

14

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. NO. 858 of /1993 Decided on : 10th Nov. 95

Shri Gulshan Jit Singh Ahluwalia ... Applicant(s)

(~~By~~ ~~XXXX~~ Shri Applicant in person Advocate)

versus

Union of India through the
Secretary, Ministry of Defence ... Respondent(s)
~~South Block, New Delhi~~


(By Shri V.S.R. Krishna, Advocate)

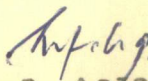
CORAM

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 *yes.*
of the Tribunal ?


(DR. A. VEDAVALLI)
Member (J)


(S.R. ADIGE)
Member (A)

15

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 858 of 1993

New Delhi, dated the 10th November, 1995

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

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

Shri Gulshan Jit Singh Ahluwalia ,
late Shri S. Jhirmal Singh,
R/o 17-B/28, Dev Nagar,
Karol Bagh,
New Delhi. ... APPLICANT

(Applicant in person)

VERSUS

Union of India through
the Secretary,
Ministry of Defence,
South Block,
New Delhi. RESPONDENTS

(By Advocate: Shri V.S.R. Krishna)

JUDGMENT

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

In this application Shri Gulshan Jit Singh Ahluwalia former draftsman Gr.I, Office of the Chief Engineer, Western Command, Chandi Mandir has impugned the letter dated 24.4.89 (Annexure A) compulsorily retiring him from service w.e.f. 2.5.89 and directing that the period from 9.5.81 to 16.8.87 will be treated as unauthorised absence from duty for all purposes, and the appellate order dated 26.5.90 (Ann. B) partially modifying the order dated 24.4.89 and directing that the applicant is entitled for full pay and allowances for the

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period 5.5.81 to 2.12.81 if the leave is due to him. A prayer has been made to make the applicant on strength from May, 1985 itself.

2. The case of the applicant who was a permanent employee ^{and} was working as Draftsman Gr. I in the E-in-C's Branch, Directorate of Cantonment Plg., Kashmir House, New Delhi is that he applied for and was sanctioned five days C.L. w.e.f. 7.5.81 till 13.5.81. During that period he fell ill and had to apply for extension of leave on medical grounds. Later on he sent medical certificate issued by C.G.H.S. Dispensary for the period from 12.5.81 to 20.5.81 and thereafter by RML Hospital up to 18.7.81. As he still did not recover, he took treatment and was issued M.C. by a private medical practitioner from 19.7.81 to 1.12.81. He was ~~not~~ fit to resume duty on 2.12.81 but when he went to his office to join duty, he was not allowed to do so and was told verbally that the E-in-C's Branch had struck him off strength (SOS) on 8.5.81 in absentia and he had been posted to Bhatinda. Although he wrote several letters to E-in-C's Branch that he had not been served with the Movement order and the SOS order was passed in absentia and he was on medical leave during the relevant period, and the E-in-C's Branch had not acted in

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accordance with their own policy circulars dated 25.10.84 and 22.11.74, those pleas were disregarded, and his contention was rejected that in the absence of service of movement order, he was not relieved from duties in the office of Directorate of Cantonment Plg., E-in-C's Branch, Kashmir House, New Delhi. He states that he wrote several letters to E-in-C's Branch asking them to issue Movement order and to sanction him TA/DA to enable him to join his unit at Bhatinda, and in response to one of those letters, he received an acknowledgment on 28.4.87 in which it was mentioned that the case would be examined and necessary action as deemed fit would be taken and there was no need for further reminders or representations. He states further that on 14.6.87 he received a telegram from CWE (P), Bhatinda Cantt. directing him to resume duty immediately failing which disciplinary proceedings would be initiated against him. He admits that he joined duty at Bhatinda on 19.6.87, after a lapse of 6 years and alleges that the respondents had not taken the President's sanction to permit him to join duty after an absence of 5 years which they were required to obtain under Rule.

3. He states that upon joining at Bhatinda he addressed a letter dated 10.8.87 to the E-in-C's Branch, New Delhi through proper channel for payment of his pay and allowances

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for the period 1.5.81 to 18.6.87 which was forwarded by CWE (P) Bhatinda to E-in-C's Br. , New Delhi with the endorsement that the CWE (P), Bhatinda office had no comments to offer on the period in question related to E-in-C's Branch, which showed that the applicant during that period was borne on the strength of the E-in-C's Branch, New Delhi.

4. However, according to the applicant on 16.8.87 the CWE (P) Bhatinda illegally initiated disciplinary proceedings against the applicant on the charge that ¹the whole functioning as Draftsman Gr. I under E-in-C's Branch up to 8.5.81, he was posted to CWE (P), Bhatinda vide CE WC, Simla's order dated 13.1.81 and E-in-C's Branch order dated 8.5.81 which had been followed up by movement order dated 13.3.81 which was finally amended vide order dated 5.5.81, and the applicant was required to report for duty to CWE (P) Bhatinda vide Movement order dated 13³.81, but he had failed to report till 18.6.87. The applicant asserts that in the D.E., the E.O. accepted his plea that no movement order had been issued to him, and has referred to the CE, WC, Chandi Mandir's letter dated 16.1.89 addressed to the CE, Bhatinda Zone

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on the basis of which he contends that he was not responsible for not joining at Bhatinda as no movement order was issued to him. He states that while he had come to Delhi on 2 months half pay leave w.e.f. 2.5.89 he received a letter on 9.5.89 from CWE (P) Bhatinda enclosing order dated 24.4.89 from CE WC, Chandi Mandir compulsorily retiring him from service w.e.f. 2.5.89 and stating that the period from 9.5.81 to 18.6.87 would be treated as unauthorised absence from duty. The applicant states that thereupon he filed an appeal on 9.6.89 and the appellate authority in his order dated 26.5.90 upheld the order of compulsory retirement with the modification that the period from 5.5.81 to 2.12.81 was ordered to be treated as eligible for full pay and allowances, if the leave was due to him and was supported by medical certificates. Thereupon he filed a revision petition on 4.10.90 which was rejected on 16.2.93, some time before the O.A. was filed.

