

Central Administrative Tribunal, Principal Bench

Original Application No.2287 of 1993

New Delhi, this the 3<sup>rd</sup> day of August, 1999

Hon'ble Mr.A.V.Haridasan, Vice Chairman  
Hon'ble Mr.N.Sahu, Member (Admnv)

Shri Vinod Kumar, S/o Sh. Dalip Singh,  
R/o Vill. & P.O. Bhojar, Distt.  
Rohtak, Haryana

- Applicant

(By Advocate - None)

Versus

1. Sh.P.K.Chakarvarty, Director General,  
N.C.C., Delhi.

2. Union of India, Secretary, Ministry  
of Defence, South Block, New Delhi - Respondents

(By Advocate None)

O R D E R

By Mr.N.Sahu, Member(Admnv) -

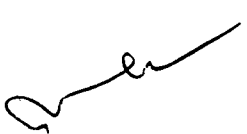
This Original Application has been filed against the order of dismissal from service dated 21.7.1992 (Annexure-X).

2. The facts leading to this O.A. are briefly as follows - The applicant while working as a Civilian Motor Driver in NCC Directorate, Delhi was issued a charge-sheet on 13.5.1991 (Annexure-P) for the following charges - (i) his habitual late coming; (ii) misbehaviour with the superior officer in the office on 2.1.1991; (iii) physical assault on two officers of NCC Directorate, and (iv) insubordination in not reporting to duty to NCC Directorate, Bhopal in compliance with the transfer order issued by the Directorate General, NCC on 5.2.1991. The enquiry officer conducted the enquiry and submitted a report with the finding that the charges against the

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applicant were proved. Agreeing with the report of the enquiry officer, the disciplinary authority imposed the penalty of dismissal from service vide order dated 21.7.1992 (Annexure-X). Thereafter the applicant filed an appeal before the Director General, NCC on 22.8.1992. This was disposed of by the appellate authority by an order dated 29.10.1992 (Annexure-A-A). The appellate authority discussed all the objections raised by the applicant point by point and held that the major penalty of dismissal from service was adequate and well-deserved. He accordingly dismissed the appeal.

3. The grounds raised by the applicant against the impugned orders are that there was already a warning issued to him for his late coming. There was no need further to make that point again as a cause of action for a charge-sheet. It was next stated that no efforts were made by the enquiry officer or the administration to procure the attendance of Shri Sultan Singh as his defence assistant. The next point raised was that Shri Chakraborty to whom the applicant was alleged to have assaulted was not subjected to cross-examination. Only the earlier written statement of Shri Chakraborty was taken as evidence. With regard to transfer it is submitted that the applicant was ill and he produced a medical certificate. According to the applicant the charges were frivolous, vague and fabricated.



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4. The respondents after notice say that in spite of opportunities the applicant failed to ensure the presence of the defence assistant in all dates of hearing except one. In fact the enquiry officer acceded to the request of the applicant to appoint Shri Sultan Singh and he wrote to the Commanding Officer to spare the services of said Shri Sultan Singh.

5. The respondents state that the applicant's contention that he was sick and was under the treatment of a village doctor from 11.2.1991 to 26.4.91 was questionable. The applicant along with two accomplices assaulted Shri P.K.Chakraborty, Adm Officer (Civ) of NCC Directorate with hockey sticks on 3.4.1991 causing grievous injuries. When Lt.Col. VK Sood came to the rescue, he was also severely beaten with hockey stick causing head injuries. An FIR was lodged with police and the applicant was arrested and detained in police custody on 14.4.1991. He was subsequently released after obtaining an anticipatory bail. It is particularly pointed out that the fact that the applicant was apprehended by Delhi Police on 14.4.1991 disproves his contention that he was sick and was under treatment of village doctor in Haryana between 11.2.1991 and 26.4.1991.

6. In the rejoinder the applicant states that Shri P.K.Chakraborty was not examined as a witness by the enquiry officer. Thus, there was no opportunity to the applicant to cross-examine him.

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7. No one was present for the parties at the time of hearing on 14.7.1999. We have carefully consulted the records.

8. We find that there is no force in any of the contentions raised by the applicant. We have no evidence on record to show that the applicant demanded examination of Shri Chakraborty. It is for the respondents to decide whether to call anybody else as a prosecution witness or not. In the case of Shri Chakraborty, the enquiry officer as well as the disciplinary authority relied on several other circumstantial evidence including the evidence of the witnesses. The enquiry officer examined Lt.Col.VK Sood, Major BR Nagpal, Hawaldar Parasram and Shri L.R.Dahia UDC. The first three witnesses clearly supported the charge of assault. The last witness said nothing that would support the applicant's stand. It is true Shri Chakraborty could not turn up before the enquiry officer but strict rules of evidence and technicalities of Cr.P.C. cannot be imported into the disciplinary proceedings and judged by those standards. In substance we find that there was ample evidence to hold that the applicant was guilty of assaulting Shri Chakraborty as also Lt. Col. VK Sood. That apart the records proved that the applicant had absented himself from duty 17 times from September 1990 to February, 1991 and he attended office late 20 times. In this period he did not improve his punctuality despite repeated warnings. He

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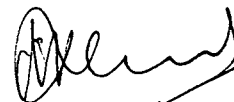
was transferred on administrative grounds from New Delhi to Bhopal by an order dated 5.2.1991. He took leave up to 8.2.1991 and did not report for duty on 11.2.1991.

9. From the perusal of the record we find that the applicant was given all opportunities to defend his case including the services of a defence assistant of his choice but he could not avail of such assistance except on one occasion. The applicant submitted a representation on 20.5.1992 against the findings of the enquiry officer. The points raised in the representation were considered by the disciplinary authority before imposing the major penalty of dismissal from service. After going through the pleadings on record we find that there is no infirmity in the enquiry conducted. The orders of the disciplinary and appellate authorities met all the contentions raised by the applicant. No case has been made out to interfere with the order of punishment.

10. In the result, the O.A. is dismissed. The parties shall bear their own costs.



(N. Sahu)  
Member (Admnv)



(A. V. Haridasan)  
Vice Chairman

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