

Reserved

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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 4th day of July 1997.

Original Application no. 490 of 1993.

Hon'ble Mr. T.L. Verma, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Vimal Kumar, S/o Shri Bhullan Das, R/o Ex T.No. 132/LCS
H. No. 1/25, New Idgah Colony, Kanpur.

... Applicant.

C/A Shri G.C. Bhattacharya

Versus

1. Union of India through the Secretary (Defence), New Delhi.
2. Director General, Ordnance Factories Ordnance Equipment Factories Gr. Head Quarter ESIC Bhawan, Sarvodaya Nagar, Kanpur.
3. Additional Director General, Ordnance Equipment Factories, Kanpur.
4. General Manager, Ordnance Equipment Factory, Kanpur.

... Respondents.

C/R Km. Sadhana Srivastava.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant seeks following reliefs in this application:-

i. to set aside the order of punishment dated 25.01.92 and the order rejecting appeal dated 16.09.92.

ii. a direction to the respondents to treat the applicant in service through out and to pay his arrears of salary and other benefits.

iii. award the costs in favour of the applicant.

3. The facts as narrated by the applicant are that he was appointed as temporary leather worker in Ordnance Factories Equipment Factories, Kanpur on 09.01.81. The inquiry was conducted against him for alleged unauthorised absence which resulted in order of removal of the applicant from service dated 25.01.92. Appeal against this order preferred by the applicant was rejected by Additional Director Ordnance Equipment Factory, Kanpur by his order dated 16.09.92.

4. Arguements of Shri G.C. Bhattacharya learned counsel for the applicant and Km. Sadhana Srivastava learned counsel for the respondents were heard. Pleadings of this case have been taken into consideration. Our order is set forth in ensuing paragraphs.

5. Learned counsel for the applicant has alleged that no proper opportunity was given to the applicant during the inquiry into the charges. There was no defence from the applicant during the inquiry. Presenting officer did not file any evidence and the inquiry officer asked few questions from the applicant and thereby acted as prosecuting authority. He has also alleged that the appointing authority of the applicant was the Director General Ordnance Equipment Factories, Kanpur and, therefore,

the General Manager, Ordnance Equipment Factory, Kanpur had no authority or jurisdiction to impose punishment. It is also stated that Ministry of Defence was the appellate authority as it was the authority higher than Director General Ordnance Factory, Kanpur. Thus Additional Director Equipment ~~Ordnance~~ Factory, Kanpur who passed the order as Appellate Authority has no jurisdiction. It is also alleged that the Disciplinary Authority as well as Appellate Authority ~~did~~ did not apply their mind in passing orders. The non application of mind appears to be the fact that the applicant could not come to duty because his wife was seriously ill and there was no body to look after her, except the applicant. Therefore, the applicant was not guilty. (para 10 of the application).

6. The respondents in their reply to contention of the applicant that the inquiry was ^{not} properly conducted have stated that the applicant had himself admitted the charge levelled against him unconditionally, as he has not claimed that he sent any information regarding absence which was without taking proper sanctions of leave without effect from 08.11.90 to 21.12.90. The respondents have also stated in their counter reply that the applicant had raised no objection against conducting of inquiry in his representation dated 17.12.91, which was submitted against the inquiry report. The respondents have mentioned that the reasons why Defence Assistant does not appear in the case was that the applicant had himself admitted unconditionally the charge levelled against him. The applicant was again asked whether he had to say anything more with reference to charge levelled against him and he has mentioned that

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he had nothing more to say except he should be excused this time. Thus the applicant was given opportunity, but he himself ~~did~~ and admitted not take it ^{and admitted} ~~it~~ ^{the} unconditionally ~~charges~~ ^{the} ~~levelled~~ against him.

7. The contention of the applicant that the General Manager, Ordnance Equipment Factory, Kanpur was not Disciplinary Authority and that Additional Director General Ordnance Factory was not the Appellate Authority, has been squarely denied by the respondents. It is mentioned that the Ministry of Defence is Reviewing Authority in this case of the applicant and is neither the Disciplinary nor Appellate Authority. The applicant has not annexed any order of appointment to show that he was temporary leather worker ~~was~~ appointed by the Director General of Ordnance Factory. The applicant seems to have admitted not only his absence from 08.11.90 to 21.12.90 but also that he was in the habit of remaining absent unauthorisedly as could be seen from the number of instances of different years given in the charge sheet. In his rejoinder affidavit ^{that he} also the applicant has admitted ~~was~~ suffering from T.B. due to which the applicant could not go to perform his duty "some times".

8. The main contention of the applicant appears to be that order of removal could only have been passed after leading evidence and establishing charges against the applicant. We do not consider that it was necessary to the respondents to have conducted full scale inquiry, after the applicant himself admitted veracity of charges ~~levelled~~ against him. The applicant had not only admitted the

charges when the inquiry officer asked him, as to whether the charges were acceptable to him or not, but does not deny the veracity of the charges even in his application made to the Tribunal under the circumstances, the contention of the learned counsel for the applicant that inquiry ought to have been conducted can not be accepted. The applicant in his representation against the inquiry report has also not mentioned any flaws in the inquiry.

9. The applicant has stated that the inquiry officer acted as prosecuting officer. But the copy of proceedings submitted by him as annexure to his O.A. only shows that the inquiry officer simply ascertained from the applicant as to whether the charges levelled against him were acceptable or not and on the admission of the applicant that the charges were acceptable, the inquiry was treated as closed because leading any further evidence was not necessary.

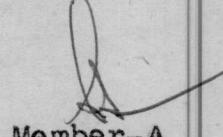
10. The contention of the Disciplinary Authority as well as Appellate Authority have not applied their mind in passing order against the applicant is also not correct. The order dated 25.01.92 (Annexure 2 to the OA) shows that the representation dated 17.12.91 had been taken into account. Only after that order of removal was passed for misconduct of habitual ~~and~~ unauthorised absence from duty as well as unauthorised absence from duty w.e.f. 08.11.90 to 21.12.90. The order of Appellate Authority is quite detailed and comprehensive having regard to the effect of this case. Therefore, the charge of non application of mind does not get established.

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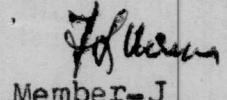
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11. We find no reasons as to why the order of Disciplinary Authority as well as Appellate Authority should be interfered with. We, therefore, dismiss the application as we find no merit in it.

12. There shall be no order as to costs.



Member-A



Member-J

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