

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, (13)

ALLAHABADDated: Allahabad this the 2nd <sup>December</sup> November, 1996 (8)

CORAM: Hon'ble Mr Justice B.C.Saxena, V.C.

Hon'ble Mr D.S.Baweja, Member (A)ORIGINAL APPLICATION NO.1202 OF 1987Firoz Khan son of Sri Zahoor Khan,  
508, Army Base Workshop Chheoki Fort,  
Allahabad

- petitioner

(C/A Sri M.A.Siddiqui)

Versus

1. Union of India,  
Ministry of Defence,  
New Delhi2. Major General Commander  
Technical Ggroup EME.,  
Army HQ, Delhi Cantt.3. Lt. Col. 508 Army,  
Base Workshop Chheoki,  
Allahabad

- Respondents

(C/R Sri N.B.Singh)

ORDER(By Hon'ble Mr D.S.Baweja, Member (A))

This application has been filed challenging the order of the disciplinary authority dated 25.8.86 imposing of the punishment of removal from service, order dated 5.6.87 of the Appellate Authority and the enquiry report dated 7.6.86 with a prayer to quash the same and to direct the respondents to re-instate the applicant to his post with all the back <sup>Wages</sup> and other benefits from 24.10.82.

2. This application had been decided by order dated 12.9.91 Union of India filed a S.L.P. against the said order before the Hon'ble Supreme Court. The Hon'ble Supreme Court as per order dated 15.12.1994, keeping in view the decision in Managing Director E.C.I.L Hyderabad, Vs. B.Karunakar (1993 (6) J.T.1) set aside the decision dated 12.9.1991 of the Tribunal and remanded the matter for deciding the other points <sup>been raised</sup> which have /



and accordingly the matter has been heard. (6)

3. The applicant while working as a civilian employee as permanent Mechanic in D.E.T. , 508, Army Base Workshop, Chheoki, Allahabad, was issued a charge sheet dated 27.10.84 with the <sup>Charge</sup> category of un-authorized absence from October, 1982 to October 1984. The enquiry was conducted and the report was submitted on 7.6.86. The disciplinary authority after considering the enquiry report, imposed penalty of removal from the service vide order dated 25.8.86. The applicant submitted an appeal dated 13.8.86. The appeal was disposed of by order dated 5.6.87 rejecting the same and the order was conveyed to the applicant vide letter dated 16.6.87. Being aggrieved by these orders of the disciplinary and appellate authorities , the applicant has filed the present application on 15.12.87.

4. The applicant has challenged the impugned orders on the following grounds :

(a) The charges are totally baseless as the applicant was not unauthorisedly absent but was sick ~~and~~ due to attack of paralysis <sup>and</sup> had been sending the medical certificates regularly under the certificates of posting. The Enquiry Officer has not accepted the certificates of posting and the medical certificates as evidence.

(b) The enquiry has been conducted as ex-parte without giving intimation to the applicant. The alleged remarks given by the Postman have been taken <sup>as</sup> ~~on~~ the basis of the ex-parte proceedings without advertising about the proposed enquiry in any local newspapers in case the applicant was not attending the enquiry.

5. The Respondents have opposed the application



by filing the Counter Affidavit. It is submitted by the respondents that the applicant was on medical leave from 23.8.82 to 23.10.82 as per the medical certificate dated 23.8.82. During this period vide order dated 19.10.82 he was posted from D.E.T. to Headquarters, Fort, Allahabad. However, he did not join the duty at Headquarters, Fort, Allahabad, after the expiry of the leave and continued to remain absent. A registered letter dated 4.9.84 was sent to him to join duty immediately and in case of sickness he should send the medical certificate. However, this letter was received un-delivered with the remark "no person with this name resides in the house". Thereafter charge sheet dated 27.10.84 was issued for un-authorised absence and the same was sent at his known address by registered post. However, this letter had been also received back un-delivered. Subsequently the charge sheet was got served on the applicant through Civil Police on 14.12.84. The first date of enquiry was fixed on 25.2.85 and the applicant was advised through registered post vide letter dated 28.1.85. However, he did not attend the enquiry. Subsequently the enquiry was fixed on 9.4.85, 10.8.85 and 20.11.85. Every time the intimation was sent <sup>at</sup> ~~at~~ his known home address but the applicant failed to report for enquiry. The next date of enquiry was fixed on 20.3.86 and intimation was sent by letter dated 17.2.86. The applicant reported to Headquarters on 22.2.86 to join the duty. He was advised to report to the Enquiry Officer for completion of the enquiry and further action would be taken only on completion of the enquiry. The applicant was also informed of the enquiry fixed on 20.3.86. However, he did not attend the enquiry. The next date of enquiry was 28.5.86. He was informed of the same through registered post. However, the applicant



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did not attend. Finally the next date for enquiry was fixed as 6.9.86 and ex-parte enquiry was completed. Thus the applicant had been given adequate opportunity to participate in the enquiry. If the applicant was sick, he should have followed the rules for reporting sick as required D.O. Part I-416/AD dated 7.1.82. The applicant has failed to comply with the rules. There is no reason to disbelieve the integrity of the postman with regard to non-delivery of the registered letters and, therefore, the applicant's allegations are not sustainable<sup>and</sup> are not based on any evidence. The disciplinary proceedings have been conducted following the extant rules. The disciplinary authority has passed the punishment order after due consideration of the enquiry report and the material brought on record. In view of these facts the applicant has failed to make out any case for the judicial interference and the applicant, therefore, deserves to be dismissed.

