

(P)

In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No.2003/92

Date of decision: 21.04.1993.

Shri Lakshman Dass

...Petitioner

Versus

Union of India through Secretary,
Ministry of Defence, New
Delhi & Others

...Respondents

Coram:- The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman(J)
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri S.S. Duggal, Counsel.

For the respondents

Shri H.K. Gangwani, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

The petitioner in this Original Application has challenged the order dated 24.1.1991 passed by the disciplinary authority under Rule 15 of CCS (CCA) Rules, 1965, retiring him compulsorily from service with effect from the date of service of the order and appellate order dated 22.11.1991, rejecting his appeal dated 14.3.1991 and affirming the order of the disciplinary authority as to the punishment imposed on him. The petitioner was charge-sheeted on 1.2.1990. The article of charge against him was that while functioning as Office Superintendent during the period April, 1989, he remained absent from duty without permission w.e.f. 17.4.1989 and continued to remain so absent till the memorandum of charges was served. The second article of charge is to the effect that the petitioner remained absent from duty without prior permission in contravention of the extant instructions and further continued to do so even though he was directed to report for duty by registered post on 6.6.1989. By his above act the petitioner Shri Lakshman Dass exhibited conduct

(L)

unbecoming of Government servant in violation of Rule 3 of the CCS (Conduct) Rules, 1964. An enquiry officer was appointed. The enquiry was held and the enquiry report finalised. The findings of the enquiry officer are that the petitioner was found guilty of charges-I and II framed against him, as he had admitted his guilt. Thereafter the petitioner was compulsorily retired after following the due process of law vide orders dated 24.1.1991 signed by Brig. V.L. Vohra, Officer-in-Charge (OIC for short) of Ordnance Depot, Shakur Basti. The petitioner filed an appeal on 14.3.1991, which came to be rejected vide appellate order dated 22.11.1991. Both these orders are under challenge in this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985. The respondents have filed the counter-affidavit. The petitioner, however, did not file the rejoinder despite several opportunities. The learned counsel for the petitioner, however, offered to argue the matter without filing the rejoinder.

2. Shri S.S. Duggal, the learned counsel for the petitioner assailed the impugned orders principally on three grounds. First that the OIC, Ordnance Depot, Shakur Basti was not the appointing/disciplinary authority and as such was not competent to pass the order of compulsory retirement. The learned counsel supported his contention by referring to the statutory provisions published in the Gazette of India dated September 25, 1978 which specifies the appointing authority and the disciplinary authority in respect of various categories of Government servants in the establishment of Director General, Ordnance Service. The learned counsel further submitted that the specific issue of competency of the disciplinary authority was also raised by the petitioner in his appeal dated 14.03.1991 but the same has been rejected by the appellate authority

J

by a non speaking order. The relevant portion of the appellate order reads as under:-

"The contention of the appellant that the charge sheet has been incorrectly initiated by the disciplinary authority i.e. OIC AOC (R) is also not correct as OCI AOC (R) is competent authority to initiate charge sheet being disciplinary authority. However, appellate powers in these cases have been conferred on the DG OS."

3. The above argument has been met by the respondents by producing a copy of the Ministry of Defence OM No. 5(7)/79/D(Lab)O dated 13.8.1979 for the perusal of the Court. In the said memorandum the President has delegated powers to the OIC to impose penalties specified in sub-rule (i) to (ix), Rule 11 of CCS (CCA) Rules, 1965 in respect of centrally controlled Group 'C' employees to which category the petitioner belongs. The learned counsel for the respondents Shri H.K. Gangwani accordingly affirmed that no illegality has been committed by the respondents either in the issue of the chargesheet or in imposing the penalty by the disciplinary authority, as the OIC is fully competent, having been empowered to take action against the centrally controlled Group 'C' employees by the President.

4. The second ground taken by the learned counsel for the petitioner is that the petitioner had sent a medical leave application accompanied by a medical certificate to his office and that the leave applied for had been sanctioned. The learned counsel contended that once the leave is sanctioned the petitioner cannot be chargesheeted for the unauthorised absence, as such period stands regularised. In support of the above the reliance was placed on the case of Mange Ram vs. Commissioner of Police and another - ATJ 1992 (2) CAT 148. In this case the

petitioner was a Constable in Delhi Police and had remained absent unauthorisedly. He was imposed a penalty of one year's permanent forfeiture of approved service with cumulative effect and his period of absence was treated as leave without pay vide the impugned order. As the period of absence was ordered to be treated as leave without pay the Tribunal held that in the circumstances of the case the impugned order of punishment of one year's permanent forfeiture of approved service with cumulative effect was not legally sustainable. The same was accordingly set aside. The facts and circumstances of Mange Ram's (supra) case are distinguishable from the matter before us.

