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**Central Administrative Tribunal
Principal Bench**

OA No.1980 of 1993

New Delhi, this the 6th day of October, 2009

**Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Dr. Ramesh Chandra Panda, Member (A)**

Shri N. K. Bithar
S/o Shri D. N. Bithar
R/o D-445, Netaji Nagar,
New Delhi.
Previously Upper Division Clerk,
Cabinet Secretariat,
New Delhi

.... **Applicant**

(By Advocate: Sh. K. L. Bhandula)

Versus

1. Union of India through
Secretary
Cabinet Secretariat,
8-B, South Block,
New Delhi.
2. Addl. Secretary (Pers)
Cabinet Secretariat,
8-B, South Block,
New Delhi.
3. The Director (Personnel)
Cabinet Secretariat,
8-B, Cabinet Secretariat,
New Delhi.

... **Respondents**

(By Advocate: Shri Anil Singal for Shri T. C. Gupta)

: O R D E R :

By Dr. Ramesh Chandra Panda, Member (A) :

Shri N. K. Bithar, the Applicant herein, was proceeded against for his 2 spells of unauthorized absence viz.(i) 12.8.1985 to 12.2.1986 and (ii) April 1986 to 8.10.1986. The **first set** of charge-sheet was issued for the period from 12.08.1985 to 12.02.1986 and he was also charge sheeted in a **second** charge sheet for another spell of unauthorized absence from April 1986 to 8.10.1986. He



was placed under suspension vide order dated 12.9.1986 (**Page 30**) on the ground of contemplation of a disciplinary proceeding. The departmental inquiry held in respect of 2nd charge sheet ultimately resulted in the punishment of removal from service vide order dated 3.6.1987 (**Pages 28-29**). His appeal was rejected by the Appellate Authority on 6.10.1987. Being aggrieved by those two orders, the Applicant moved this Tribunal in **OA No.1187 / 1991** which was disposed of vide order dated 13.11.1991 (**Annexure-VIII**) by quashing and setting aside the orders of the Disciplinary, Appellate and Revisional Authorities and the Respondents were directed to reinstate the Applicant w.e.f. 12.09.1986 i.e. the date on which the Applicant was placed under suspension. However, vide order dated 10.1.1992 (**Annexure-IX**) though his removal from service was revoked; the Applicant was ordered to be under suspension. Since the liberty was granted to the Respondents for proceeding with disciplinary action, de novo, disciplinary case for the first spell of unauthorized absence against the Applicant based on the period of absence between 12.08.1985 to 12.02.1986 was revived and processed. Since the inquiry report was available for the said disciplinary proceedings in the 1st spell of absence, the enquiry report was served on the Applicant, his representation considered by the Disciplinary Authority and resultantly the Applicant was removed from service. His appeal was also rejected by the Appellate Authority. Both the orders were challenged in the present **OA No.1980 / 1993**. This Tribunal decided the case on 20.08.1997 by quashing the orders of the Disciplinary Authority dated 2.7.1992 (**Annexure-III**) and Appellate Authority order dated 21.09.1992. However, the Respondents were directed to reinstate the petitioner in service with all consequential benefits with effect from 10.01.1992 that being the date on which the Applicant was earlier reinstated in service in pursuance to the directions of this Tribunal. In the meantime, the Applicant moved a Contempt Petition against the Respondents, which was decided on 14.01.1998 by taking cognizance of the fact that Tribunal's order dated 20.08.1997, was stayed by the Hon'ble High Court of Delhi in **WP (C)**

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No.1164/1998 and, as such, the **Contempt Petition No.379 of 1997** in OA No.1980/1993 was disposed of. The Hon'ble High Court of Delhi considered the issues involved in this case in **WP (C) No.1164/1998** and passed the judgment dated 19.05.2009. While disposing of the above Writ Petition by settling aside the Tribunal's order and remitting back to the Tribunal, the Hon'ble High Court of Delhi passed the following judgment :-

"On remission of this matter to the Disciplinary Authority, it transpired that action under the first charge sheet had not been taken even though enquiry had been concluded. On this premise, the Disciplinary Authority passed orders of removal of the respondent from service on 2nd July, 1992. The respondent again approached the Tribunal and filed OA No.1980/1993 after exhausting the departmental remedy of appeal. This OA has been allowed by the Tribunal vide impugned judgment dated 20th August, 1997 holding that disciplinary action under the first charge-sheet could not be taken against the respondent as this action had been abandoned. The Tribunal in arriving at its conclusion has been influenced by the fact that after the report was submitted by the Enquiry Officer in respect of first charge-sheet, no orders thereupon was passed at that time.

