

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Date: 09-06-1989.

Regn. No. TA 378/86.
(CW 2525/85) with
CA 509/86, OA 1392/87, OA 214/88 & OA 833/88

TA 378/86

Shri K.L. Gulati

....Applicant

vs.

Union of India & Others

....Respondents

For the Applicant

....In person

For the Respondents

....Shri R.M. Bagai,
Counsel

OA 509/86, OA 1392/87, OA 214/88 and OA 833/88
MP 260/89 and MP 480/89 in TA 1177/85 and MP 2397/88 in OA 833/88

Shri K.L. Gulati

....Applicant

vs.

Union of India & Others

....Respondents

For the Applicant in the above
mentioned three cases

....In person

For the Respondents in the above
mentioned three cases and MPs
For respondent No. 2 in MP 2397/88
in OA 833/88

....Mrs. Raj Kumari Chopra,
Counsel
....Shri George Paracken,
Estates Officer in
person.

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. M.M. MATHUR, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporters or not? Yes

(The Judgment of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice Chairman(J))

Shri Gulati, the applicant in these applications has / in
worked
On

the Military Engineering Service under the Ministry of

Defence for about 26 years in various capacities.

Seven applications filed by him have been heard together

as per the directions of the Hon'ble Chairman. In

TA 378/86, he has challenged the validity of the order

dated 20.9.1985 whereby he was transferred from Delhi

to Suratgarh. In OA 509/86, he has sought confirmation

in the grade of Supervisor Barrack and Store Grade II

with effect from 20.4.1965 with all consequential

benefits. In OA 1392/87, he has prayed for directing

the respondents to release his pension in view of his

purported voluntary retirement with effect from 14.11.1987.

In OA 214/88, he has sought for a declaration that the

impugned public notices dated 2nd November, 1987 and

14.1.1988 whereby it was notified that he had been removed

from service, are illegal and void and that he be awarded

a sum of Rs.15 Lakhs as compensation for "social damages".

In OA 833/88, he has sought relief against his eviction

from the Government accommodation and recovery of out-

standing licence fee from him. In view of the interconnection

of the issues involved in the above mentioned applications,

it is proposed to deal with them in a common judgment.

Time set for 2.30 p.m. The applicant argued his case in person. He has also

relied upon several rulings of courts and this Tribunal.

Broadly stated, his stand is that, the impugned order of

his transfer from Delhi was mala fide, that he was denied his due

and legitimate seniority and promotions illegally, that there was/leading to

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harmassment and victimisation, that he was forced to take voluntary retirement vide his notice dated 15.10.86, that the respondents did not refuse to grant permission for such retirement and consequently his retirement became effective from 14.1.87, that he retired from the post of Principal Barrack and Store Officer (PBSO), that he was re-employed as Principal Barrack and Store Officer with effect from 6.5.87, that on the same day he was placed under suspension and that his suspension has not so far been revoked. The respondents have not paid him his pension or other retirement benefits.

3. As against the above, the stand of the respondents, stated, O

broadly is that the transfer of the applicant was valid, that he did not comply with the impugned order of transfer from

Delhi to Suratgarh, that he was Struck Off Strength (SOS) on 30.9.85, that disciplinary proceedings under Rule 14 of

the CCS (CCA) Rules, 1965 were initiated against him for the misconduct of absenting himself from duty without permission,

that he avoided the receipt of charge-sheet issued under

Rule 14 of the CCS (CCA) Rules, 1965, that though he

initially attended the oral inquiry for some days, he did not attend the hearings thereafter and, therefore, the

enquiry proceedings were completed ex parte and the

disciplinary authority imposed the penalty of removal

from service on him by order dated 24th August, 1987, that

the Registered Letter sent to him by post could not be

delivered and, therefore, public notices were issued on

14.1.1988 and on 2.11.87, that his removal from service became effective from 14.1.1988, that they did not take

cognizance of his notice of voluntary retirement as he had sought retirement from the post of PBSO which he had never held, and, that he has not been re-employed and thereafter placed under suspension as alleged. They have also denied the allegation of mala fides.

4. At the outset, we may consider the contention raised by the applicant regarding the question of mala fides. In IA 378/86, he has alleged that a conspiracy had been hatched against him for not agreeing to certify false and fictitious bills of contractors worth lakhs of rupees for which no work had been done by them or no material was supplied (vide rejoinder-affidavit, pages 70 and 78 of the Paper Book). In OA 1392/87, he has alleged that in order to harass and humiliate him for foiling the plan of the respondents "to destabilize the nation by removing its leader by violent means", the respondents issued the impugned public notices on 14.1.88 and 2.11.87 (vide rejoinder-affidavit, page 56 of the Paper Book). The same theme has been repeated in OA 214/88 (vide rejoinder-affidavits at 07 (and in OA 833/88 at page 4 of the paper book) pages 83, 87, 100 and 114 of the Paper Book). The petitioner has also alleged that he could not give proper attention to his son who was ailing and he died at the young age of 14. He believes that these occurred because he foiled the attempted conspiracy against the Prime Minister.

5. The allegation regarding the conspiracy to destabilize the nation appears to have been made in support of the plea of mala fides. In this context, it may be stated that the burden of establishing mala fides is very

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heavy on the person making the allegation. Allegation of mala fides is often easily made than proved. The very seriousness of such allegations in the instant case demands proof of a very high order. The applicant has not produced before us any contemporaneous records to substantiate the same. In the circumstances, it would appear that allegation of mala fides has been made in the applications before us for the purpose of giving a semblance of truth and as an after-thought.

