

(S.R. ADIGE)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

693/91 with

O.A./T.A. NO. 730/93 /19 Decided on : 29.12.95

P.N. Trehan

... Applicant(s)

(By Shri G.D. Gupta Advocate)

versus

U.O.I.

... Respondent(s)

(By Shri N.S. Mehta Advocate)

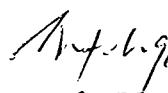
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THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE SHRI DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not ? Yes
2. Whether to be circulated to other Benches of the Tribunal ? Yes


(DR. A. VEDAVALLI)
Member (J)


(S.R. ADIGE)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

HON'BLE MR. S.R. ADIGE, MEMBER (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Date of Decision: 21.12.95

✓ 1) O.A.No.693/91

Shri P.N. Trehan,

s/o Shri Khushi Ram Trehan,
R/o 718, Lodi Road Complex,
New Delhi-110 003

.....Applicant.

Versus

1. Union of India through
the Secretary to the Govt. of India,
Ministry of Home Affairs,
North Block,
New Delhi -110001.

2. The Director General,
Central Reserve Police Force,
Block I, CGO Complex, Lodi Road,
New Delhi -110 003

.....Respondents.

2) O.A.No.730 / 1993.

Shri P.N. Trehan,
S/o Shri Khushi Ram Trehan,
R/O 718, Lodi Road Complex,
New Delhi -110 003.

Versus

1. Union of India through
The Secretary to the Govt. of India,
Ministry of Home Affairs,
North Block,
New Delhi -110 001.

2. The Director General,
Central Reserve Police Force,
Block-I, CGO Complex, Lodi Road,
New Delhi - 110003.

3. The Deputy Inspector,
General of Police,
Rapid Action Force, CRPF,
East Block, R.K.Puram,
New Delhi.

.....Respondents

By Advocate Shri G.D. Gupta for the applicant.

By Advocate Shri N.S. Mehta for the respondents.



JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

As many of the facts and points of law raised in these two QAs, both of which have been filed by Shri P.N.Trehan, are common, the two QAs are being disposed of by this common order.

2. Shortly stated the applicant was initially appointed as IDC in CRPF in June, 1965. His case is that while working in the wireless Office of the IGP CRPF, R.K.Puram, New Delhi, he brought to the attention of the then Asstt. Director (Admn) on 15.4.69 certain information regarding leakage of question papers of the ensuing UDC exam. After inquiries, it transpired that there had been a leakage, and two of the applicant's colleagues had knowledge of the same and had sought to profit by it. Thereupon, the applicant was pressurised to withdraw his complaint about leakage of the information, but he declined to do so upon which he was threatened with dire consequences. Thereafter he was served with a charge sheet dated 24.7.69 ^(Ann A-4) under Rule 16 CCS (CCA) Rules alleging that he had made a false complaint. He submitted his reply in August, 1969 in which he denied having made any false complaint, upon which the departmental enquiry started. The applicant alleges that the I.O who was appointed, was biased and conducted the D.E. in an irregular manner, as he was bent upon helping those persons against whom the applicant had filed the complaint. The applicant brought the alleged irregularities to the notice of

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the higher authorities upon which he was transferred to 27th Battalion in Assam on 3.6.70 (Annexure-A9), but was not actually issued the relieving order. Six months later on 24.10.70 (Annexure-A9) he was transferred back to 47th Battalion in Delhi, but he contends that even at that time he was not relieved by DG, CRPF where he was working. He states that in response to his representations against his transfer, he was informed vide Memo dated 15.6.70 (Annexure-A10) that he had been transferred because he had cast doubts about the fairness of the inquiry held by the I.O and so that the inquiry could be held there by the new I.O. Ultimately the IO submitted his report on 12.4.72 holding the charge proved, and a copy of the same was supplied to him on 14.6.73 with a Memo (Annexure-A11) imposing a penalty of withholding of promotion for 5 years w.e.f. 24.7.69. His appeal petition dated 26.7.73 was rejected on 26.10.73, and his review petition dated 23.2.74 was likewise rejected on 25/26.3.74. His subsequent representations elicited no satisfactory reply till he was informed by Memo dated 21.12.90 that the matter stood finally closed.

3. He states that meanwhile on 14.6.73 another charge sheet was served upon him alleging that

- i) While on transfer to Assam and then back to Delhi he had been absenting himself from 3.6.70 without proper authority; and
- ii) he drew TA/DA for his transfer, knowing fully well that he would not be using it for the purposes for which he had drawn it.

He contends that he upon receipt of charge sheet, reported for duty before the DG CRPF (his Disc. Authority) on 25.8.73 and to face the enquiry but was informed that

as he stood posted to 47th Battallion, the question of his joining duty at the Directorate did not arise. However, as he was not paid salary despite several representations, he found himself unable to participate in the D.E. as a result of which the D.E. was held ~~ex parte~~ and by order dated 21.7.75 (Annexure-A19) he was dismissed from service.

