

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABADAllahabad : Dated this 25th day of March, 1999

Original Application No. 537 of 1992

District : AgraCORAM :-

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

Hon'ble Mr. S.L. Jain, J.M.

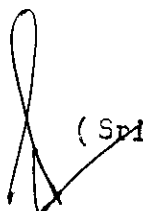
R.D. Sharma
 S/o Vaidya Shri Krishna Das Sharma,
 R/o 448, Peer Punch, Mathura,
 Employed in Central Ordnance Depot,
 Agra.

(Sri M.K. Upadhyaya, Advocate)

. . . . Applicant

Versus

1. Union of India
Through the Secretary,
Ministry of Defence,
Govt. of India, South Block, New Delhi.
2. The Director General of Ordnance Services,
Master General of Ordnance Branch,
Army Headquarters, New Delhi.
3. The Vice Chief of Army Staff,
Army Headquarter,
New Delhi.
4. The Officer-in-Charge,
Army Ordnance Corps Records,
Post Box No.3, Trimulgherry Post-
Secunderabad-500015.
5. Shri S.P. Rath,
Inquiry Officer
(Major when conducted the Inquiry in
Central Ordnance Depot, Agra),
C/o Chief of the Army Staff
Army Headquarters, New Delhi.
6. The Commandant
Central Ordnance Depot,
Agra.


 (Sri S.C. Tripathi, Advocate)

. . . . Respondents

O R D E R

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

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985. In this application the applicant prays for the following reliefs:-

- (i) the punishment order, appellate order and revision order may be set aside.
- (ii) the costs of the case may be granted to the applicant; and
- (iii) any other relief which the Hon'ble Court may deem fit and proper according to the circumstances of the case.

2. The facts as stated in the application are that the applicant was appointed in Group 'C' Central Services, in 1961 and was confirmed as a L.D.C. in 1968. During 1974 the applicant organised a Trade Union and agitated against the alleged mal-administration ^{anti national} and/activities. He claims to have developed mental disease Neuro-psychosis and his attendance is stated to have become irregular. He claims to have submitted an application 3-3-1984 for settlement of dispute about service matters and thereafter fell ill on 24-3-1984 claiming to have sent an application for leave intimating that a medical certificate will be produced at the time of resuming duty after being declared fit. The applicant claims to have resumed duty on 21-5-1984. The applicant also claims to have met the Commandant-Respondent no.6 on the same day and expressed his inability to continue service in the presence of Sri B.B. Chaturvedi, the then Secretary Works Committee. The Commandant is alleged to have perused the documents on the next day and ~~and~~ passed

orders for completion of a departmental enquiry pending against the applicant and retirement of the applicant from service thereafter on his volition. The applicant was required to attend enquiry regularly. The applicant claims to have attended departmental enquiries regularly and attached certificate by the Inquiry Officer regarding his having attended the enquiry from 9-11-1984 to 17-11-1984. The applicant also stated that he was not allowed to mark his attendance from 24-11-1984 onwards, in the attendance register on the ground that he was ^{to be} voluntarily retired after completion of disciplinary cases. He claims that on 23-8-1985 the Personnel Officer, CDD Agra asked the applicant to give evidence and co-operate for settlement of his service particulars by a letter dated 23-8-1985. He has annexed a copy of this letter as Annexure-A-6, which is a letter from the Personnel Officer (Civ) for Commandant addressed to the applicant stating that in the context of his application dated 16-8-1985 his disciplinary cases have been decided by the disciplinary authority by dropping charges and asked the applicant to resume duty. The applicant thereafter claims to have resumed his duty and submitted his leave application alongwith necessary medical certificate. He claims to have submitted a representation dated 4-10-1985 and thereafter another application dated 12-10-1985. The application dated 12-10-1985 is Annexure-A-7 and makes a request that he may be granted leave due to him till his grievances are settled. He mentions that as soon as he receives his dues, he shall apply for voluntary retirement from service. The applicant claims that the respondents were not interested in settling his dispute and they ~~served~~ served charge sheet dated

15.10.1985 for absenting himself without leave from 24.3.1984 to 5.9.1985. It is mentioned in the Article of Charge that the applicant did not assume duty although he was directed to do so vide letter dated 13.12.1984 and submit a leave application duly supported by medical certificate in case he was sick. The applicant after receiving the letter dated 13.12.1984 did not submit any leave application. He is stated to have joined duty on 6.9.1985. The applicant claims that the charge against him were not sustainable as he was granted extra ordinary leave from 3.10.1984 to 14.10.84 as mentioned in Annexure A-9 to the application.

