

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1640 of 1999.

Allahabad, this the 7th day of December, 2006.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Ram Gopal son of Late Jagannath,
Resident of 83/1, Sagar Gate,
Tilyani Bazaria, Jhanasi (U.P.).Applicant.

(By Advocate :Shri M.P. Gupta)

Versus

1. The Union of India through the Secretary,
Ministry of Defence, Government of India,
New Delhi.
2. The Garrison Engineer (AF) Bagdogra, P.O.
Bagdogra Air Port, District -Darjeeling,
(W.B.).
3. The Commander Works Engineer (AF)
Kalaikunda, P.O.Kalaikunda Air Field,
District Kharagpur (W.B.).
.... Respondents.

(By Advocate : Shri M.B. Singh)

O R D E R

By Hon'ble Mr. P.K. Chatterji, A.M. :

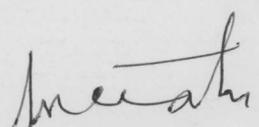
The fact of the case is that the applicant who was working as Chaukidar in the M.E.S. at Bagdogra was served with a charge sheet dated 21.1.1975 alleging that the applicant absented himself from work without authority from 2.3.1974. On the basis of the aforesaid charge, he was removed from service on 11.6.1976. The applicant challenged the legality of the order

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removing him from service by filling a Civil Suit in the Civil Court of Jhansi under Suit No.758 of 1977. After formation of the Tribunal the suit was transferred to the Tribunal at Allahabad. After hearing the said transfer case the Tribunal vide its judgment dated 18.12.1986 (Annexure-V) directed that the plaintiff if he so wishes may now submit an appeal against the order of removal to the appropriate authority who may consider it according to rules condoning the delay.

2. In pursuance of the order passed by this Tribunal, the applicant submitted an appeal dated 30.1.1987. The appeal was rejected after consideration by the Commander Works Engineer, Bengdubi, Darjeeling vide his order dated 12.8.1987. Thereafter, the applicant again filed an application under Section 19 of the Administrative Tribunals Act, 1985 in this Tribunal, challenging the legality of the order of removal dated 11.6.1976 and the order dated 12.8.1987. The application was filed as OA No.76 of 1988. The aforesaid OA was decided by the Tribunal vide its judgment dated 24.7.1992 (Annexure-VIII) in which the order of removal of the applicant was quashed.

3. The applicant alleged that the respondents took more than five years to implement the order passed by the Tribunal and ordered his reinstatement to the post of Chaukidar vide order dated 30.10.1997. The applicant was directed to join his duties at Bagdogra in the office of Garrison Engineer and he reported for duty in compliance thereof but upon reporting for duty the applicant was placed under suspension vide order dated 18.12.1997 with effect from 2.3.1974.

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A charge sheet dated 12.2.1998 was served on him after calling him from Jhansi to rejoin his duties in the office of the respondent No.2 and after quashing and setting aside ⁷ the earlier order of removal dated 11.6.1976. The charges contained in the memo dated 12.2.1998 are the same as the charges in the memo dated 21.1.1975. It is alleged by the applicant that the order of the Tribunal dated 24.7.1992 implied that the authorities were not to start departmental proceedings against the applicant afresh. He objected to it vide his representation dated 28.2.1998 in which he also made a request for paying the subsistence allowance from March 02, 1974 i.e. the date from which he was placed under suspension vide order dated 18.12.1997. But no subsistence allowance was paid to him even to this date. The Inquiry Officer appointed to enquire into the charges made against the applicant found the applicant guilty of the charge of absenting himself from duty in an unauthorised manner and a copy of this report was made available to the applicant. He was asked to make a representation against the report of the Inquiry Officer.

4. The applicant made a representation on 22.8.1998 against the report of the Inquiry Officer but the representation which the applicant made on 22.8.1998, it is stated by the applicant, was not considered and punishment of removal from service was imposed upon him on the ground of having absented himself from duty from 2.3.1974 to 11.6.1976 in an unauthorised manner.

5. The relief which has sought by the applicant is:-

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- (a) To quash the impugned order dated 16.10.1998 (Annexure-1) removing him from service.
- (b) To quash the order dated 18.12.1997 placing the applicant under suspension from the 2.3.1974.
- © To award the cost to the applicant.

6. The grounds on which the action of the respondents have been assailed are as follows:-

- (a) After the decision of the Tribunal of 1992, the respondents have no authority to issue fresh charge sheet.
- (b) Unauthorised absence is not such a grave misconduct as to warrant removal from service (in this context the learned counsel for the applicant cited from the case CWP 12406/95 decided by Punjab and Haryana High Court on 7.12.1998 in support of his contention.
- (c) No subsistence allowance was paid and on this ground also the disciplinary proceedings falls (learned counsel cited relevant judgment of Allahabad High Court- 1996 LABIC 1485 in the case of Kailash Nath Pandey Vs. State of U.P. and also from 1999 LABIC 1565 Capt. Paul Antony Vs. Bharat Gold Mines).
- (d) The applicant has also alleged that the respondents were required to take a decision regarding treatment of the period of suspension

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after conclusion of disciplinary proceedings which they have not done.