6. We may now consider the tenability the claims made by the applicant in these applications.

TA 378/86

7. The validity of the impugned transfer order dated 20.9.1985 has been challenged in this application (vide Annexure-C, page 21 of the Paper Book). The contention of the applicant is that it is not in accordance with the guidelines issued by the respondents on 25.10.84. According to these guidelines, transfer of persons to tenure duty station as far as possible will be carried out in bulk once a year in the month of February/March with instructions to complete move by May/June. A panel of persons will be prepared for the purpose in accordance with the seniority. A list of volunteers will also be maintained separately. The respondents vide their letter dated 22.7.85 issued Command Roster for posting to tenure station in respect of Supervisor B/S Grade I in the ensuing year 1985-86. Nothing was communicated to him about his posting.

Or

8. The respondents have contended in the counter affidavit that the applicant was given a copy of the impugned order of transfer on 21.9.85 but he refused to accept the same in the presence of three senior officers. He sought an interview with the Chief Engineer on 24.9.85, which was granted the same day. He was then given a copy of the Movement Order and he signed in token of having received the same. The respondents have contended that he is liable to be posted at a tenure station after he has completed 3 years in Delhi.

They have relied upon the guidelines dated 25.10.84.

His name was Struck Off Strength (SOS) from Chief Engineer, Delhi Zone with effect from 30.9.85(A/N).

He filed CW 2525/85 in the Delhi High Court on 9.10.1985 which was transferred to the Tribunal under Section 29 of the Administrative Tribunals Act, 1985, on 18.3.1986 (TA 378/86).

9. There was no formal handing over and taking over of charge as is the normal practice in the case of transfer. According to the respondents, he refused to hand over charge. They have also denied his allegation that the steel almirah which was opened by them after his transfer contained any personal cash belonging to him.

70

10. We have carefully considered the rival contentions of both parties. Though the applicant has contended that the impugned transfer order was not served on him, he has himself filed a copy of the same along with Wnit/2525/85 filed in the Delhi High Court. He had filed in this Tribunal MP 230/86 for continuance of the interim order dated 16.10.85 which has been passed by the Delhi High Court. The respondents had annexed to their reply to the aforesaid MP a copy of the report submitted by the senior officers of the respondents to the effect that they tried to serve a copy of the Movement Order on him on 21.5.85, but he refused to receive the same. On 24.9.85, he made an endorsement on the back of the impugned Movement Order to the following effect:-

- (i) I have submitted my representation dated 21st September, 1985 requesting for cancellation of posting. Decision may please be obtained before I am SOS (Struck Off Strength).
- (ii) TA/DA may also be paid.
- (iii) I have seen the copy of Movement Order. (vide Annexure-R-2 to the counter affidavit, page 40 of the Paper-Book)

11. In view of the above, this Tribunal vide its order dated 29.7.86 vacated the interim order issued by the Delhi High Court on 16.10.85 and disposed of MP 230/86 accordingly.

12. Admittedly, the applicant had been posted at Delhi continuously for more than 3 years. His terms of appointment are such that he is also liable to serve in the offices of the respondents outside Delhi. In the circumstances, as he has completed 3 years at Delhi, he cannot make a grievance of his transfer to Suratgarh. The plea of mala fides raised by him in this regard has not been substantiated by him. In the circumstances, we see no merit in the reliefs sought in TA 378/86. *Q/2*

OA 509/86

13. The applicant filed OA 509/86 in this Tribunal on 2.7.1986 praying that he should be confirmed in the grade of Supervisor (Barrack & Store) Grade II with effect from 20.4.1965 with all consequential benefits to flow therefrom. He had also prayed for staying confirmations in the said grade pending final decision on his representations. The Tribunal passed an interim order on 5.9.1986 to the effect that if any promotion is made, that will be subject to the result of this application. The case of the applicant is that before 1965, the qualifications for the post of Supervisor B/S Grade II were pass in matriculation examination and in the examination of Storeskeeper, Grade II, that there was no provision for direct recruitment, and that he was eligible to be promoted as Supervisor B/S Grade II in the year 1964-65. In 1965, the respondents for the first time provided for 1/3rd direct recruitment ^{on} to the post of Supervisor B/S Grade II. The recruitment rules framed in 1971 prescribe a Degree in Arts or Science for direct recruitment of Supervisor B/S Grade II and 3 years minimum service in the grade of Storekeeper, Grade I for promotion to the said post. According to him, the aforesaid provisions reduced his chances or opportunities for promotion.

14. The respondents have contended that the application

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(21)

is barred by limitation as the grievance of the applicant related to the year 1965 and he did not make any representation till 1985. The first representation made by him was on 17.6.1985. They have further submitted that in 1970, the applicant, who was a Storekeeper Grade I, along with 30 others, was promoted to the post of Supervisor B/S Grade II and his date of seniority was fixed as 3.12.1969. This was also entered in his service-book which was duly signed by him without raising any objection. A consolidated seniority list of Supervisor B/S Grade II was circulated in 1982 and he did not object to it. The respondents have also argued that the applicant is not entitled to challenge the direct recruitments made after a lapse of nearly more than 20 years.