3. The arguments of Sri M.K. Upadhyaya, counsel for the applicant and Sri S.C. Tripathi, counsel for the respondents were heard. Sri M.K. Upadhyaya, also submitted a copy of the arguments, which he claims to have filed in the office earlier, which was taken into account.

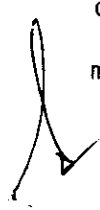
4. Learned counsel for the applicant assailed the charges on the basis of which the enquiry was made as wrong. It is stated in the application that the applicant absented himself without prior application or without getting leave sanctioned according to the charge but in paragraph 4(k) of the O.A. the applicant claims that :-

" He had sent an application for leave intimating that medical certificate will be produced at the time of resuming duty" and states in paragraph 5(g) of the O.A. that:-

" Prior information or getting the leave sanctioned was not possible as the applicant was suddenly attacked by the uninvited disease."

Both the claims of the applicant have been denied by the respondents. The other ground on which the charge is

assailed is that the applicant was granted E.O.L. on Medical certificate from 3.10.1984 to 14.10.1984 as shown in Annexure A-9 to the application. The applicant has also given a copy of certificate of the Inquiry Officer at Annexure A-5 of having attended the departmental enquiries from 9.11.1984 to 17.11.1984. The applicant claims to have remained present on a number of other days on which the enquiry was held. The respondents have not denied that the applicant had been granted E.O.L. w.e.f. 3.10.1984 to 14.10.1984 or that he attended enquiry from 9.11.1984 to 17.11.1984. It is stated in the counter affidavit that the applicant remained present before the Inquiry Officer on three occasions but the C.A. has not mentioned the days on which the applicant remained present before the Inquiry Officer and how the period of his presence before the Inquiry Officer was treated by the Office. The applicant had raised issue of the charge sheet being defective on the ground that he had attended the enquiry from 9.11.1984 to 17.11.1984 in his memo of appeal. The appellate authority has rightly not considered these contentions of the applicant because the proper forum for presenting these facts was the departmental enquiry being conducted by the Enquiry Officer. The applicant did not avail of the opportunity of presenting these facts and documents in the departmental enquiry inspite of grant of a number of opportunities to him. The Enquiry Officer was shown the register of attendance which showed the applicant as absent and the applicant though present before the Enquiry Officer did not challenge this evidence. He has raised these matters subsequently. Not only the pleadings on this



point are inconsistent but also the charge against the applicant of proceeding on leave without submitting application for leave or medical certificate was valid. Provisions of Rule 7, Rule 14 and Rule 19 of C.C.S.(Leave) Rule 1997 make it obligatory to submit an application for leave along with medical certificate before proceeding on leave.

5. The applicant has also mentioned that he was not given a copy of the enquiry report when he was asked to give his defence statement after completion of enquiry. This contention of the applicant is contained in para 5(n) of the O.A. The Sub rule on this issue is Sub-Rule 15(1) which did not require enquiry report to be furnished to the delinquent official before insertion of Sub-Rule 15(1-A) Rule 1-A was added w.e.f. 3.5.1995 which reads as follows:-

" The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the enquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the inquiring authority, a copy of the report of the inquiring authority to the Government Servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days irrespective of whether the report is favourable or not to the Government Servant."

The contention of the applicant is based on the law laid down in Union of India Versus Mohammad Ramzan Khan 1991(1) S.C.C. page 588 in which it was laid down that:-

" Non furnishing of the enquiry report submitted by Enquiry Officer to Disciplinary Authority to the delinquent employee would violative of principles of natural justice rendering the final order invalid.".

The Apex Court in Union of India Vs. Vijay Bahadur Singh in S.L.P. No. 13287 of 1992 has laid down by their judgment dated 25.1.93 that the application of the law laid down in Mohammad Ramzan Khan's case would be prospective. In this case the order of punishment was passed on 27.5.87 and therefore the claim of the applicant is not valid.

