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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 688/90

New Delhi this the 11th day of August, 1994

Shri N.V. Krishnan, Vice Chairman(A).

Shri C.J. Roy, Member(J).

Harnam Das Deswal,
S/o Shri (Late) Chothu Ram,
R/o 334, Bhare Enclave,
Outer Ring Road,
New Delhi.

...Petitioner.

By Advocate Shri R.L. Sethi.

Versus

1. Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi.
3. Vice Chief of the Army Staff,
Army Headquarters,
DHQ PO
New Delhi.

...Respondents.

By Advocate Shri M.K. Gupta.

ORDER (ORAL)

Shri N.V. Krishnan.

The applicant was permanent Draftsman Grade-I under the respondents. While so, disciplinary proceedings were initiated against him by the Annexure A-6 memo dated the 26th November, 1986 on a charge of absenting himself from 5.4.1985 till date, despite the issue of numerous letters and telegrams advising him to join duty. A statement of imputations, the list of documents in support of the charge and the list of witnesses to be examined were also furnished to him. On his denying the charge, an enquiry was conducted. The Enquiry Officer found him guilty of the charge of remaining absent from duty w.e.f. 6.4.1985 till date except for the period 12.12.1986 to 15.12.1986 and 5.1.1987 to 7.1.1987.

2. Thereupon, the disciplinary authority considered the Enquiry Officer's report and found the applicant guilty of the charge framed against him and accordingly imposed the penalty of removal from service not amounting to disqualification for future employment by the Annexure A-10 order dated 27.11.1987. The appeal filed by the applicant has been dismissed by the Annexure A-12 order dated 17.10.1988. The applicant thereafter filed a revision petition which has also been dismissed by the Annexure A-1 order dated 7.11.1989. In the circumstances, the applicant has filed this O.A. seeking to quash the Annexure A-1 order of the revisional authority and Annexure A-10 order of the disciplinary authority.

3. The respondents have filed a reply denying that any relief is due to the applicant inasmuch as the enquiry has been properly conducted. The applicant has been removed from service for the charges proved against him.

4. The matter came for final hearing today. Shri R.L. Sethi, learned counsel for the applicant, submitted that this is a case where there is no evidence, whatsoever, about the absence of the applicant as charged. This is due to the fact that, as stated in the Enquiry Officer's report, no witness was examined in this regard, though, as many as three witnesses were cited in the 'memo of charges'. He points out that the Enquiry Officer's report has the following to say in regard to the evidence against the applicant:

"PO then presented the case and intimated that out of his witnesses, Sub Maj Harbans Singh, OS GE (AF) Suratgarh has since retired from service and Shri S.R. Goyal, AE and Shri K.K. Puri, D'Man Gde I have given a certificate stating that SPS was absent from duty w.e.f. 05 Apr 85 to-date (PE-8), no witnesses are presented by him".

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5. It is, therefore, contended that the Enquiry Officer had no material to come to the conclusion that the applicant was guilty. The Enquiry Officer could not have relied upon the certificate given by Shri K.K. Puri stating that the applicant is absent from duty without his entering into witness box and testifying against the applicant.

6. The learned counsel for the applicant also states that the Enquiry Officer has exceeded his jurisdiction in coming to the conclusion that the applicant was absent till date i.e. till the date the report was written, the date of which, however; has not been indicated by the Enquiry Officer. It is, however, clear that the report has been written after May, 1987 as seen from the body of the report which states that the applicant has nothing more to add to the enquiry which was completed on 12.5.1987. In other words, the Enquiry Officer found him guilty till May, 1987 or till the date he gave his report whichever is later, though the charge is only for absence only upto 27.11.1986.

7. Thus, the main ground of attack is only a lack of evidence in respect of the charge. We notice that one of the documents listed for being produced was the attendance register for the year 1985-86. The applicant gave a reply to the charge. It was open to him to give the reply after examining the attendance register and to take the plea that the register was false in so far as the recording of his attendance in the register during those years is concerned. Nothing of that sort of has been done. Instead, he has given some extenuating circumstances for his absence.

8. The report of the Enquiry Officer also mentions that when the enquiry was resumed on 27.3.1987, the applicant was shown the documents which he checked and accepted the authenticity, except one telegram

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dated 11.2.1986 from SPS. In the circumstance, we are of the view that there can be no question of the guilt being established without any evidence on record. In our view, the most important documentary evidence is the attendance register which was shown to the applicant and accepted by him. Therefore, we are unable to accept the argument of the learned counsel for the applicant that this is a case where there is no evidence to prove this charge.

9. The learned counsel for the applicant, however, argued that the penalty imposed on the applicant is totally out of proportion to the nature of the charge framed against him. The applicant had some personal difficulties which have not been given consideration.

10. The learned counsel for the respondents, however, pointed out that the plea taken by this applicant in this regard in the appeal has been fully considered by the appellate authority who has observed as follows:

"(m) The punishment was awarded after careful consideration of IO report and independent application of mind by CE Western Command.

(n) Each case is considered by competent disciplinary authority keeping in mind the aggravating or mitigating circumstances, before deciding about quantum of punishment and, therefore, cannot be compared.

(o) The CE Western Command has not considered the request for voluntary retirement of the individual after he was declared permanent during 1985. The charge sheet was issued during 1986".

The revising authority has also considered this.

11. We have carefully considered this matter. A perusal of the Annexure A-10 order dated 27.10.1987 only establishes that the disciplinary authority had given "a good deal of consideration" to the matter whether the applicant was found guilty of the charge memo against

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him. Thereafter, the disciplinary authority straightway has imposed the penalty of removal from service on the applicant. There is no discussion of the extenuating circumstances which the applicant had brought to the notice of the disciplinary authority in the reply to the charges as extracted above nor has the disciplinary authority given a consideration to the last para of the Enquiry Officer's report where, after coming to the conclusion that the applicant was guilty, the Enquiry Officer states that there was a considerable delay by the department to finalise his case for permanency and application for retirement. We are, therefore, of the view that in so far as the disciplinary authority is concerned, he has not applied his mind to this aspect of the matter. The appellate and revising authority too have not given any consideration.

12. In the circumstances, we are of the view that this is a case where the penalty imposed requires reconsideration. Hence, we dispose of this O.A. by quashing the impugned orders, only to the extent of the penalty imposed on the applicant by the disciplinary authority and to the extent of it being maintained in the appeal and revision without, in any way, disturbing the findings of the concerned authority that the applicant is guilty of the charges framed against him. We remand the matter to the disciplinary authority who should consider this aspect of the matter, i.e. quantum of penalty and pass a considered order imposing the appropriate penalty taking into account the observations made therein, within a period of three months from the date of receipt of a copy of this order and we direct that the second respondent shall ensure that this is done. We, however, make it clear that the question whether the applicant should be reinstated

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and if so, on what terms, shall depend on the order that may be passed by the disciplinary authority, as observed above.

13. There will be no order as to costs.

[Signature]
(C.J. ROY)
MEMBER(J)

[Signature] 11/8/84
(N.V. KRISHNAN)
VICE CHAIRMAN(A)

'SRD'