5. The learned counsel for the respondents drew our attention to a copy of the leave application which was submitted by the petitioner on 20.4.1990 when he came to join duty after a little over one year's continuous absence. The learned counsel for the respondents submitted that the said application, as would be observed from the copy filed, was recommended by the Group Officer and forwarded to the competent authority. The competent authority had not sanctioned the leave applied for. The period of unauthorised period of absence, however, was regularised for the purpose of sanction of retirement benefits e.g. pension etc. This was done vide order dated 13.5.1991 after the petitioner had been compulsorily retired. If this unauthorised absence had not been regularised the petitioner would have lost by way qualifying service for pension etc. The regularisation of unauthorised absence after compulsory retirement cannot be construed to mean as sanction of the leave applied for on resuming duty after unauthorised absence of over little one year.

2

6. Lastly, the learned counsel for the petitioner urged that the respondents have tampered with the enquiry proceedings. He further submitted that while in the manuscript copy of the enquiry report the presenting officer is said to have refused to give the brief, in the typed copy, it is stated that the brief is attached. Both the documents are of 18.5.1990. If on 18.5.1990 the brief was not ready how the same could be attached with the enquiry report. This argument was sought to be sustained by the learned counsel for the petitioner by reference to the last paragraph of the manuscript copy of the enquiry report. The enquiry officer has recorded "since the delinquent official admitted his guilt, I hereby close the enquiry and Present Officer was asked to submit his brief if any, for which he refused." In the typed copy of the enquiry report, however, this portion of the enquiry report appears as follows: "Since the delinquent official admitted his guilt, I hereby close the inquiry and presenting officer was asked to submit his brief which is attached"

7. The allegation of tampering with the enquiry report has been countered by the respondents. The learned counsel Shri Gangwani submitted that the enquiry officer apparently had corrected the mistakes which appeared in the manuscript copy of the enquiry report. Errors of syntax etc. which crept in the manuscript copy had alone been rectified in the typed copy. These minor corrections cannot be construed as tampering with the enquiry report and consequently the question of vitiation of enquiry report does not arise. As far as the brief of the Presenting Officer is concerned, it is not the case of the petitioner that a copy of the brief had not been given to him. In fact, both, a copy each of the

d
2

enquiry report and the brief was furnished to the petitioner before the disciplinary authority passed his order dated 24.1.1991. No prejudice thus has been caused to him.

8. We have heard the learned counsel of both the parties and gone through the record of the case carefully. We are of the opinion that the petitioner had remained absent unauthorisedly and had not sent any intimation about his sickness to the respondents. In fact, in paragraph-4 of his appeal (page 40 of the paperbook) he has submitted that:-

"That during my such critical illness I could only send message and an application through someone, whether the same was delivered to my office, nothing could be said but I have concrete proof/evidence in this regard."

It would thus be seen that the petitioner disowns the responsibility of having ensured the delivery of any application to the office of the respondents nor has any concrete proof to this effect been produced. Factually, his medical leave was also not sanctioned. It was regularised to enable the sanction of retiral benefits. We have no reason to disbelieve the statement made by the learned counsel for the respondents at the Bar, as supported by the documentary evidence regarding regularisation of unauthorised period of absence for purpose of retirement benefits. We also have not reason to disbelieve the statement of the respondents made in paragraph-4.13 of the counter-affidavit that there was no malafide motive in the minor corrections which were made in the enquiry proceedings. They have clearly stated that:-

"In case there had been any amendment on the manuscript copy of the Oral Inquiry Proceedings, the same had been done in the presence of the applicant and the petitioner was well aware of that, since he had put his signatures thereon."

A

9. In view of the above facts and circumstances of the case, we are not inclined to interfere in the matter. The O.A., therefore, fails and is accordingly dismissed. No costs.

S. K. Dhaon

(I.K. RASGOTRA)
MEMBER(A)

S. K. Dhaon

(S.K. DHAON)
VICE-CHAIRMAN(J)

San.