15. The respondents have further contended that no one junior to him has been given confirmation earlier than him.

16. A writ petition filed by the applicant in the Delhi High Court (CW 822 of 1985), was transferred to this Tribunal (TA-11177/85) and it was decided by the Tribunal vide its judgment dated 1.4.1986. He had claimed seniority and confirmation in the grade of Supervisor B/S Grade I from 1973 and subsequent promotion to the post of Barrack & Store Officer on that basis. The Tribunal, by its judgment dated 1.4.1986, directed that his service as Supervisor B/S Grade I shall be counted as regular for the purposes of seniority and eligibility

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for promotion as Barrack & Store Officer with effect from 17.4.1980. The respondents were directed to fix his seniority on the basis of his regular appointment with effect from 17.4.1980 and place his case before the D.P.C. when it meets next as one of the eligible candidates for consideration to the post of Barrack & Store Officer. Accordingly, the respondents fixed his seniority in the grade of Supervisor B/S Grade I from 17.4.1980. They have contended that by seeking to get his seniority refixed in the lower post of Supervisor B/S Grade II, the applicant is trying to get the judgment of the Tribunal in TA 1177/85 reopened.

17. We have carefully gone through the records of the case and have heard the applicant in person and the learned counsel for the respondents. Pursuant to the judgment of this Tribunal dated 1.4.1986 in TA 1177/85, the seniority of the applicant as Supervisor B/S Grade I (which post is higher to Supervisor B/S Grade II) has been fixed from 17.4.1980 (vide Para 4 of counter affidavit, page 28 of the Paper-Book). After this has been done, the refixation of his seniority in the lower grade of Supervisor Grade II has no relevance. Consequently, we are of the opinion that it is unnecessary at this stage to consider the question of his confirmation in the lower post of Supervisor B/S Grade II with effect from 20.4.1965.

18. In this application which was filed in this Tribunal on 22.9.87, the applicant has prayed for an order to the effect that the respondents should release his pension consequent upon his voluntary retirement from the post of Principal Barrack & Store Officer (PBSO) with effect from 14.1.1987. He submitted his notice dated 15.10.1986 to the Secretary, Ministry of Defence through proper channel seeking voluntary retirement as Principal Barrack & Store Officer (vide Annexure 'A' pp.7-11 of the Paper Book). In the said notice, he has recounted the various events dating from his impugned transfer from Delhi to Suratgarh (which is the subject matter of TA 378/86) and the alleged harassment meted out to him thereafter. He has alleged that he has completed 26 years of qualifying service and that he is entitled to five years' weightage provided under the rules in the case of persons retiring voluntarily, that the appointing authority did not refuse to grant permission for his retirement as Principal Barrack & Store Officer before the expiry of the period specified in the notice and that he also did not withdraw his notice. Therefore, he claims that he stood retired with effect from 14.1.1987 as Principal Barrack & Store Officer. He attended a "Fact Finding Enquiry" conducted by the respondents at Suratgarh as Principal Barrack & Store Officer (Retd.) on 7.5.1987. His designation as Principal Barrack & Store Officer (Retd.) was accepted by the Enquiry Officer and he was allowed to sign as Principal Barrack & Store Officer (Retd.).

19. The contention of the respondents is that the

applicant was holding the post of Supervisor B/S Grade I (Group 'C' non-gazetted post) on 15.10.1986, i.e., on the date of the notice seeking voluntary retirement, he had never held the post of Principal Barrack & Store Officer (Group 'A' Gazetted post) in the department, that the question of his entitlement to pension on retirement as PBSO does not arise, that while functioning as Supervisor B/S Grade I, he was transferred from Delhi to Suratgarh, that since he did not join duty at Suratgarh, disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965 were initiated against him and that finalisation of the said proceedings, an order awarding him the penalty of removal from service was passed on 24.8.1987 by the Chief Engineer, Western Command, who was the competent disciplinary authority. In view of this, he is no longer in Government service.

20. The respondents have further stated that as he was holding the post of Supervisor B/S Grade I (Group 'C' non-gazetted post) only, no cognizance was given to his notice dated 15.10.1986 seeking voluntary retirement from the post of PBSO which post he had never held. They have denied his contention that he stood voluntarily retired after the expiry of the notice period. According to them, Command Chief Engineer is the competent authority in the case of voluntary retirement from the post of Supervisor B/S Grade I. The applicant did not give any notice of voluntary retirement to the Command Chief Engineer regarding his intention to

retire from the post of Supervisor B/S Grade I under Rule 48A of the CCS (Pension) Rules, 1972. He did not do so despite the advice of Chief Engineer, Bhatinda ZOM to that effect in his letter dated 10.8.87 addressed to the Headquarters Western Command, Engineer's Branch, Chandimandi, copy of which was endorsed to him (vide Annexure R-4 to the counter-affidavit, page 50 of the Paper-Book). The respondents have, therefore, contended that the notice dated 15.10.1986 is invalid and the question of its acceptance or refusal did not arise.

21. The respondents have contended that since the notice of voluntary retirement dated 15.10.1986 stated that the applicant was seeking to voluntarily retire from the post of PBSO, which post he had never held, the provisions of Rule 48-A of the CCS (Pension) Rules, 1972 would not be applicable. The said rule is applicable only in the case of voluntary retirement from the post which the Government servant was holding on the date of serving of the notice.

