

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1643/90

New Delhi, 30th September, 1994

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)
THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Arjan J. Lalwani,
Retd. Suptd. Gr-II (MES),
R/O A-244, Vikasपुरी,
New Delhi - 110018.

... Applicant

By Advocate Shri R. K. Kamal

Versus

1. Union of India through
the Engineer-in-Chief,
Army Headquarters,
Kashmir House, DHQ P.O.
New Delhi - 110011.

2. The Chief Engineer,
Hq. Western Command,
Engineers Branch,
Chandi Mandir.

... Respondents

By Advocate Shri M. K. Gupta

O R D E R

Shri S. R. Adige, Member (A) —

In this application Shri A. J. Lalwani, retired Suptd. Grade-II (MES) has impugned the order dated 27.12.1989 (Annex. A-1) compulsorily retiring him from Government service which has been upheld in appeal vide order dated 6.4.1991 (Annex. R-1 to MA-4190/91).

2. From the materials on record it appears that the applicant who joined the M.E.S. as Suptd. B/R Gr.-II on 30.3.1965 was deputed to the Government of Nigeria for a period of two years w.e.f. 8.6.1977 which was subsequently extended by a year. The applicant was to re-join duty on 8.6.1980, but when he did not report back to duty even till February, 1986, a

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- 2 -

departmental proceeding was drawn-up against him vide order dated 8.2.1986 (Annex. A-5) for unauthorised absence. He reported back on 25.2.1986 and was taken on strength w.e.f. 29.4.1986 after a clarification was obtained that a decision to regularise this period of absence would be taken after the departmental proceedings were finalised.

3. After serving for a few months, the applicant applied for and was granted one day's restricted leave for 15.9.1986 with permission to prefix 14.9.1986 (Sunday) and suffix 16.9.1986 (Gazetted holiday). The applicant was to resume duty on 17.9.1986, but as he failed to do so, a telegram was sent to him on 30.9.1986 (Ex. P-1) in reply to his own telegram stating that he had fallen sick and he was directed to report to duty forthwith. In reply, the applicant sent a letter dated 14.10.1986 (Ex. P-2) stating that he was still undergoing treatment and it would take a week or so to recover, but he did not specify the cause of his sickness, nor was any specific request made in that letter for grant/extension of leave. Meanwhile, another telegram was sent to him on 13.10.1986 (Ex. P-3) directing him to re-join duty at once which was followed by three more telegrams dated 11.11.1986, 26.11.1986 and 23.12.1986 (Ex. P-4-6) directing him to re-join immediately failing which disciplinary action would follow. The applicant sent a telegram dated January, 1987 from which the respondents concluded that he would join duty on 16.1.1987, but when he failed to do so a letter was

sent to him on 22.1.1987 (Ex. P-7) directing him to report to the C.M.O., Civil Hospital, Jaipur for medical examination, to substantiate his contention that he was undergoing treatment.

4. The applicant neither abided by these instructions, nor reported back for duty, upon which another departmental proceeding was drawn-up against him on 7.3.1987 (Annex. R-I to the Counter) for unauthorised and wilful absence from duty w.e.f. 17.9.1986. The earlier departmental inquiry for failing to report back after completion of his tenure with the Nigerian Government was not pursued.

5. In his reply dated 19.3.1987 (Annex. A-8) the applicant admitted receiving the memo dated 7.3.1987 and stated that he would like to submit his first-hand reply as he did not feel there was any justification for submitting a defence statement as he did not agree to the charges framed against him. Furthermore, he suggested that the respondents were "well aware of his leave on medical grounds" for which he was undergoing treatment, and added that he would like to be heard in person as soon as he was fit. No mention was made of the illness from which he claimed he was suffering nor to the respondents' earlier directive to report to the C.M.O., Jaipur for medical examination. 28.8.1987 was fixed for the inquiry and summons were sent to the applicant at his address in Jaipur directing him to appear on that date, but the process server returned the summons with the remark that the individual was not available at that address.