6. The second contention raised by the applicant is that he was not given any opportunity of defence. The applicant has mentioned that he was not given any notice before the Inquiry Officer proceeded with the enquiry on exparte basis. He claims that his defence assistant was also not informed about exparte enquiry. The procedure for holding exparte enquiry is given in paragraph 6 of Government of India's instructions on page 46 of Swamy's Compilation of C.C.S. and C.C.A. Rules 1997. This procedure requires service of a chargesheet. The chargesheet in this case had already been served on the delinquent official for absenting himself without leave. The entire gamut of enquiry has been gone through. Reasons have been recorded by the Enquiry Officer in the enquiry proceedings in paragraph 22 of the enquiry report. The Enquiry Officer has mentioned in the proceedings all the previous dates which were 23rd Jan. 1987, 27th Jan. 1987 and 2nd Feb. 1987 that the date fixed was communicated to the delinquent official. The main evidence of production of S-37 was done in the presence of delinquent official himself. The third ground on which the procedure adopted in the enquiry has been assailed by the applicant is that the findings of the enquiry were recorded in the presence of the presenting officer. The findings of the Enquiry Officer would have been recorded in the presence of the presenting

officer as well as the applicant in case the applicant ² were present on the date the enquiry officer recorded the findings. The findings can not be said to have become vitiated merely because of the reason that they were recorded in the presence of the presenting officer. The applicant has not shown what prejudice was caused to him by the fact that E.O. has recorded the finding in the presence of the presenting officer, therefore this ground has no validity for declaring the enquiry proceedings ~~as~~ against principles of natural justice and illegal.

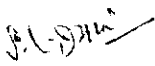
7. The fourth contention is that the findings are baseless and without any evidence. It is mentioned by the applicant that the entire gamut of enquiry proceedings was not gone through before the findings were recorded. He has alleged that the findings are based on extraneous considerations and has mentioned that although allegations were made in the article of charges that the applicant was ~~not~~ sent registered A.O. letter dated 13.12.1984 and was directed to resume duty forthwith but he did not comply with the directions after having received the letter. The applicant contends that this letter was not produced during the enquiry and therefore, could not have been taken as proved, besides articles of charges mention that the applicant joined duty voluntarily on 6.9.1985 while he actually joined duty on the direction of the respondent vide their letter dated 23.8.1985. These issues have been raised by the applicant in his memo of appeal but the order of the appellate authority does not specifically deal with these issues but only states that the enquiry was based on documentary evidence which was produced before the Inquiry Officer. The appellate authority has ⁸ mentioned in para 2(b) that all the documents mentioned


in article of charge No.3 is in the memo of charge were produced by the presenting officer before the Inquiry Officer. This part of the appellate orders appears to be a genuine mistake because the documents are mentioned in Annexure-3 to the memo of charge. The Enquiry Officer has referred to a letter dated 15.12.1984, in his finding as also DO pt 11 No. 91 dated 18.6.1985. He has mentioned that DO pt 11 No. 91 dated 18.6.1985 declared the applicant absent without leave. These documents have been mentioned in the list of documents in Annexure III of the chargesheet. The applicant has not claimed that copies of these documents have not been supplied to him. Therefore the copies of documents appear to have been a part of the record of the enquiry. Thus, the contention that the findings were not warranted by the evidence available on record is not established by the applicant.

8. The last issue raised by the applicant is that the punishment order passed by respondent No.4 is a non-speaking order. The punishment order is also assailed on the ground that the reduction was ordered in time scale which was non-existent at the time of passing of the punishment order. As far as the first contention is concerned, the enquiry officer's finding has been mentioned by the disciplinary authority and the disciplinary authority's acceptance of the finding of the enquiry officer is also mentioned. This is adequate ^{for the} ~~as~~ requirements _{under the law.} of speaking order. The second contention of the applicant that the scale was non-existent is not established because the order of punishment was passed on 22.5.1987 and the new pay scale in which reduction was made had become effective w.e.f. 1.1.1986. The applicant has filed an order fixing his pay which is dated 7.9.1989. The order mentions that the pay of the

applicant was fixed at Rs.1400/- per month on 1.1.1986 in the pay scale of Rs.950-20-1150-EB-25-1500 (Annexure R.A.-5) and the pay became Rs.1425/- w.e.f. 1.1.1987. It also mentions that the pay of the applicant was reduced by two stages i.e. to Rs.1375/- per month w.e.f. 27.5.1987 for a period of two years as a punishment. Therefore the contention of the applicant that he was awarded punishment in a non-existent scale is not borne out by facts.

9. In effect, we find none of the contentions raised by the applicant as sustainable. The application is therefore, dismissed as lacking in merits. There shall be no order as to costs.


Member (J.)


Member (A.)

Nafees.