5. The respondents in their reply have challenged the contents of the O.A. They state that the applicant was transferred to Bhatinda vide Movement order dated 13.3.81 as amended on 5.5.81 but failed to report there and was absent up to 18.6.87 i.e. over 6 years. Departmental proceedings were initiated against the applicant in which he was given full

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opportunity to defend himself and the competent authority awarded the punishment of compulsory retirement on 24.4.89, which was sought to be served on the applicant through two officers on 2.5.89 before he proceeded to Delhi but he refused to receive it. His appeal and revision petitions were rejected. In so far as the alleged non-receipt by the applicant of the movement order is ¹concerned, the respondents state that the movement order dated 13.3.81 as amended on 5.5.81 was despatched to the applicant on 7.5.81 by registered post as he was not on duty. He should have reported to Bhatinda as mentioned on the Movement order on expiry of leave/fitness. Art. 53 of CSR Vol. I does not preclude an employee from being struck off strength (SOS) by relieving unit in absentia where the employee avoids service of the order. He did not report to Bhatinda even when the position was made known to him on 2.12.81 when he reported arrival in Delhi. He was correctly disallowed to resume duty in E-in-C's Branch on reporting arrival there after fitness, because he had been SOS on 7.5.81. He failed to join at the new duty station up to 10.6.87 and awaited the outcome of a court case he had filed challenging the transfer, which was finally decided against him by the CAT Principal Bench, New Delhi on 13.11.86.

6. In his rejoinder the applicant has broadly reiterated the contents of his O.A.

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7. We have heard the applicant in person and Shri V.S.R. Krishna for the respondents. We have also perused the materials on record and considered the matter carefully.

8. The applicant has not denied that after proceeding on C.L. from office of E-in-C's Branch, Kashmir House, New Delhi on 5.5.81 he joined duty at Bhatinda only on 19.6.87 in response to the order dated 14.6.87. His only defence is that he had been advised rest on medical grounds till 2.12.81 and when he sought to resume his duty in E-in-C's Branch, New Delhi on 2.12.81, he was not allowed to do so as the authorities informed him that he stood transferred to Bhatinda, although no movement order in respect of his transfer to Bhatinda had been served upon him. Thus even according to his own averments, he cannot deny that he remained absent from duty from 2.12.81 to 19.6.87. In so far as the alleged non-service of the movement order is concerned, the applicant had raised an identical plea in T-570/86 (S 486/82) challenging his being struck off strength from the post of Draftsman Gr. I in E-in-C's Branch, Directorate of Cantonment Plg., Kashmir House, New Delhi which application was dismissed by judgment dated 13.11.86 wherein it was conclusively held that the movement order

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dated 5.5.81 was issued to the applicant by post and even if he did not receive it, he made no efforts to verify as to what happened to it and his seeking to question the SOS on the ground that there was no movement order could not avail him. Hence this defence fails.

9. In the light of this finding of the Tribunal the other grounds taken by the applicant to challenge the impugned retirement order, namely that CWE (P) Bhatinda was not competent to initiate departmental proceedings falls to the ground. The applicant has also alleged that no opportunity was given to him to call his witnesses, but as it is not the applicant's case that he performed duty from 2.12.81 to 19.6.87 this ground lacks merit. The applicant has also contended that notice for the premature retirement or three months salary thereof was not given to the applicant as required under FR 56 (J) (1). This argument also lacks force as the applicant was compulsorily retired as a measure of punishment under Rule 14^m CCS (CCA) Rules and not under FR 56(J)(1).

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27

10. In the result we see no legal infirmity in the impugned orders which warrants our judicial interference.

This O.A. therefore fails and is dismissed. Before parting with this case however we note that the applicant has asserted during hearing that he has not been paid various sums which were due to him, including pay fixation on the new scale prior to his retirement; full amount of GPF; TA/DA for proceeding to Bhatinda on 14.6.87 etc. No such reliefs were sought for in the O.A. itself and this prayer constitutes a separate cause of action which cannot be made a part of this O.A. Shri V.S.R. Krishna has very fairly stated that in case any payments are due to the applicant he should list out the same in a proper application addressing to the respondents which would be got examined by them and in case any payments were due the same would be made expeditiously. In ^{any} ~~the~~ event this prayer for payment of dues claimed by the applicant, is a matter in respect of which it will be open to him to pursue it separately with the respondents.

11. This O.A. stands disposed of accordingly. No costs.

A. V. Vedavalli

(DR. A. VEDAVALLI)
Member (J)

/GK/

S. R. Adige

(S.R. ADIGE)
Member (A)