22. The applicant has argued that as the facts stated by him have not been denied by the respondents, it amounts to an admission. He has stated that the Government of India, Ministry of Defence, has confirmed the commissioned rank of the applicant as PBSO (vide rejoinder-affidavit, page 69 of the Paper-Book). A copy of the same stated to have been annexed as Annexure 'B' to the rejoinder-affidavit is not, however, available on the record.

According to him, he stood voluntarily retired from service as PBSO on 14.1.1987. No disciplinary proceedings were ever initiated or contemplated against him till he retired with effect from 14.1.1987. Even after his re-employment as PBSO with effect from 6.5.1987, no disciplinary proceedings under the law had been instituted against him till date.

23. We have carefully gone through the records and have heard the applicant in person and the learned counsel for the respondents. In the instant case, the notice of voluntary retirement is purported to have been given in terms of Rule 48-A of the CCS (Pension) Rules, 1972. The relevant provisions of the said rule are as under:-

"(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service."

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(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority;

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

xxxxx xxxxx xxxxx xxxxx

"EXPLANATION:- For the purpose of this rule the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement."

24. It is clear from the aforesaid provisions that the Government servant shall give the notice to the appointing authority and the same shall require the acceptance by that authority. Where that authority does not refuse to grant

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permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the said period.

The expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement. It is implicit in this rule that the Government servant should have been appointed to the service or post from which he is seeking voluntary retirement. Otherwise, it will not be a valid notice in the eye of law.

23. The applicant has not produced before us any document to substantiate his assertion that he was appointed to the post of PBSO at the time of serving notice dated 15-10-1986 under Rule 48-A. During the hearing of the case, he stated that he received a telegram regarding his appointment as PBSO, which he annexed to the joining report submitted to the Enquiry Officer holding a "fact finding enquiry". He has not kept with him a copy of the said telegram. He did not produce a copy of the same along with his application, or at any time thereafter. To our mind, it is not the usual practice and procedure of the Government to appoint persons to posts by sending telegrams. Any appointment will be formally notified in writing, setting out therein the terms and conditions and the period of the appointment. It cannot also be disputed that the post of PBSO is three steps higher than that of BSO Grade I,

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which the applicant was holding as on 15.10.1986. The applicant served his notice dated 15.10.1986 seeking voluntary retirement from a higher post which he has never held. On the receipt of the notice, the respondents did not take cognizance of the same. The more prudent course would have been to inform the applicant that his notice was not in proper form and that he had never held the higher post from which he was seeking voluntary retirement. This was not done by the respondents in the instant case.

26. The question, however, arises whether mere silence on the part of the respondents on what all the applicant had stated in his notice dated 15.10.1986 amounts to an admission or acquiescence on their part.

27. Under the normal rules of evidence, the burden of proving the necessary facts for grant of relief is on the applicant (vide Governing Body of D.A.V. College Vs. P. Padhy & Others, 1988 (2) SLJ(SC) 180 at 183). This burden has/ been discharged by the applicant in the instant case.

The fact that he signed as PBSO(Retd.) in the proceedings before the Enquiry Officer and that the Enquiry Officer did not raise any objections to the same does not prove that he was appointed as PBSO. The fact that when he reported to the Enquiry Officer to give his evidence in the enquiry, he had stated that he was PBSO(Retd.) and that thereafter he participated in the enquiry on some days does not prove that he had retired from the post of PBSO. An Enquiry Officer conducting an enquiry - fact finding or otherwise - is not competent to appoint any person to any post or to accept or refuse to accept any designation of the person appearing

before him to give evidence. Except for the assertions made by the applicant, no evidence has been produced before us to show that he was duly appointed as PBSO by the competent authority at any point of time. In this context, the applicant relied upon the directions issued to the respondents by this Tribunal on 19.1.1988 while dismissing his review petition 114/87 in CCP 77/87 in TA 1177/85 to the effect that they should ensure that if there are vacancies for promotion to the rank of BSO or Senior BSO, the meeting of the DPC should be held in accordance with the relevant instructions and orders of the Department of Personnel within a period of three months from the date of communication of the order, or in the alternative, a certificate is issued that the meeting of the DPC could not be held because there were no vacancies. According to him, had the respondents complied with the aforesaid directions and convened the DPCs for his promotion as BSO or Senior BSO within the period stipulated in the order dated 19.1.1988 and had he been appointed as BSO or Senior BSO, he would have become PBSO by 15.10.1986. He has also relied upon the interim order dated 5.9.86 in OA 509/86 that any promotion made will be subject to the result of that application. To our mind, this is too far-fetched a contention to merit consideration in the context of the present application in which he has claimed that he was holding the post of PBSO on 15.10.1986 when he gave his notice of voluntary retirement under Rule 48-A of the

CCS (Pension) Rules, 1972. Relief cannot be founded on mere expectations and sumises, however, legitimate or reasonable they may be. Silence does not imply acquiescence (vide Union of India Vs. Watkins & Co., AIR 1966 S.C. 275 at 278). The mere fact that the respondents kept silence on the receipt of his notice dated 15.10.1986, does not mean that they acquiesced in the claim made by him that he was holding the post of PBSO as on that date or that they did not refuse to grant permission to him to voluntarily retire from the post of PBSO.

28. In view of the foregoing, we are of the opinion that the notice dated 15.10.1986 was not valid in the eye of law and the applicant is not entitled to the relief sought in this application.