A fresh registered A/D letter was sent to the applicant at his permanent address at his village as per his service record directing him to appear on 28.8.1987, but the same was also returned back with the remark that the applicant was not available at that address either. Thereafter, a public notice was issued in two leading newspapers on 29.10.1987 directing the applicant to appear before the inquiry officer on 10.11.1987 failing which the inquiry would be held ex parte against him, but he did not respond to that either. Thereupon, the I.O. submitted his findings on 30.1.1988 (documents attached to Annex. A-1) holding that the applicant had wilfully absented himself from duty w.e.f. 17.9.1986 without any communication to the department and thereby had failed to maintain absolute devotion to duty and was "bluffing the department". Accepting the I.O.'s report, the disciplinary authority passed the impugned penalty order dated 27.12.1988 compulsorily retiring the applicant from service which was upheld in the appellate order dated 6.4.1991.

6. The first ground taken by the applicant is that the inquiry was violative of the principles of natural justice and Art. 14 of the Constitution, being ex parte and based on no evidence. The inquiry had to be conducted ex parte owing to the applicant's failure to participate and the evidence was the applicant's own absence in spite of numerous communications to re-join duty and directive to get himself medically examined by the C.M.O., Jaipur to substantiate his claim that he was in fact too ill to join and was receiving treatment. This ground, therefore, has no force.

7. The next ground taken is that the chargesheet is illegal and void because it did not contain the statement of imputation of misconduct in support of the articles of charge, or the lists of witnesses and documents to support the charge. In view of the contents of Annexure R-I attached to the respondents' reply, this ground has no force.

8. The third ground is that the memo of charges is biased because it states that the applicant was not merely absent from duty, but 'wilfully' absent. The applicant did not produce any materials before the respondents before the charges were framed, to satisfy them that he was absent due to reasons beyond his control, and hence, it cannot be said that the use of the word 'wilfully' was actuated by bias. This ground also fails.

9. The next ground taken is that the I.O. relied on the presenting officer's statement in support of the charges, but his statement was not recorded nor authenticated by witnesses. It is alleged that the inquiry is vitiated because no witnesses were listed on the evidence of whom the charges were to be sustained and in that circumstance, the examination of the presenting officer was illegal. This ground also has no force and does not vitiate the inquiry, because the presenting officer was not examined as a witness but was only asked to present the case against the applicant which he did, and he produced certified true copies of the various communications sent to the applicant in support of the charge that the applicant had absented

- 6 -

himself from duty w.e.f. 17.9.1986 in spite of several directives to him to re-join duty or get himself medically examined by the C.M.O., Jaipur to substantiate his claim that he was unwell and was being treated, as also the clear warning that he would face disciplinary action if he failed to abide by these directions.

10. The next ground taken by the applicant is that the disciplinary authority did not go through the defence statement submitted by the applicant. The applicant has failed to furnish any materials to establish this ground.

11. The next ground taken is that the Commander Works Engineer (CWE) was not competent to appoint the I.O. This is negatived by Rule 13(2) C.C.S. (C.C.A.) Rules, as pointed out by the respondents in their reply which has not been rebutted by the applicant in his rejoinder. Hence, this ground fails.

12. Similarly, the grounds taken that the words "tactfully bluffing the department" used by the I.O. in his report; no oral or documentary evidence being cited under assessment of evidence; no reasons being given in support of the findings; use of the words "fresh inquiry" in the chargesheet where no earlier inquiry was held; and failure to record the applicant's absence in the inquiry, are sufficient to vitiate the inquiry, have to be rejected. It must be remembered that it is not the form but the substance of the inquiry which has to be seen, and particularly whether the charged official received a fair trial. The applicant

cannot deny that he was absent from duty from 17.9.86 till the actual date of the inquiry. His only defence is that he was ^{ill and} thereby unable to attend either his duty or the inquiry. However, there is no reference to any leave application being made by the applicant at any stage, specifying the cause ^{or sickness} of the illness, and the period of leave sought, supported by a proper medical certificate. Furthermore, mere submission of a leave application even if supported by medical certificate, was not by itself sufficient to allow the applicant to remain absent from duty in anticipation of sanction of leave. For a Government servant, leave is not a right, but a privilege which has to be sanctioned by the competent authority and merely on the strength of a leave application, the grant of leave cannot be assumed in anticipation of sanction. In the present case, there is not even a whisper that any leave application was submitted by the applicant. Hence, this ground also fails.