This approach is clearly erroneous. Reason for not passing the orders in the first charge-sheet was that in the meantime the respondent had been removed from service by orders dated 3rd June, 1987 passed by the Disciplinary Authority in the second charge-sheet. On passing of the orders of removal, no action could have been taken at that time on the enquiry report submitted in respect of first charge-sheet, which was submitted one month thereafter i.e. July, 1987.

Under Rule 15, the Government of India had issued instructions and Note (8) below Rule 15, which is relevant for our purpose, reads as under:

"No closing of Disciplinary proceedings without intimation to the accused-

Once disciplinary proceedings are initiated against an official the proceedings cannot be closed without sending an intimation to that effect to the accused official.

Disciplinary proceedings against an employee who has been dismissed or removed from service in another disciplinary case will stand suspended.

These proceedings can be revived, if and when the official is reinstated in service on appeal."

It is clear from the above that on dismissal or removal from service in one disciplinary proceeding other disciplinary proceedings stand suspended, which can be revived when the official is reinstated on appeal or by the orders of the Court. Therefore, when the Tribunal had set aside the orders of removal passed in second charge-sheet vide its judgment dated 13th November, 1991, proceedings in the first charge sheet stood revived and it was open to the disciplinary authority to pass order thereupon.

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We, therefore, set aside the judgment of the Tribunal holding that Disciplinary Authority was competent to proceed further in respect of first charge sheet.

At this stage, it is submitted by learned counsel for the respondent that there were many other issues raised by the respondent in OA NO.1980 / 1993. Accordingly, we remit the case back to the Tribunal for fresh adjudication on merits.

The parties shall appear before the Tribunal on 9th July, 2009".

2. In view of the above directions of the Hon'ble High Court, the case is before this Tribunal for fresh adjudication. On 22.09.2009, we heard Shri K. L. Bhandula, learned Counsel for the Applicant and Shri Anil Singh on behalf of Shri T. C. Gupta, counsel for the Respondents. We also perused the pleadings available in the case.

3. In this OA, the Applicant has sought the intervention of this Tribunals with the following relief(s) :-

- "I) allow the application of the applicant with costs;*
- ii) issue appropriate direction or directions/order or orders;*
 - a) Quashing the impugned order of removal dated 2.7.1992 (Ann.III) and appellate order dated 21.9.1992 (Ann.I) wherein the applicant's appeal was rejected, including the earlier inquiry and inquiry not concluded.*
 - b) To reinstate the applicant into service immediately with retrospective effect with all consequent benefits or pay, arrears, allowances, seniority, promotion to which he would have entitled had he not illegally been removed from service.*
 - c) Any other directions which Hon' Tribunal may deem fit."*

4. The following contentions were raised in support of the Applicant. (i) It is stated by the Applicant that from 1981 onwards he faced certain problems in the family including the illness of his son who suffered from nephritic syndrome with relapses and frequent admissions in the hospitals. (ii) The Applicant averred that after submitting his representation and requests, he was not supplied copy of the documents relied on by the Respondents in passing removal order against him

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and was denied inspection of records. (iii) He could not lay his hands on the documents in 1992 when the disciplinary case on the first set of charges was in progress since those related to the years, 1985 and 1986. (iv) Another contention is that while the enquiry was fixed on 24.07.1992, his name was struck off the rolls of Cabinet Secretariat on 02.07.1992., which he considered as illegal removal from service. (v) Though the Enquiry Report was dated 06.07.1987, he could receive the same only after 5 years in January, 1992. He was not allowed the reasonable opportunity to inspect the documents on which the Enquiry Report was based. (vi) Since he was reinstated for the charges of unauthorized absence in the 2nd spell, the Respondents revived the abandoned disciplinary case on 1st set of charge. Thus it was stated that to revive the earlier enquiry on earlier charges was against the Government instructions and principles of natural justice. (vii) He also averred that having kept him in continued suspension was arbitrary and wrong. (viii) He admitted that he remained absent without any prior sanction of leave but he kept his seniors informed informally. Instead of regularizing the absence period as leave due to him, or leave without pay, disciplinary action was harsh and removal from service was the worst treatment.