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OA 214/88

29. In this application which was filed in this Tribunal on 4.2.88, the applicant has prayed for a declaration that the public notices issued by the respondents on 2.11.87 and 14.1.88 are illegal and void and that a sum of Rs.15 Lakhs be decreed in his favour as compensation for "social damages". During the hearing, the applicant was asked to elucidate as to what he meant by the expression "social damages". According to him, he is claiming damages for the loss of prestige and reputation suffered by him on account of the publicity given by the respondents to the alleged removal from service.

30. We may at the very outset state that a claim for compensation for loss of reputation will be in the nature of claim for tort. This Tribunal has no jurisdiction to entertain the same. For this purpose, he may file an appropriate civil suit, if so advised.

(vide Kamal Kumar Puri Vs. M/s Bombay Marine Engineering Works (Pvt.) Ltd., 1982 SCC (I&S) 112 at 113).

31. The case of the applicant is that he voluntarily retired as PBSO with effect from 14.1.87 in terms of his notice dated 15.10.86. He has stated that he was summoned to attend a fact finding enquiry at Suratgarh, that he reported for duty on 6.5.87 but the G.E. Engr Park did not permit him to join duties, that on 7.5.87, he reported to the Enquiry Officer of the fact finding enquiry, that his joining report was duly accepted by the Enquiry Officer, that the Enquiry Officer purposely did not serve to him the

the appointment letter re-employing him as PBSO, but allowed him to sign all the proceedings of the fact finding enquiry as PBSO (Retd.) and that he signed all the proceedings of the said enquiry as PBSO (Retd.).

32. The applicant has alleged that he was neither given a charge-sheet nor any show cause notice was issued to him, but he was placed under suspension with effect from 6.5.87. On 2.6.87, the fact finding enquiry was adjourned for 7.9.87. On 12.6.87 he applied for TA/DA advance to attend the said enquiry on 7.9.87 and also requested for a change of the venue to Delhi. The fact finding enquiry was, however, abruptly closed on 16.6.1987. Thus the enquiry stood vitiated.

33. On 24.10.87, the applicant represented to the Government of India to revoke his suspension as no charge-sheet had been served upon him for nearly 5½ months. He received no reply.

34. On 2.11.87, it came to the applicant's attention that a public notice had been issued in prominent News Papers to the effect that he has been removed from service after holding an enquiry under Rule 14 of the CCS (CCA) Rules, 1965, that he did not cooperate with the enquiry and that the proceedings were concluded ex-parte, finding him guilty of the charges regarding unauthorised absence from duty with effect from 30.9.85 till date brought against him. He has alleged that during the said period, he was

working at Delhi on re-employment as PBSO. He has also challenged the validity of the public notice dated 14.1.88 on the same ground.

35. The respondents have denied the aforesaid allegations and contentions in the counter affidavit filed by them. According to them, the post of PBSO is the highest cadre post and that in between that post and the post of BSO Grade I, which the applicant had held, there were three other posts, namely, BSO Group 'B' post, SBSO Group 'A' post and PBSO, that he was never appointed to the post of PBSO, that there is only one post of PBSO at Army Headquarters and not in any lower formations and, therefore, he could not have functioned as PBSO either at CE, Delhi Zone or GE (EP) Suratgarh, that he was also not placed under suspension, that he was removed from service after holding an oral enquiry which he attended on 7th May, 1987 to 9th May, 1987, 28th May, 1987, 30th May, 1987, 1st June, 1987 and 2nd June, 1987. Though he denied the charges brought against him, he did not attend the hearings thereafter to substantiate his denial. Therefore, the oral enquiry proceedings were completed ex parte and the disciplinary authority passed the order of removal from service. The said order which was sent by Registered post to the applicant was received by him on 14.9.87 as confirmed by the Post Master, Suratgarh. However, considering his evasive attitude, a public notice was notified on 14.1.1988 in the prominent News Papers to doubly ensure the cognizance of the penalty imposed on the applicant.

36. According to the respondents, the charge sheet was sent to the applicant under Registered Post, but it was received back undelivered with the postal remarks on the cover "even after frequent visits, he was not available." Therefore, a public notice was got published on 24.2.87 in the Hindustan Times and Vernacular News Papers calling upon him to join his duty in the office of the Garrison Engineer, Engr Park, Suratgarh within 10 days from the publication of notice, failing which ex parte proceeding would be resorted to.

37. The respondents have further stated that the applicant was summoned by oral enquiry officer under CCS (CCA) Rules, 1965 and not for a fact finding enquiry, that his "arrival" report dated 7th May, 1987 submitted by him to the Enquiry Officer was in connection with the oral enquiry for which he was summoned, that it cannot be termed as a "joining report" for the purpose of reporting to the office of GE (EP), Suratgarh on permanent transfer pursuant to the Movement Order dated 20th September, 1985, that he was not disallowed to join duties at GE (EP), Suratgarh, that the oral Enquiry Officer was not empowered to serve any appointment letter to him since his task was to probe the charges levelled against him and that the applicant's signing the record of enquiry proceedings as PBSO (Retd.) was on his own mistaken assumption, although he was Supervisor B/S Grade I on the relevant dates.

38. According to the respondents, the applicant was not entitled to TA/DA to attend the enquiry at Suratgarh as he

was supposed to be physically present there which was his place of posting, that his request for conducting oral enquiry at Delhi instead of Suratgarh was also rejected by the Enquiry Officer, and that as the applicant failed to attend the enquiry inspite of notice, there was nothing wrong in conducting ex-parte enquiry.

