

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

(1)

OA No.50/92

New Delhi this the 12th day of March, 1996.

Hon'ble Sh. B.K. Singh, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Raj Bir Singh,
S/o late Sh. Bhawani Prasad,
R/o 405, Bhagwat Gali No.1,
Nand Ram Mohalla,
Ghonda,
Delhi-110053. ...Applicant

(By Advocate Sh. Ashok Aggarwal)

Versus

Union of India through:
Secretary,
Ministry of Defence,
Raksha Bhavan,
Parliament Street,
New Delhi-110001. ...Respondent

(By Advocate Sh. Ajesh Luthra, proxy for
Ms. Jyotsna Kaushik, Counsel)

ORDER (Oral)
(Hon'ble Mr. B.K. Singh, Member (A))

The admitted facts of the case are that the applicant was appointed as a peon on adhoc basis by the office of Chief Administrative Officer, Ministry of Defence on 25.2.80 (FN) and his appointment was regularised w.e.f. 1.7.81. After regularisation the respondents came to know that the applicant was simultaneously working as Assistant Pump Operator (Vehicle) in the D.D.A. during the period from 8.1.81 onwards and D.D.A. had ... sent a communication to that effect and the respondents have also enclosed that as Annexure R-1 to the counter-reply filed by them. While the enquiry was being made by the respondents in the Ministry of Defence the applicant absented from duty from the office of the respondents w.e.f.

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25.9.88 and accordingly the applicant was served with a memorandum of charges as to why a DE should not be launched against him for working simultaneously in two organisations viz. D.D.A. and also in the office of the respondents in the Ministry of Defence. The applicant admitted the fact of his having worked in D.D.A., which is evident from the Annexures E&F to the OA. A report also was subsequently received from the office of D.G.I.(now designated as DGQA) where the applicant was working to the effect that he was granted leave from 25.8.88 to 24.9.88 on the basis of the medical certificate but he did not report for duty even from 25.9.88 and no reply was sent by him. The applicant was further served with chargesheet dated 24.11.88 for remaining unauthorisedly absent from duty and also for holding dual employment with the D.D.A. and in the office of the respondents.. The respondents did not pursue with the enquiry in view of the admission of the applicant that he was actually in double employment with the respondents and also with the D.D.A. It is admitted by both the parties that the applicant quit the job with the D.D.A. after the D.D.A. informed the respondents - Ministry of Defence and the facts were known to both the employers and the chargesheet having been served on him. The D.D.A. also claimed that he was absent from duty w.e.f. 12.7.88. After admitting the guilt the applicant filed a representation to the disciplinary authority that a lenient view should be taken in

regard to imposition of punishment on him since he has admitted the charges levelled against him by the respondents.

2. The respondents followed the procedure and initiated the enquiry in order to give a fair chance to state his case and to defend himself as per the relevant rules. In the very first hearing on 17.1.90 before the enquiry officer he admitted all the charges levelled against him and the respondents have enclosed as Annexure R-II which shows that the admission of the charges levelled against the applicant have been recorded and read out to him. The enquiry officer subsequently submitted his report on 18.1.90 and concluded that the charge regarding unauthorised absence from the office of the respondents and simultaneously working in D.D.A. w.e.f. 8.1.81 to 19.8.88, i.e., for more than seven and a half years without obtaining the prior approval of the competent authority stands proved against the applicant. The enquiry report was submitted to the disciplinary authority and the applicant was given an opportunity to file a representation which he filed on 5.2.90 accepting the charges and praying for a lenient view to be taken in the matter. The disciplinary authority after taking the facts and circumstances of the case and under the provisions of Rule 15 of the C.C.S. (Conduct) Rules, 1964 read with Govt. of India's decision No.1 under the said provisions concluded that the applicant was working in the D.D.A. without prior sanction of

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the competent authority and that he continued to work there for practically 8 years without any intimation to any of the employers and, therefore, a penalty of removal from service was imposed on him.

3. He filed an appeal also to the appellate authority and this O.A. was preferred on 7.1.92 and the order of the appellate authority is Annexure R-II. dated 7.5.91. This order of the appellate authority has not been challenged by the applicant. The order of the disciplinary authority merges with the order of the appellate authority and if the order of the appellate authority is not challenged, no relief can be granted to the applicant. During the course of hearing the learned counsel for the applicant did not like to amend the O.A. nor was he prepared to submit the English translation of the appellate order. He only argued that the punishment is disproportionate to the omissions and the commissions of the applicant.

4. As stated above, unless the order of the appellate authority is challenged the Tribunal is not in a position to grant any relief since the order of the disciplinary authority has already merged with the order of the disciplinary authority. Unless this is challenged we are unable to consider grant of following reliefs prayed for in the O.A:

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(a) This Hon'ble Tribunal may be pleased to declare that the impugned order of removal dated 17.7.90 (Annexure L) is illegal, arbitrary, and unconstitutional and the applicant is deemed to be in continuous service of the respondent;

(b) This Hon'ble Tribunal may be pleased to direct the respondent to reinstate the applicant in service with full back wages and continuity of service and with all other constitutional benefits.

5. The O.A. accordingly fails and is dismissed leaving the parties to bear their own costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

B.K. Singh

(B.K. Singh)
Member(A)

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