

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated: Allahabad, the 3rd day of April, 2001

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

ORIGINAL APPLICATION No. 338 OF 2001

Jalalluddin,
son of Sri Habibuddin,
r/o Baruzai, Ist Tarowala Bag,
Shahjahanpur.

..... Applicant

(By Advocate: Sri M. Lal)

Versus

1. Union of India through the Secretary, Ministry of Defence, Production, Government of India, New Delhi.
2. The Additional Director General, Ordnance Equipment Factories, G. T. Road, Kanpur.
3. General Manager, Ordnance Equipment Factory, Hazratpur Tundla, District Firozabad.

..... Respondents

(By Advocate: Sri

O R D E R (ORAL)

(By Hon'ble Mr. S. Dayal, A.M.)

This Application has been filed for setting aside the punishment order dated 31.8.96, appellate order dated 28.6.99 and revisional order dated 30.8.2000. A direction to the Respondent No. 3

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is sought to allow the applicant on duty with consequential benefits on the ground that the applicant was physically working, when the impugned order of compulsory retirement was passed.

2. The case of the applicant is that he was appointed as semi-skilled Tailor on 1.11.1985. He absented from his duties from 1.9.1993 to 26.8.1996. The applicant states that the absence was because of the fact that he was not aware that he was absent, because his mind was not working, as he was under the influence of ghosts. The applicant went to resume his duties on 26.8.1996. He was called by the Works Manager, who asked him as to how he could resume his duties, when the charge-sheet for his unauthorised absence has been issued to him. The applicant mentioned that he has no medical certificate to cover up his absence. He was under the influence of ghost and was taken by family members to 'Ojha'. The applicant admitted that he felt guilty and accepted his misconduct in absenting unauthorisely. He gave his admission of acceptance of unauthorised absence in writing. The applicant claims to have worked from 26.8.96 to 31.8.96, when he received a Memo dated 31.8.96 enclosing a copy of the document, which the applicant had signed on 26.8.96. He was asked to reply to the Memo on the same day and he submitted his reply stating that he had not absented unauthorisedly knowingly and deliberately but due to helplessness, and that he would not repeat such lapse in future.

The applicant was awarded punishment of compulsory

retirement on the same day. The applicant claims to have again lost his memory and was not in a position to take a decision. He claims to have recovered his senses on 29th January, 1999 and requested Respondent No.3 to grant pension. The Respondent No.3 replied that he was not eligible for pension, as he had not completed 10 years of service. The applicant preferred an Appeal on 2.2.99 to the Respondent No.2. The Respondent No.2 rejected the Appeal on the ground that it was time-barred. He preferred a Revision Application on 8.2.2000, which was rejected on 30.8.2000 by the Respondent No.1. Hence, he has come to this Tribunal.

3. We have heard learned counsel for the applicant.

4. We have seen Memo dated 24.9.93. The applicant was proceeded against on three imputations—first one was that the applicant remained absent from 25.6.93 to 29.8.93. The second was that he was continuously absent unauthorisedly from 1.9.93 onwards. The third was that previously also he had absented himself unauthorisedly a number of times, for which he had been imposed punishment and two instances of unauthorised absence on 25.7.90 and 28.10.92 to 5.1.93 have been mentioned for which the applicant was warned and awarded censure. It appears that on 26.8.96 the court of inquiry was convened. The charged official was present and sought to see the charge-sheet, which was shown to him. He read the same and stated that

he understood the contents thereof and admitted imputations against him. He stated that he had been absent, because of certain circumstances relating to his family and his mental state and that he accepted the imputations made against him. The Inquiry Officer stopped further proceedings, because the applicant had admitted as to his misconduct. The applicant seems to have received a copy of the enquiry report and he made a representation dated 31.8.96, stating that he had not deliberately committed the misconduct of unauthorised absence, but was guilty of the same because of less of memory and gave assurance that he would work as a model employee in future. The applicant was imposed the punishment of compulsory retirement with effect from 31.8.96. On 9.1.99, the applicant made written representation for being granted Gratuity, pension etc. He was replied that he was not entitled, as he had not completed 10 years of qualifying service and that admissible amount of gratuity had been paid to him. He filed an Appeal on the ground of mercy, which was rejected. He again filed a Revision, seeking re-engagement on compensate ground, which was also rejected.