6. The applicant has filed the rejoinder affidavit countering the averments of the respondents and reiterating the submissions made in the application.

7. Heard the Learned Counsels for the parties<sup>we</sup> have given thoughtful consideration to the pleadings made during hearing and also gone through the materials placed on record.

8. The first contention of the applicant is that the charges are baseless as the applicant was actually sick<sup>y</sup> and he had been submitting the medical certificates regularly<sup>y</sup> and postal proof of sending the certificates has not been taken as authentic. On going through the enquiry report and the order of the disciplinary authority, we find that this aspect has been examined in detail and the disciplinary authority has come to the conclusion after recording the detailed reasons for the same<sup>we</sup> that the applicant was on



unauthorised absence. It is further<sup>for</sup> the disciplinary authority to find out whether the rules regarding sick reporting have been followed and whether the medical certificates are genuine. It is well settled law as held on several judgements of the <sup>Apex Court</sup> applicant that if the findings of disciplinary authority were on some evidence, substitute its own findings. Keeping the Tribunal would not re-appreciate the facts and in view the findings of the Enquiry Officer and the reasons recorded by the disciplinary Authority, we decline to re-appreciate the facts and come to our own findings.

9. The second contention of the applicant is with regard to conducting of ex-parte enquiry. The applicant contends that he did not get any intimation for any of the dates said to have been fixed for enquiry. While on the other hand, the respondents strongly contend that the enquiry was fixed on several dates but the applicant did not attend the enquiry inspite of informing the applicant through registered post at the known address. Receipt of the charge sheet and submission of the defence statement against the same are admitted facts. Respondents have averred that first enquiry date was fixed on 25.2.85 and the intimation was sent by letter dated 28.1.1985 through registered post but the applicant did not attend. Subsequently, <sup>after several dates, the next</sup> date was fixed on 20.3.86 as brought out in para 5 above and the intimation was sent vide letter dated 17.2.86. On 22.2.86, the applicant came to office to join duty and he was advised to report to Enquiry Officer for completion of the enquiry before he is allowed to join duty. The applicant was also informed of the enquiry already fixed on 20.3.86. However, the applicant did not attend the enquiry on this date. Thereafter the enquiry was fixed on 28.5.86. Finally the enquiry was fixed on 6.6.86 when enquiry was concluded ex-parte. From these facts



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averred in the Counter Reply, we observe that the respondents though have stated that the intimation for enquiry date was sent by registered post but have not indicated as to what happened to these letters. Were these letter received back undelivered and if so with what remarks ? On going through the enquiry report , we find the enquiry report is silent on this aspect. No reasons have been also recorded as to why the enquiry was conducted ex-parte. However, though the disciplinary authority in its order has covered this aspect and given the dates on which the enquiry was fixed but no mention has been made with regard to service of the letters fixing the enquiry. Original file containing the proceeding of disciplinary action has also not been produced for perusal. However, we find <sup>that</sup> the applicant has made a statement in Para 7(5) of the applicant that the alleged doubtful remarks by the postman with regard to the registered letters have been taken as the basis of intimation of the enquiry dates having been given to the applicant for ex-parte enquiry without advertising for the proposed enquiry in the local news papers. This clearly implies that the applicant was aware of the letters being sent back and he was perhaps avoiding the service in the same manner as was for the charge sheet which was finally served through Civil Police on the same address. Apart from this the applicant was specifically advised of the enquiry fixed on 20.3.86 when he came to office for joining duty. This is admitted fact by the applicant but he did not attend the enquiry as he wanted to join the duty first and then only participate in the enquiry. Subsequently the enquiry was fixed on 28.5.86 and finally on 6.6.86 when ex-parte enquiry was conducted. When the Department informed the applicant to attend the enquiry and then only he will be allowed to join duty, he should have attended the enquiry to explain his

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position with regard to sickness. Non-participation in the enquiry even after intimation was, therefore, of his own choice but not due to lack of reasonable opportunity. From these facts, we are compelled to conclude that reasonable opportunity had been afforded to the applicant to participate in the enquiry and the situation leading to ex-parte enquiry was of his own making. In our opinion, thus there was been no denial of principles of natural justice.

10. In the light of the above discussions, we find no merit in the <sup>O.A.</sup> or any reason to grant the reliefs prayed for. The application therefore, deserves to be dismissed and is accordingly dismissed. No order as to costs.

*S. B. Singh*  
MEMBER (A)

*Bebakse*  
VICE CHAIRMAN

RJ