4. He challenged that order in the Civil Court, where the suit was dismissed at the trial stage, but in appeal, the said suit was allowed by the Addl. District Judge, Ludhiana on 16.4.85 (Annexure-A20). Against that order the UOI filed an appeal in the Punjab & Haryana High Court which was transferred to CAT, Chandigarh Bench, who by their order dated 8.7.86 dismissed the appeal, against which the Punjab High Court in their order dated 16.1.87 on the second appeal dismissed the same as being without merit.

5. As a result thereof, the applicant was reinstated in service w.e.f. 14.5.87 and was posted to Imphal. The period between 22.7.75 and the date of reinstatement was ordered to be treated as duty. Accordingly, the applicant joined at Imphal as UDC from where he was transferred to Amritsar in January, 1989 and then back to the Directorate General, CRPF, New Delhi in May, 1989.

6. The applicant contends that during the said period when he reminded the authorities for the settlement of his case in regard to confirmation, promotion, seniority and also regularisation of his service from 21.7.75 onwards, the respondents

directed that the period from 3.6.70 to 21.7.75 would be treated as 'dies non' for all purposes viz. increment, leave and pension, vide their letter dated 10.6.87 (Annexure-A26) without assigning reasons or giving the applicant any show cause or opportunity of being heard. As regards his promotion, he was informed vide letter dated 4.7.87 (Annexure-A27) that the same would be decided after finalisation of his case for promotion as IDC and as regards his confirmation he was informed that the matter had been referred to his superiors in Imphal. The applicant contends that when he represented against treatment of the period 3.6.70 to 21.7.75 as dies non, he was eventually informed vide Memo dated 2.3.90 that the Home Ministry had clarified that the said period was required to be regularised as dies non under Rule 25 CCS (Leave) Rules and FR 17 and the Memo dated 10.6.87 required no amendment. He was also informed vide Office order dated 20.11.90 that his case for confirmation as IDC had been considered by the DPC on 9.11.90, but he had been found unfit for confirmation and the DPC had recommended that his performance be watched for one year more against which he submitted an appeal, but receiving no reply he was compelled to file this O.A. No.693/91 on 28.2.91.

7. The applicant contends that after the above O.A. was filed on 28.2.91, he was confirmed as IDC vide order dated 20.3.91, but having got prejudiced

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by the applicant's act in challenging the respondents' action in treating the period 3.6.70 to 21.7.75 as dies non, they issued a fresh charge sheet dated 9.10.91 (Annexure-A10 of O.A. No.730/93) in which the charges are identical with those contained in the earlier charge sheet dated 14.6.73. The applicant states that he submitted his objections to the said charge sheet, which were however rejected on 23.12.91, his prayer for a personal interview with the DG, CRPF was refused and his appeal to the Home Secretary was withheld compelling him to file O.A.No.730/93.

8. Accordingly in O.A.No.693/91 the applicant has prayed for quashing of the Memo dated 2.3.90 and office Order dated 20.11.90 and for a declaration that the period from 3.6.70 to 21.7.75 be treated as the period spent on duty for all purposes with all consequential benefits. While in O.A.No.730/93 the applicant has prayed for quashing of impugned charge sheet dated 9.10.91 and for a declaration that no de novo enquiry into the charges which were the subject matter of earlier charge sheet dated 14.6.73, could be held.

9. The respondents in their reply have contested the two OAs. They state that a qualifying test for promotion to the post of UDCs was held on 15.4.69. The applicant who had been appointed as UDC in June, 1965 was a candidate but failed to appear in the test and instead alleged leakage of question papers and malpractice.

10. A departmental enquiry was ordered to be

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held, but as the applicant alleged bias on the part of the Enquiry Officer, he was transferred out of Delhi on 3.6.70 and he was also paid TA advance Rs.417/- for the purpose. The applicant did not join his new post and was not co-operative in the enquiry. Accordingly, he was again transferred back to Delhi on 17.10.70 but he defied the order and did not co-operate to complete the enquiry and accordingly the enquiry was held ex parte and based upon the findings of the Enquiry Officer, the Disciplinary Authority by Memo dated 14.6.73 imposed the penalty of stoppage of promotion for five years w.e.f. 24.7.69. The applicant's appeal and revision was also rejected. The respondents further state that meanwhile as the applicant remained absent even after being relieved on 3.6.70 and drawing TA advance, it became necessary to hold an enquiry into the applicant's misconduct as a result of unauthorised absence from 3.6.70 leading to the framing of charges dated 14.6.73. The applicant had approached the Delhi High Court for quashing of the enquiry, but the writ petition was dismissed at his instance on 17.9.74 and the enquiry proceeded. He was intimated of the dates of hearing but he did not co-operate and participate in the enquiry as a result of which it was decided ex parte on 7.4.1975.