5. The Respondents in their written submission stated that the Applicant indicated in the OA that his son was suffering but submitted in explanation to show that he and his wife were suffering. The Applicant, it is stated in the Respondents' counter, furnished contradictory stands his own illness and that of his wife. He did not produce medical certificates in support of the same. Respondents averred that as per Government Instructions No. 8 under Rule 15 of CCS (CCA) Rules 1965, the disciplinary proceedings against the employee who has been removed from service in any other disciplinary case, will stand suspended and those proceedings would be revived if and when the employee gets reinstated in service. As per the said instructions, the 1st case against the

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Applicant which was under abeyance, was revived and proceeded as per law. It is also averred that the Applicant was supplied with copies of the relevant documents. It is submitted that there was no violation of the principles of natural justice and the Article 311 of the Constitution of India.

6. In view of the rival averments and contentions of the parties, we examine the charges, Enquiry Officer's finding and the grounds raised by the Applicant in his representation before the EO, and the Disciplinary and Appellate Authorities and ultimately we will determine whether the punishment imposed is proportionate or not.

7. The Applicant was charge-sheeted under Rule 14 of CCS (CCA) Rules vide Memo No.25/E.4/71(1074)-KW-3316 dated 11.02.1986 for his 1st spell of unauthorized and willful absence from 12.08.1985 to 12.02.1986.

The charge reads as follows:

"Shri N.K.Bithar while functioning as UDC in the R&I Section of the Cabinet Secretariat, New Delhi, during the years 1985/86 unauthorisedly and willfully absented himself from duty w.e.f.12.08.1985 to 12.02.1986 and remained content by sending leave applications without any supportive medical certificates etc., and did not report for duty inspite of directions issued in this regard on 18.09.1985, 18.10.1985, 24.12.1985 and 28.01.1986.

Shri N.K.Bithar by his above conduct exhibited lack of devotion to duty and also conduct unbecoming of a Government servant and thereby contravened Rule 3 (1)(i) and (iii) of the CCS (Conduct) Rules, 1964."

8. On the basis of the above cited charge, a departmental enquiry was conducted by Shri S.Raman, the then Director (PUC) who submitted his Enquiry Report on 06.07.1987 and held the charge as proved since the Applicant pleaded guilty during the enquiry. The relevant part of the Enquiry Officer's Report is as follows :-

"Shri N.K.Bithar, UDC, when the above article of charge was read out and asked whether he pleaded guilty or not, said that he pleaded guilty. He was again asked to carefully consider the implications of his reply and asked again whether he pleaded

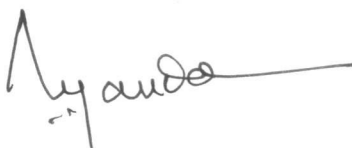


guilty or not in exhibiting lack of devotion to duty and conduct unbecoming of a Govt. servant under rules 3 (I)(i) and (iii) of the CCS (Conduct) Rules, 1965. He again pleaded guilty.

Conclusion

Shri N.K.Bither has been found guilty of the charges mentioned in Memo. No.25/E.4/71 (1074) K.1-3316-17, dated.11.02.1986."