39. As regards the question of revocation of suspension, the respondents have stated that he was never suspended and, therefore, the question of revocation did not arise.

40. The applicant had sought an interview with the Engineer-in-Chief and pursuant thereto, he was interviewed by Officiating Additional Director, Engineers(Pers.), Engineer-in-Chief Branch on 3.12.87. The applicant was advised to put in a proper appeal to E-in-C if he was aggrieved by the punishment awarded to him. A letter to the same effect was sent by Chief Engineer, Bhatinda Zone, to the applicant at his Delhi address on 3.2.88, but the same was received back undelivered.

41. We have carefully gone through the records and have heard the applicant in person and the learned counsel for the respondents. During the hearing, we directed the applicant to produce any letter of appointment or other document indicating that he had been appointed by the respondents as PBSO. He referred to a telegram having been received by him but he was unable to produce a copy of the same. He contended that he had participated only in a fact finding enquiry and that the alleged departmental proceeding under the

CCS (CCA) Rules, 1965 was conducted behind his back and he came

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to know about the same only from the public notice dated 2.11.1987.

42. In the absence of any documentary evidence, we cannot accept the contention of the applicant that he was appointed by the respondents as PBSO at any point of time or that he was re-employed and thereafter placed under suspension, as alleged by him. In our opinion, the holding of ex-parte enquiry in the facts and circumstances of the case cannot be held to be unjustified. Consequently, the applicant is not entitled to the relief sought in the present application.

43. In this context, the question still arises whether in the facts and circumstances of the present case the alleged misconduct of unauthorised absence from duty is of such a nature that imposition of the penalty of removal from service would be justified.

44. Rules 27(2) of the CCS (CCA) Rules, 1965, provides inter alia that in the case of imposition of a major penalty, the Appellate Authority shall consider (a) whether the procedure laid down in these rules have been complied with, and if not, whether such non-compliance has resulted in the violation of

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any provisions of the Constitution of India or in the failure of justice; (b) whether the findings of the disciplinary authority are warranted by the evidence on the records; and (c) whether the penalty imposed is adequate or inadequate or severe. In the instant case, the appellate authority had no occasion to consider these factors as the applicant did not choose to prefer an appeal.

45. The applicant has served the Government for more than 26 years. There is no allegation of misconduct involving moral turpitude, or any charge of corruption or suspected doubtful integrity on the part of the applicant. The gravamen of charge against him is that he refused to comply with the order of transfer and remained on unauthorised absence from duty. Imposition of the penalty of removal from service / forfeiture of proportionate pension and other retirement benefits. Does this not cause undue hardship to the family of the Govt. servant dependent on him for survival and sustenance in the evening of his life? Should not the authorities concerned be even-handed while deciding the question of quantum of punishment? These aspects should be considered while deciding the quantum of punishment. In order to avoid the charge of vindictiveness, justice, equity and fair play demand that the punishment must be commensurate with the gravity of the alleged misconduct. This is a well recognised principle of jurisprudence. (vide Shri Ramakant

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Misra Vs. State of U.P., 1982(3) SCC 346 at 350).

Any departure from this principle would amount to violation of Article 14 of the Constitution-(vide

Shri Bhagat Ram Vs. State of H.P., 1983(2) SCC 442).

In a recent case where the service of an employee was terminated for absenting himself from duty

for three days without leave, the Supreme Court

set aside the impugned order of termination of service and in its place a punishment of censure

to be entered in the service record was ordered

to be substituted-(vide Ashok Kumar Vs. U.O.I, JT

1988(1) SC 652).

46. In the facts and circumstances of the case,

we are of the opinion that the penalty imposed

deserves reconsideration in the light of what

is stated in Para 45 above. In the interest of

justice, we, therefore, direct that the applicant

may prefer an appeal to the appellate authority

against the impugned order of removal from service

dated 24.8.1987 within a period of one month

from the date of communication of a copy of this

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order. The Appellate Authority shall dispose of the appeal as early as possible but in any event not later than three months from the date of receipt of the appeal preferred by the applicant and pass a speaking order. The Appellate Authority should give due consideration to the observations made to 46⁹ in Paras 43/above. In case the applicant is aggrieved by the decision of the Appellate Authority, he will be at liberty to file a fresh application in this Tribunal in accordance with law, if he is so advised.

OA 833/88

47. The applicant filed this application in the Tribunal on 26th April, 1988 praying that the impugned order dated 23.3.1988 issued by the Assistant Director of Estates regarding the recovery of licence fee with effect from 1.3.81 to-date from the applicant and the eviction notice dated 13.1.1988 issued by the Estates Officer, be quashed.

48. The case of the applicant is that he was allotted Govt. accommodation at House No.1327, Sector IV.

R.K. Puram, New Delhi and he is in lawful occupation of the same till date, that he had sought voluntary retirement with effect from 14.1.1987, that he was re-employed as Principal Barrack and Store Officer with effect from 6.5.1987 and placed under suspension and that he applied for regularisation of the said premises in his name vide his letter dated 19.5.1987. However, in January, 1988, he received an eviction notice. He submitted to the Estates Officer on 23.2.88 that the rent/licence fee had already been recovered from his pay bills, that he had received a revised rent bill dated February, 1988 which superseded the previous bills and in which no arrears of licence fee from 1.3.1981, as claimed, have been mentioned as outstanding and that it is evident from the revised rent bill that only a sum of Rs.150/- is outstanding against him.