13. Another ground taken is that the non-supply of the inquiry report has vitiated the inquiry. In this connection, in Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors. : (1993) 25 ATC 704 SC, the Hon'ble Supreme Court has directed that the rule laid down in Mchd. Ramzan Khan's case ((1991) 1 SCC 588) on 20.11.1990 that non-furnishing of a copy of the inquiry officer's report to the delinquent employee renders the final order passed by the authority against the delinquent void, has only prospective effect, and as the penalty order was passed on 27.12.1988, much before the decision dated 20.11.1990 in Ramzan Khan's case, this ground also fails.

14. Another ground taken is that the penalty of compulsory retirement and treatment of the period of absence as unauthorised are two punishments for the same misconduct, which is bad in law. This argument also has no force, because the punishment in fact is only one, that is, of compulsory retirement. That order merely clarifies how the period of unauthorised absence would be treated. /

15. Although no such ground has been taken anywhere in the pleadings, and for that reason it is open to us to reject the same summarily, we would advert to the argument advanced by the applicant's counsel Shri Kamal^{Advocate during hearing} that the proceedings were vitiated because of the inquiry officer's failure to adjourn the case under Rule 14 (11) CCA (CCS) Rules after the presenting officer had produced evidence to prove the articles of charge, to enable the applicant to prepare his defence. Shri Kamal asserted that the word 'shall' occurring before the words 'adjourn the case', makes this adjournment mandatory and the failure to abide by this mandatory direction vitiates the entire proceedings. In keeping with the principles of natural justice, the purpose of this sub-rule is to give the charged official an opportunity to inspect the documents which will be used against him, submit his list of defence witnesses, and call for any documents which are in the Government's possession, not mentioned in the list of documents to be used against him, to enable him to defend his case. In other words, this sub-rule gives full opportunity to the charged official for preparing and presenting his defence. In the present case, however, despite every opportunity being

- 9 -

given to the applicant to come forward and plead his defence, including registered letters and even a public notice, the applicant not only failed to put forward any defence, but even failed to appear. He is on record as stating that he did not feel there was any justification in submitting his defence statement, which itself was taken as the defence statement by the applicant in the impugned penalty order dated 27.12.1988. Right from 28.8.1987 when he was directed to appear before the I.O. upto the date of inquiry report, i.e., 30.1.1988, the applicant failed to present himself before the I.O. Under the circumstances, we hold that in the facts and circumstances of this case, merely because the inquiry was not adjourned under Rule 14 (11), the proceedings cannot be deemed to be vitiated, because in view of his conduct, the applicant has failed to establish that the non-adjournment has prejudiced him in any way, because he cannot deny that he received the list of documents as well as the list of witnesses (nil) with the aid of whom, the charges were proposed to be sustained, well in time and yet took no action thereon.

16. As has been laid down by the Hon'ble Supreme Court in Union of India & Ors. vs. Upendra Singh : (1994) 27 ATC 200 SC, judicial review is not an appeal from a decision, but a review of the manner in which the decision was made, with a view to ensure that the individual receives fair treatment, in accordance with the principles of natural justice. In the present case, having regard to the principle that 'he who seeks

equity, must do equity', we are satisfied that the requirement of affording the applicant full opportunity to put forward his defence has been amply fulfilled and the appellate authority in his detailed and reasoned order has also discussed the various grounds taken by the applicant in his appeal. In this connection in Managing Director, ECIL vs. B. Karunakar (supra), the Hon'ble Supreme Court have observed as follows :-

/the employee to resume duty.....

"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact prejudice has been caused to the employee or not.....has to be considered on the facts and circumstances of each case. Where, therefore,.....no different consequences would have followed, it would be a perversion of justice to permit the. / It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which itself is antithetical to justice."

17. In the facts and conspectus of this case, therefore, we see no reason to interfere with the impugned orders and this application is accordingly dismissed. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Member (A)

/as/