9. It is noted that the Applicant was facing 2 separate disciplinary proceedings. In the 2nd departmental disciplinary case, he was imposed a punishment of removal from service. In the result, the 1st disciplinary proceeding was kept in abeyance. In the meantime, he moved this Tribunal in OA No.1187/1991 which was decided on 13.11.1991. The removal order was quashed and set aside on the ground of non-supply of the Enquiry Report to the Applicant before passing the final order in that case. The Applicant was reinstated but kept under suspension. The 1st disciplinary proceeding which was kept under abeyance, was revived. It is noted that the Applicant was supplied a copy of the Enquiry Report dated 06.07.1987 granting him time of 15 days for submitting his representation against the report which he submitted to the Disciplinary Authority. It was stated that due to illness of his son, he was to attend his son at the hospital regularly and he had verbally informed his controlling officer and he submitted not to take any action on the said Enquiry Report. The Disciplinary Authority having considered the reply of the Applicant to the Enquiry Report, agreed with the findings of the Inquiry Officer and imposed the penalty of removal of the Applicant from service vide his order dated 02.07.1992 (**Annexure-III**). Being aggrieved by this order, he filed an appeal (**Annexure-II**) to Secretary, Cabinet Secretariat, who having considered the relevant facts rejected the appeal vide order dated 21.09.1992 (**Annexure - I**).



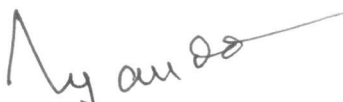
10. The admitted facts are that the Applicant remained absent from 12.8.1985 to 12.2.1986 for a period of about six months and though he applied for leave he did not produce medical certificate for which he was claiming before the disciplinary authority. The Inquiry Officer has recorded that while the applicant was enquired into he was put twice the question whether he admitted guilty of charge or not and on both the occasions during the enquiry he admitted 'guilt' without any condition. In the enquiry, the Inquiry Officer has also mentioned to him the consequences of admission of 'guilt'. The Disciplinary Authority while passing the orders has taken into account the representations given by the Applicant and found that there were differences in the claims that he made earlier and the facts he brought in his representations about the illness. Nonetheless, he has reported the illness of the self, his wife and his son. From the pleadings, we notice that he has produced a medical certificate of the Department of Pediatrics dated 9th October, 1984 (**Annexure-IV**), which states that the son of the Applicant was suffering from Nephritic Syndrome with relapses and was undergoing treatment in the Maulana Azad Medical College w.e.f. 2.12.1981 to 14.1.1982. This is only the Certificate which could be seen by us in the pleadings which has no relevance for the period of his absence i.e. from 12.8.1985 to 12.2.1986. On the basis of the findings of the Inquiry Officer, the Disciplinary Authority has rightly concluded that the absence of the Applicant during the said period was unauthorized and willful and held the charge as proved. His appeal was also meticulously considered by the Appellate Authority and ultimately rejected.

11. We now turn our analysis to the question of proportionality of the punishment to the proved misconduct committed by the Applicant. Unauthorized absence without taking prior permission for a long period of time up to six months is a serious and grave misconduct which exhibited lack of devotion to duty and also conduct unbecoming of a Government servant. It is also noted that

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many times the Applicant was asked to report for duty which was not responded to by the Applicant. Unauthorized absence itself being a serious and grave misconduct, the punishment of removal from service, to our mind, is proportionate and, therefore, we uphold the decision of the Disciplinary Authority in imposing the punishment and Appellate Authority in rejecting the appeal. We have also closely scrutinized the orders passed by both Disciplinary and Appellate Authorities and found that these were all speaking and reasoned orders. We also notice that copy of the enquiry report was furnished to the Applicant, he was given adequate opportunities to defend himself and, therefore, the principles of natural justice had been complied with in processing of the disciplinary proceedings and passing the final orders. In our considered opinion, the Disciplinary and Appellate Authorities have taken decision as per the prescribed procedures and as per law. Therefore, we find that the applicant has not made out a case in his favour. Our views are fortified with the judgment of Honourable Apex Court in **Y.P. Sarabhai Versus Union Bank of India** [2006 STPL(LE) 36841 SC]. Honourable Apex Court decided a case similar to the present case of long unauthorised absence of more than five months and the ground of ailment was taken as a ruse and since the principles of natural justice were followed the order of dismissal was held as proper.

13. In view of our above discussion and the factual matrix of the case, we find that the Original Application is devoid of merit and is accordingly dismissed. No costs.


(Ramesh Chandra Panda)
Member (A)


(Shanker Raju)
Member (J)