49. On 23.3.1988, the Directorate of Estates wrote to him that the allotment of his accommodation has been cancelled with effect from 1.3.1981. The letter also contained a demand for recovery of damages to the tune of Rs.19,212/- with effect from 1.3.1981.

50. The applicant has alleged that respondents 4,5 and 6 (Chief Engineer, Delhi Zone, Delhi Cantonment, E-in-C Branch, Army Headquarters and G.E. Engineer Park, Suratgarh) in collusion with a few officials of the Directorate of Estates, have issued the impugned letter dated 23.3.1988 in order to to pressurise and harass him and to take revenge on him "for saving the life of the Hon'ble Prime

Minister" as also "for disclosing the plotting of the respondents with regard to the assassination of the Hon'ble Prime Minister" and in order to force him to withdraw all the matters pending before this Tribunal for fear of being exposed.

51. Shri George Paracken, the Estates Officer who appeared in person on behalf of respondent No.2 (The Director of Estates) submitted that they would abide by the decision given by this Tribunal in OA 214/88.

52. We have carefully gone through the records of the case and have heard the applicant in person and Shri Paracken, the representative of respondent No.2. We have already dealt with the plea of mala fides in paras 4 and 5 hereinabove. In view of our findings in OA 214/88, we direct that the applicant should not be dispossessed from the Government accommodation at House No.1327, Sector IV, R.K. Puram, New Delhi, for a further period of six months from the date of communication of a copy of this order,

subject to his liability to pay the licence fee, etc., in accordance with the relevant rules. In the meanwhile, respondent No.2 (Directorate of Estates) will be ~~at~~ to take all proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, but the final order of eviction should not be passed. The question of recovery of licence fee, etc., with effect from 1.3.1981 to-date from the applicant, will have to be considered afresh in the light of the decision that may be taken by the Appellate Authority in the appeal to be filed by him against the order of

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removal from service. Hence, we do not think it appropriate to pass any specific orders in this regard.

MP 260/89 and MP 480/89 in TA 1177/85
and MP 2397/88 in OA 833/88

53. In these petitions, the applicant has alleged that some of the officers of the respondents committed the offence of perjury and, therefore, they should be prosecuted for the said offence.

54. As regards MP 260/89 and MP 480/89 in TA 1177/85, the case of the applicant is that the respondents falsely stated before the Tribunal that there were no vacancies in the grade of BSO in 1986 and 1987 and that he was removed from service on 24.8.87. The respondents filed an affidavit on 23.9.87 in the Tribunal to the effect that the seniority list has been revised on 28.8.87, in which his seniority was shown to have been revised. According to him, his seniority could not have been revised on 24.8.87, had he not been in service and that the statement that he was removed from service on 24.8.87 is false.

55. The question whether the applicant has been removed from service or not has been considered in OA 214/88. We have also issued certain directions to both parties in para 46 hereinabove. The mere fact that the respondents revised the seniority list on 28.8.87 retrospectively with effect from 17.4.80 does not imply or warrant an inference that he continued to remain in service on that date or that he had not been removed with effect from

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24.8.87 as alleged. It is pertinent to state that a similar MP (i.e. MP 170/88) filed by the applicant in this Tribunal on 20.1.88 was dismissed on 29.1.88. We are satisfied that the respondents have not committed any perjury by filing their reply which only sets out the stand of the respondents.

56. In MP 480/89 in OA 1177/85, the applicant has stated that he had filed a contempt petition in the Tribunal for non-compliance of the Tribunal's order dated 19.1.1988, but the same was dismissed on 26.9.88 on the basis of a false affidavit filed by the respondents. This Tribunal's order dated 26.9.88 was on the basis of its earlier order dated 10.6.88 in MP 636/88 filed by the respondents. The respondents had certified in the said MP that there were no vacancies in the grade of BSO in 1986 and 1987 and that the question of review DPC for the applicant's promotion as BSO during these years did not arise. In the absence of any promotion to the grade of BSO, he had no claim for being considered for promotion as Senior BSO during 1986 and 1987. The respondents had also indicated in the said MP that he had been removed from service on 24.8.87 and, therefore, the question of considering him for promotion as BSO for subsequent years did not arise.

57. In view of the above, we see no justification for modifying the Tribunal's order dated 26.9.88. RA 132/88 filed by the applicant against the Tribunal's order dated 26.9.88 had also been dismissed by order dated 31.3.89.

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58. In MP 2397/88 in OA 833/88, the applicant has prayed that Shri George Paracken, Estates Officer be punished for having committed the offence of perjury. The applicant states that Shri George Paracken appearing on behalf of the respondents on 29.9.88 in MP 1939/88 in OA 833/88 had stated before this Tribunal that the Chairman while sitting in the Single Bench in the case had passed an order that no fresh stay can be given. The applicant has submitted that on 22.7.88, the Hon'ble Chairman had passed an order in regard to clubbing and non-clubbing of the pending applications filed by the applicant. As such, he had alleged that Shri George Paracken has intentionally and deliberately made a false statement in order to obstruct the administration of justice. He has further stated that relying on the statement of Shri Paracken, this Tribunal did not stay or quash the impugned letter dated 1.9.88 issued by the Director of Estates.