5. The order of disciplinary authority dated 31.8.96 amounts to compulsory retirement after considering the report of the Enquiry Authority. The grounds of passing this order besides enquiry authority's report are that the applicant had accepted charges before the Enquiry Authority on 26.8.96 and that he had indulged in the past also with similar acts of indiscipline.

6. The learned counsel for the applicant has relied on the case of Ghanshyam Kabat Vs. Union of India and others, 1989, 10 A.T.C. 774. The applicant in this case was working as Extra Departmental Delivery Agent. The applicant had taken a money order along with money to be paid to the addressee of the money order. It was alleged that the applicant did not pay money but obtained thumb impression of some other person and thus committed forgery in respect of thumb impression. A regular enquiry was conducted and the applicant was found guilty and the disciplinary authority concurring finding of the Enquiry Officer ordered removal of the applicant. The learned counsel for the applicant had contended in that case that non-production of acknowledgement receipt of the addressee has caused serious prejudice to the applicant. The applicant was further not allowed to be defended by one Bhagirathi Das instead of Enquiry Officer requiring the applicant to engage some local officer. The applicant has relied on observations of the Bench that even if there was an admission, it did not relieve the burden of the prosecution to prove the charge and that the alleged admission had not been put to the delinquent officer, as it is an incriminating circumstance appearing against him. It is contended by the learned counsel for the applicant that in the present case charges have not been proved at all. However, this contention of the learned counsel for the applicant is not acceptable as the applicant remained absent and he had no explanation to offer except that he had lost his memory and was under the influence of ghost. Hence, this case is distinguishable from the case before us. The learned counsel for the applicant

also relies upon the judgment of Central Administrative Tribunal, Madras in N. Sundaramurthy etc. vs. Lieutenant Governor of Pondicherry and Union of India and others and Secretary Planning - Cu-Development Commissioner, Pondicherry, (1990) 12 A.T.C. 553. In this case, the applicants had given detailed reply accepting the charges with some reservations. The order of the disciplinary authority as confirmed by the appellate authority was set aside on the ground that the Enquiry Officer had not given a definite conclusion on the basis of circumstances mentioned by the applicant that they could be held guilty. It was found that general statement was qualified by a number of detailed facts and the Enquiry Officer had not analysed those facts and concluded as to which fact stood admitted. The disciplinary authority did not come to an independent conclusion as to what punishment would be imposed after taking the circumstances into account. In the case before us, the admission made by the applicant before the Court of Enquiry is quite specific and he only mentioned some circumstances of family and his mental state as reasons for his absence. He has further clarified the same in his application. We do not find that the findings of the said case can be applied to the case before us.

7. The learned counsel for the applicant has also relied on the case of Poonam Chand, 1996, 34 ATC 30. In the said case, the applicant was removed from service after 19 years on account of unauthorised absence from

138 days. It was found that the applicant was physically and mentally sick and was unable to perform the duties of Pointsman. He was, therefore, required to be referred to the nearest Railway Hospital. In the circumstances of that case, however, the punishment of removal was converted to the punishment of compulsory retirement. In the case before us, the applicant has been imposed the punishment of compulsory retirement.

8. We find no infirmity in the orders of the disciplinary, appellate and revisional authorities. The application is, therefore, rejected at the admission stage itself.

9. There shall be no order as to costs.

Rafiquddin *S. Dayal*
(RAFIQ UDDIN) (S. DAYAL)
JUDICIAL MEMBER MEMBER (A)

Nath/