi-skilled category in industrial grade which ~~is~~ the fedder grades for the post of Junior examiner now designated as examiner scale. Now coming to the validity of this order we find that the applicant was appointed to the post of Jr. Examiner by the order dated ^{at that time} 21.2.1981. The scale of Jr. Examiner was Rs.210-290.

of removal from service was
The order passed by the divisional authority and subse-
quently reviewed by the competent authority goes to show
that the applicant has been reverted to the scale of
Rs.210-290 which is the fedder grade for the post of Junior
Examiner. In view of the authority of the Hon'ble Supreme
Court a person initially recruited to a higher time scale
grade or post or service cannot be reduced by way of
punishment to a post in a lower time scale, grade and
service or post which he never held before AIR 1988 P.1979
vs. Union of India.

9. In this case the order passed in the name of
the president while reviewing the order of removal
from service passed by the DGQA dated 16.10.1985, the
applicant could have been placed in the same post which
he held in 1981 by virtue of fresh appointment. He cannot
be reverted to a post to which he was never appointed.
The final order dated 28.4.1988 clarifying the para 5 of
the order dated 9.3.1988 shows that the applicant has
been placed in the fedder grade for the post of Jr.
Examiner now designated as Examiner Skilled. Thus, this
order is patently illegal.

10. On the consideration of all the facts and
circumstances, the application is partly allowed and the
matter is remanded to the reviewing authority exercising
power under Rule 27 of the CCS(CCA) Rules 1965 to consider
the matter afresh and pass necessary order according to
law in the light of the observations made above. The
order of 16.10.1985 of removal from service of the
applicant had already been modified by the order dated
9.3.1988/20.4.1988 and both these later orders are
quashed. The reviewing authority shall pass the order
afresh on the basis of the appeal preferred by the

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applicant against the order of removal from service dated 16.10.1985. The applicant will be entitled to the benefits, if any, arising from the final order, if favourable to him. In these circumstances the parties to bear their own costs. The respondents to pass such an order within three months from the date of receipt of the copy of this order.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

Mittal