

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.Allahabad, this the 29th day of October, 2003.QUORUM : HON. MR. JUSTICE R.R.K. TRIVEDI, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 134 of 1997

Raj Kamal Bajaj S/O C.L. Bajaj, aged about 47 years R/O
T/8, Shyam Nagar, Mustagar Quarters, Agra Cantt.

.....

..... Petitioner.

Counsel for petitioner : Sri A.K. Jaiswal.

Versus

1. Union of India through the Secretary, Ministry of Defence, A.H.Q., New Delhi.
2. Commander, H.Q. Technical Group EME, Delhi Cantt.
3. Commandant, 509, Army Base Workshop EME, Bandu Katra, Agra Cantt.....

..... Respondents.

Counsel for respondents : Sri A. Sthalekar.

ORDERBY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of A.T. Act, 1985, applicant has prayed for direction to quash the impugned order dated 23.12.1995 passed by the Disciplinary Authority and the order dated 8.4.1997 passed by the Appellate Authority by which applicant has been compulsorily retired from service.

2. The facts, in short, are that the applicant was a permanent employee of 509, Army Base Workshop, Agra. He was served with the charge memo dated 13.10.1994. He denied the charges by his defence statement dated 8.9.95 (Annexure A-4). He also represented against the findings of the Enquiry Officer and proposed punishment by letter dated Dec-1995 (Annexure A-7). He made appeal to the Appellate Authority by his appeal memo dated 30.1.96 (Annexure A-8). His appeal was dismissed by the Appellate Authority. Aggrieved by these orders, the applicant has filed the present O.A.



3. We have heard the rival contentions of the counsel for both the parties and perused the pleadings on record.

4. Learned counsel for the applicant has very emphatically put forth the argument that the Enquiry Officer was biased and enquiry was not fair as the Enquiry Officer has acted as a party and prosecutor and witness rather than impartial Judge. He has pleaded that during the period September 1994, he was on Extra Ordinary Leave and Earned Leave in five spells of 2 to 5 days. Immediately on return from leave he submitted application on the next date. He pleaded that it is true that he did not get the leave sanctioned in advance as he himself was ill. He has further urged that the respondents ~~have~~^{or} brought in the question of leave taken by him during previous years i.e. he was on leave for 83 days in 1992 and 256 days in the year 1993. Even during the year 1994, he was on leave for 134 days upto August 1994. For all these leave he was on EOL without pay. Thus, he contends that to bring the previous leave into the present disciplinary action is bad in law.

5. The respondents, on the other hand, have resisted the contention of the applicant's counsel that the ~~submission~~^{proceeding} ~~on leave of application~~ without prior sanction is contrary to Rule 5 of Leave Rules for Industrial Employees, 1954 and Unit Standing Order Para 403 reproduced vide D.O. Part-I No. 604(a) dated 19.5.94 (Annexure SA-2). The respondents have further stated that the previous account of leave could be brought into picture when it forms part of the chargesheet.

6. The crucial issue, which is to be decided, is whether it is necessary for the applicant to get the leave sanctioned in advance. In this connection, it is clear from Annexure CA-2 of the Daily Order Part-I dated 19.5.94 that leave should be applied for in advance and got sanctioned before availing. Thus, he clearly violated this standing order when he did apply for leave during September 1994 after

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availing all the leave which is not permissible under the rules. In so far as the leave rules for Industrial Employees are concerned, it may be mentioned that the applicant's counsel has annexed a copy of the leave rules and clause 5 of that rule says that leave cannot be claimed as a right. Discretion is reserved to the authority empowered to grant leave. The leave rules for Industrial workers does not, however, provide specifically for getting the leave sanctioned prior to availing the same. However, Rule 5 clearly states that leave cannot be claimed as a matter of right and the discretion lies with the sanctioning authority. This shows that the applicant should have got the leave sanctioned particularly when he was on EOL/EL. It would have been justified had he informed the office the moment he fell sick. In any case the leave mentioned above contradicts the provision of the Daily Unit Order dated 19.5.94. The argument of the applicant is not convincing that the Enquiry Officer was biased and he was working as prosecutor rather than impartial Judge. It is clear from the proceedings of the enquiry that the Enquiry Officer never interfered when the Presenting Officer was presenting his case. He even asked, in the beginning, whether the applicant or the Defence Assistant had anything to say against the Enquiry Officer or the Presenting Officer. Both the Defence Assistant and the applicant said that they did not have anything to say against the Enquiry Officer or the Presenting Officer. In view of this he cannot be allowed to argue that the Enquiry Officer was biased against him, because it is the settled principle of law that the charge of bias should be specific with a proper foundation. Mer bald averment of bias would not be valid.

7. All the charges against the applicant had been proved and enquiry was conducted in accordance with Rule 14 of CCS(CCA) Rules 1964. The punishment order passed by the

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Disciplinary Authority is detailed one and the confirmation of this order by the Appellate Authority is equally detailed and does not suffer from any legal infirmity. It is not proposed to interfere with the punishment awarded to the applicant.

8. In view of the facts mentioned above, the O.A. is devoid of merit and is accordingly dismissed.

No order as to costs.

Asthana
A.M.

V.C.

Asthana/