59. At the time of final hearing on 31.5.1989, Shri Paracken appeared in person and drew our attention to the Tribunal's order dated 15.12.88 whereby the respondents were directed to stay the eviction proceedings against the applicant. The records do not indicate that whatever representations had been made by Shri Paracken, had influenced the decision given by this Tribunal. In the circumstances, we see no merit in MP 2397/87 and the same is rejected.

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Findings and Directions

60. Our conclusions in these applications are as follows:-

A. Question of mala fides

Allegations of mala fides made in all these applications have not been substantiated by the applicant by producing cogent and contemporaneous evidence.

B. Orders in TA 378/86, OA 509/86, OA 1392/87, OA 214/88 and OA 833/89

(i) TA 378/86

The impugned order of transfer of the applicant from Delhi to Suratgarh dated 20.9.85 cannot be faulted on the grounds alleged in the application and, therefore, he is not entitled to the reliefs sought by him.

(ii) OA 509/86

Pursuant to the judgment of this Tribunal dated 1.4.86 in TA 1177/85, the respondents have fixed the seniority of the applicant in the post of Supervisor from B/S Grade I / 17.4.1980. In view of this, refixation of his seniority in the lower post of Supervisor Grade II and his confirmation in the said post, as prayed for by him, are neither necessary nor warranted.

(iii) OA 1392/87

The applicant has not produced any evidence to substantiate his assertion that he was working as Principal Barrack & Store Officer (PBSO) as on 15.10.1986 when he gave notice of his voluntary retirement styling himself as PBSO. Mere silence on the part of the respondents during the notice period or thereafter does not mean or imply admission or acquiescence on their

part to the claim or assertion made by him. His notice dated 15.10.1986 is not, therefore, a valid notice in the eye of law and no legal consequences flow therefrom.

(iv) OA 214/88

As to the applicant's prayer for awarding him compensation to the tune of Rs.15 Lakhs as "social damages", we hold that this Tribunal has no jurisdiction to adjudicate upon the matter and he may seek his remedy in an action for tort by filing an appropriate suit in a competent court of law, if he is so advised. In the facts and circumstances of the case, the holding of ex-parte enquiry against the applicant in accordance with the provisions of the CCS (CCA) Rules, 1965 was justified. We are, however, of the opinion that the penalty imposed deserves reconsideration in the light of what is stated in Paras 43 to 46 above. In the interest of justice, we, therefore, order and direct that the applicant may, within a period of one month from the date of communication of a copy of this order, file an appeal to the appellate authority against the impugned order dated 24.8.87, imposing on him the penalty of removal from service. The appellate authority shall consider the appeal ~~as early as possible~~ as early as possible but in any event not later than three months' from the date of receipt of the appeal and pass a speaking order. The appellate authority shall also duly consider the observations contained in paras 43 to 46 hereinabove and the concluding para of this judgment while taking a decision on the appeal. In case he feels aggrieved by the decision of the appellate authority, he will be at liberty to file a fresh application in this Tribunal in accordance with law, if he is so advised.

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(v) OA 833/89

In view of our findings and directions in OA 214/88, we direct that the applicant shall not be dispossessed from the Government accommodation at House No.1327, Sector IV, R.K. Puram, New Delhi, for a further period of six months from the date of communication of a copy of this order subject to pay ~~or~~ to his liability/ licence fee etc. in accordance with the relevant rules. In the meanwhile, the Directorate of Estates will be at liberty to take all proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, but the final order of eviction shall not be passed during the said period of six months. The question of recovery of licence fee etc. with effect from 1.3.1981 to date from the applicant will have to be considered afresh in the light of the decision that may be given by the appellate authority in the appeal to be filed by him.

(vi) MP 260/89 & MP 480/89 in TA 1177/85 and MP 2397/88
In OA 833/88

We see no merit in these miscellaneous petitions.

The applicant has not made out a *prima facie* case for proceedings against the officers concerned of the respondents for having committed the offence of perjury, as alleged by him. These petitions are, therefore, dismissed.

(vii) All other miscellaneous petitions, CCPs etc. filed and ~~in~~ in TA 378/86, OAs 509/86, 1392/87, 214/88 and 833/89 stand disposed of by this order.

(viii) The parties will bear their own costs.

On

CONCLUSIONS

61. Before parting with these cases, we cannot help observing that throughout the course of this protracted litigation in which numerous MPs, CCPs and RAs had been filed by the applicant, he did not have the benefit of good counsel. He appeared to be excessively obsessed with the justness of his stand and unduly sensitive to any contrary view advanced by the respondents. This explains initiating for his persistence in his request for/ proceedings against the senior officers of the respondents for perjury. Certain issues raised by him in the pleadings like corruption in high places in his department, the so-called plot and conspiracy to destabilise the nation and to assassinate the Head of the Government claimed to have been foiled by him, are extraneous to the issues involved in the proceedings before us and, at best, might serve as a subtle attempt to influence, if not prejudice, our minds. We have not in any manner been influenced by these oddities of the litigation and have arrived at our decision on the merits of each case. Likewise, we hope, that the respondents will ignore these extraneous considerations and the events of the past and comply with the directions given to them in this judgment in a fair and just manner. A copy of this judgment is to be placed in each of the case files.

M.M. Mathur
(M.M. MATHUR)
ADMINISTRATIVE MEMBER

Partha
9/6/89
(P.K. KARTHA)
VICE CHAIRMAN(J)