

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 6th day of April 2004.

Original Application no. 207 of 1998.

Hon'ble Maj Gen K K Srivastava, Member (A)
Hon'ble Mr A K Bhatnagar, Member (J)

Babloo Prasad, S/o late Khairati,
R/o G.R.D. Gate, Kuneraghata,
GORAKHPUR.

... Applicant

By Adv : Sri S S Tripathi

V E R S U S

1. The Union of India through Ministry of Defence,
Civil Secretariat,
NEW DELHI.
2. Lt. Col., Station Staff Officer for Station Commander,
Gorakha Recruiting Depot, Kuneraghata,
GORAKHPUR.
3. Brig. Commander, Head Quarters, Allahabad,
Sub Area,
ALLAHABAD.
4. Commanding Officer, Gorkha Recruiting Depot,
Kuneraghata,
GORAKHPUR.
5. Station Staff Officer, Station Head Quarter,
Gorkha Recruiting Depot, Kuneraghata,
GORAKHPUR.

... Respondents

By Adv : Sri D S Shukla

O R D E R

Maj Gen K K Srivastava, AM.

By this OA, filed under Section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 18.11.1997, passed by respondent no. 3, by which the applicant has been

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dismissed from service. The applicant has prayed for quashing the same and also letter dated 27.11.1997 passed by respondent no. 2 communicating the punishment order dated 11.11.1997. The applicant has also prayed that the direction be issued to the respondents to reinstate him in service w.e.f. 18.11.1997 alongwith arrears of salary and other consequential benefits.

2. The facts, as per applicant in short, are that the father of the applicant was permanent Safaiwala in the respondent's establishment at Gorakhpur. He died in harness in the year 1983 and the applicant was appointed as Safaiwala on compassionate grounds vide order dated 14.1.1987. As per applicant, he rendered satisfactory service all through and he was promoted from the post of Safaiwala to the post of Head Safaiwala. The grievance of the applicant is that despite his promotion he was being forced by the authorities concerned to do the duty of Safaiwala. The applicant resisted and sent a representation on 02.08.1994 to the Defence Minister. Annoyed with this, the respondent no. 2 recommended to respondent no. 3 vide letter dated 25.09.1994 that the applicant be placed under suspension. The applicant was modified by memo dated 04.11.1995 (Ann 14) served with the charge sheet on 06.06.1995 and the allegation against the applicant was that the applicant during the tenure he was unauthorisedly absent w.e.f. 06.08.1994 till the charge sheet was issued. Enquiry was instituted and after conclusion of the enquiry the impugned punishment order was passed imposing the punishment of dismissal from service. Aggrieved by the same the applicant filed this OA, which has been contested by the respondents by filing counter affidavit.

Shri S.S. Tripathi,

3. The grounds taken by the learned counsel for the applicant in challenging the impugned order of dismissal are that the charges are not correct. There has been violation of principle of natural justice and while passing the punishment order, the disciplinary authority did not apply his mind. Therefore, the order dated 18.11.1997 is illegal, unjustified and untenable in law. Applicant's counsel also submitted that during the enquiry the applicant was not given opportunity of being heard.

4. Learned counsel for the applicant further submitted that though the applicant was given promotion as Head Safaiwala yet with ulterior and mala fide motive he was not given proper duties and disciplinary enquiry was conducted against him and serious punishment of dismissal has been imposed upon him, which is not proportionate to the misconduct of the applicant, if any. Learned counsel argued that the punishment order is violative of Article 14 & 16 of the Constitution of India. The applicant has been deprived of his livelihood because the disciplinary authority did not consider the legal and genuine grievance made by the applicant in his reply dated 14.10.1997 against the major penalty. In fact the entire action of the respondents is bad in law.

5. Resisting the claim of the applicant Sri D.S. Shukla, learned counsel for the respondents submitted that ~~thru~~ the enquiry in regard to the charges levelled against the applicant was held in which the applicant participated. Inviting our attention to annexure 1 which is the letter dated 25.09.1994 written by respondent no.2 to respondent no 3,

learned counsel submitted that the applicant had opened a bangle shop in Nand Nagar, Village adjacent to Kuneraghat and once this fact was revealed respondent no. 2 wrote to respondent no. 3 that the applicant be placed under suspension. Respondent's counsel further submitted that, as brought out in para 9 of the counter affidavit, the applicant became casual in his attitude while working as Safaiwala in the office of respondent no. 2 and, therefore, he was ordered to do the job of Malvahak Safaiwala. Soon, thereafter, he absented himself from duty w.e.f. 6.8.1994. Later on the applicant submitted the medical certificate w.e.f. 16.7.1994 to 10.10.1994. Inspite/repeated reminders, the applicant did not join his duties till dismissal from service.