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Based on the findings of the Enquiry Officer, he was dismissed under order dated 22.7.75 with effect from that date and the absence period was treated as dies non. Aggrieved by the dismissal order, he approached the Court of Sub Judge 1st Class, Ludhiana by filing a suit for declaration even though the cause of action was outside the jurisdiction of that court on 10.11.80, for recovery of salary from 22.7.75 till the date of institution i.e. 17.7.78, in which no prayer was made for treatment of period from 3.6.70 to 21.7.75 as on duty. The suit was dismissed vide judgment dated 3.8.81 by holding that there was no infirmity in the order of dismissal having regard to the reasonable opportunity.
The ~~appeal~~ ^{applicant then} had filed an appeal to the Addl. District Judge, Ludhiana where in he had not impleaded the Director General, being a proper and necessary party. The appellate Court reversed the findings of the Sub-Judge 1st Class *ex parte*, because according to the respondents no notice was served on the department, and the case could not be pleaded. The respondents state that the appellate court purely on the submission of the applicant stated that the lower court had not gone into the record of enquiry without providing any opportunity to produce the relevant documents/records. The judgment dated 16.4.85 reversed the findings of the lower court with the following observations:-

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It will not be out of place to mention here that the respondent department has not conducted the enquiry in accordance with law and rules of natural justice. The appellant was even denied the personal hearing as per note dated 15.6.70 which was sent by Dy. Director, CRPF therefore for the foregoing reasons I hold that the enquiry was not conducted in accordance with law and reverse the finding of the Trial Court.

11. The respondents state that these exparte orders could not be further challenged in the High Court and were thus implemented by ordering reinstatement of the applicant vide order dated 12.5.87. They state that the issue as to how the aforesaid period of an unauthorised absence from 3.6.70 to 21.7.75 is to be treated, still remains undecided and that the proposed enquiry is being held to afford the applicant a reasonable and just opportunity of being heard before a final decision is taken in the matter, and it is for that reason that the charge sheet dated 9.10.91 has been issued under Rule 10(4) read with Rule 14 CCS(CCA) Rules, 1965.

12. We have heard Shri G.D. Gupta for the applicant and Shri N.S. Mehta for the respondents. We have also perused the materials on record and considered the matter carefully.

13. A comparison of the impugned charge sheet dated 9.10.91 with that of the charge sheet dated 14.6.73 shows that the two are practically

identical in all material particulars, and the differences, if any, are only cosmetic and of no real consequence. The punishment of dismissal imposed by the Disciplinary Authority and upheld in appeal and revision was successfully challenged by the applicant before the A.D.J. Ludhiana who set aside the dismissal order as a result of which the applicant was reinstated. The respondents were unable to challenge the ADJ Ludhiana's decision either before CAT or before the High Court, and they have not produced any materials to indicate that the said decision of the ADJ, Ludhiana has not become final. Under the circumstances charge-sheeting the applicant for the same acts of alleged misconduct for which he was charge sheeted and punished on an earlier occasion, which punishment was set aside by an authorised Court of Law, will be an attempt to punish the applicant twice for the same alleged acts of misconduct. Such an action on the part of the respondents would neither be fair nor in accordance with the principles of natural justice, more so as the alleged acts of misconduct relate to events more than 20 years ago, when the applicant is ^{now} approaching the age of superannuation, and cannot be justified on the ground that such a DE is necessary to determine how the period of unauthorised absence from duty from 3.6.70 to 21.7.75 is to be treated, when the respondents themselves admit that the said period has been treated as ~~dies non~~, under Rule 25 CCs (Leave) Rules read with

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FR 17. In this connection, we must note that respondents' counsel Shri N.S. Mehta also does not oppose the dropping of the charge sheet dated 9.10.91 and states further that the respondents would have no objection to the counting of the period of absence of the applicant from duty from 3.6.70 to 21.7.75 for pension purposes, while for any other purpose, the period of absence may be treated in accordance with rules.

14. We consider this submission made by Shri Mehta an eminently fair and reasonable one. Accordingly, OA No.730/93 is allowed and the impugned charge sheet dated 9.10.91 is quashed and set aside, and the respondents are directed not to proceed further on the basis of that charge sheet while in respect of O.A. No.693/91 the respondents are directed to count the period from 3.6.70 to 21.7.75 in respect of the applicant towards his pension, but in respect of the other benefits claimed by him relating to this period, dispose of such claims in accordance with rules, by means of a detailed and speaking order under intimation to the applicant within three months from the date of receipt of a copy of this judgment. While disposing of these claims the respondents will not lose sight of the fact that the applicant is now approaching the age of super-annuation and has not many years of service left.

15. These two OAs are disposed of in terms of the contents of paragraph 14 above. Let copies of this judgment be placed in both case records. No costs.

A. Vedavalli

(DR. A. VEDA VALLI)
Member (J)

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

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