6. Learned counsel for the respondents finally submitted that the applicant did not even care to file an appeal against the impugned punishment order dated 18.11.1997.

7. Heard learned counsel for the parties, considered their submissions and perused records.

8. The applicant in this case has challenged the punishment order dated 18.11.1997, by which he has been dismissed from service. Applicant's counsel all along during the arguments maintained that there has been violation of principle of natural justice. We have closely perused the enquiry report which was forwarded to the applicant vide letter dated 07.10.1997 (Ann 15) and the same reveals that the applicant attended the enquiry all through from beginning to end, as has been held by

the enquiry officer in para 2 of the enquiry report. The applicant neither nominated the defence assistant nor took assistance during the entire proceedings. That being so, the applicant cannot take pleas that there has been violation of principle of natural justice.

9. Another ground taken by the applicant is that the charge levelled against him are not correct. We do not find substance in this plea. The charge levelled against the applicant was that he has been absenting unauthorisedly since 06.08.1994. The applicant has not produced any record to show that he did duty on any of the days after 06.08.1994. The applicant did produce a ^{medical} certificate for the period of absence w.e.f. 16.07.1994 to 10.10.1994. However, inspite of having been declared fit by the doctor, the applicant has not produced any evidence whatsoever to show that he attempted to join his duties after 10.10.1994 i.e. w.e.f. 11.10.1994 or, thereafter. We would like to observe that the applicant being a Govt. servant should have acted as per rules and in case he was medically unfit he should have informed the respondents well in time, which he has not done. Nothing restrained the applicant to inform that respondents about his illness through registered post, which he did not. Even otherwise the applicant should have informed the respondent about his inability to join the post due to illness.

10. The applicant has maintained all alongwith that he had been promoted as Head Safaiwala. He has not produced any order to this effect. On the contrary the respondents have stated in para 12 of the counter affidavit that no vacancy other than Conservancy Safaiwala was existing at Station Headquarter, Kuneraghat. In para 12, the respondents have also stated that on the request of the

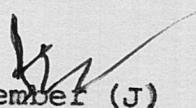
applicant he was given a task in the office as Peon/Messenger on humanitarian grounds but when it was found that the applicant was casual in his attitude he was reverted back to his original post of Safaiwala. In para 12 of the rejoinder affidavit, the applicant has given a vague reply and has simply stated that he was promoted as Safai Commandant and he was being compelled to work as Safaiwala. We have earlier observed that the applicant did not produce any evidence to establish that the applicant was promoted as Head Safaiwala and, therefore, we are not inclined to accept the arguments of the applicant's counsel that he was being compelled to do the job which he was not supposed to do. The applicant was appointed as Conservancy Safaiwala and he had no reason to refuse doing the work of his substantive post of a Conservancy Safaiwala. Therefore, we are not inclined to accept the plea of the applicant that he was not being given the job of the promoted post. Since there is no post of Head Safaiwala in the sanctioned strength of Station Headquarter, Kuneraghat, the applicant could not have been promoted and the contention of the applicant is totally misconceived.

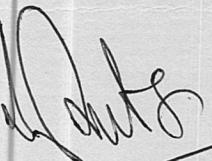
10. We would like to observe that the applicant was given full opportunity to defend his case. Besides, the applicant refused to perform his duties and continuously absented himself from duty. He also failed to join his duties of Conservancy Safaiwala after 11.10.1994 which he was expected to because the medical certificate produced by the applicant was upto 10.10.1994 / upto 10.10.1994. We have carefully gone through the impugned punishment order dated 18.11.1997 and we do not find any

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illegality in the said order. The very fact, that the ^{event} applicant did not care to file any appeal challenging the punishment order, goes to show that even where the statutory remedy was available to him he was casual in his attitude. We do not find any good ground for interference. The OA is bereft of merits and is liable to be dismissed.

11. In the facts and circumstances and our aforesaid discussions the OA is dismissed being devoid of merit with no order as to costs.


Member (J)


Member (A)

/pc/