7. The extracts of the above judgments are as follows:-

(i) CWP No.12406/95 - Balwant Singh Vs. State of Haryana

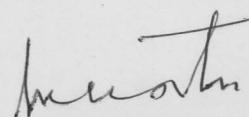
"Punjab Police Rules, Rule 16.2 - Dismissal-Absence From Duty-Dismissal from service ordered on account of absence from duty-Employee was under treatment of ulcer in a hospital during the period of absence-Absence from duty cannot said to be gravest act of misconduct -Order of dismissal from service not warranted on the facts of the case- Impugned order quashed- Reinstatement ordered."

(ii) 1996 LAB.I.C. 1485 - Kailash Nath Pandey Vs. State of U.P.

"In the present case it is admitted fact that no subsistence allowance was paid during pendency of the inquiry. Therefore, the inquiry proceedings stand vitiated. There is no force in the submission of the learned Standing Counsel that the petitioner did not submit requisite certificate to the Inquiry Officer to the effect that he did not work any where during the period of suspension, therefore, subsistence allowance was not paid. There is nothing on record to suggest that this certificate was ever demanded from the petitioner or it was informed to him that his subsistence allowance could not be paid to him on account of non-furnishing of the requisite certificate. It is the duty of the opposite parties to pay the subsistence allowance and if the certificate was required in this connection, the petitioner should have been asked to submit the same."

(iii) 1999 LAB.I.C. 1565 - Capt. M. Paul Anthony Vs. Bharat Gold Mines

"Constitution of India, Arts,21,309-Central Civil Services(Classification, Control and Appeal) Rules (1965), R.10-Fundamental Rules, R.53-Subsistence allowance- Non-payment of, during suspension period-



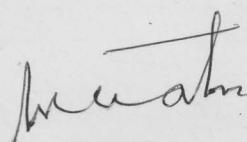
Violative of fundamental right to life-Penury occasioned by non-payment of subsistence allowance- Employee unable to under take journey to attend departmental proceedings-Departmental proceedings stand vitiating."

8. In denying the charges, learned counsel for the respondents stated that the applicant remained absent from duty first on the ground of illness of chronic dysentery for over 50 days but the applicant continued to remain absent and kept sending medical certificate from different medical practitioner. He did not turn up for duty. Even a press advertisement was issued to enable him to respond and even that did not elicit any response so the respondents were quite justified in issuing the charge sheet.

(d) The applicant was given reasonable opportunity of defence during the disciplinary proceedings and for this reasons he should not have any grievance.

9. Learned counsel for the respondents also asked how after the judgment of the Tribunal in 1986 in which the Tribunal did not observe any illegality in the disciplinary action, it could be re-opened in the subsequent OA. We considered this question posed by learned counsel but as the matter was considered by the Tribunal before passing the judgment in OA No.76/88 We refrain from making any comments on the matter.

10. As to the point made by the learned counsel for the applicant that reasonable opportunity of defence was not provided to the applicant, the

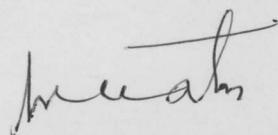


respondents have stated that the applicant attended the court of enquiry and was given an opportunity of hearing. Not only that, even a copy of the enquiry report was made available to him and, therefore, on this ground the disciplinary proceedings suffer from no infirmity. The applicant remained absent for 23 years and, therefore, he has no right to seek the relief and regularisation of the service after such a long period.

11. We have applied our mind to the pleadings of the arguments. The points on which the decision has to be taken are:-

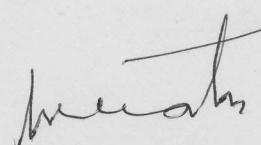
- (a) Whether there was any infirmity in the disciplinary proceedings.
- (b) Whether unauthorised absence was so grave a misconduct as to warrant the removal from service.
- © Whether the second disciplinary proceedings should be declared void for not paying any subsistence allowance.
- (d) Whether the disciplinary proceedings can be declared as void for not issuing a memo declaring the manner in which the suspension period would be treated on conclusion of the disciplinary proceedings.

12. We have applied our mind to all the issues above from the pleadings and arguments. It was clear that the disciplinary authority had summoned the applicant for his presence during the inquiry he was also given a copy of the

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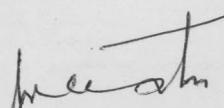
findings to express the view there upon. Merely alleging that reasonable opportunity was not provided will not suffer and it is not going to help the applicant. Regarding the quantum of punishment vis-à-vis misconduct of unauthorised absence, we are aware the settled law in this regard is that unauthorised absence can be cause of removal from service depending upon the length of such absence and the related circumstances and other factors. In this case, the applicant remained absent without any authority ignoring the notices of the respondents for a long time. Obviously, such disregard of discipline should not be countenanced.

13. Learned counsel for the applicant has drawn our attention to the order in OA No.76/88 of the Tribunal to say that after this order it was not open to the respondents to issue fresh memo of chargesheet. What was directed by the Tribunal was that a copy of the report of enquiry be furnished to the applicant to enable him to give his objection. Thereafter, the matter was to be decided by the appellate authority. We have thought over the matter. It is true that the respondents have not followed the direction to the letter. Instead disciplinary proceedings were instituted afresh. What shall be made of this deviation from the Tribunal's direction will depend on what prejudice has been caused to the applicant by this. As a matter of fact the disciplinary proceedings have afforded the applicant the scope to restate and represent his case once again before the authority. It has not detracted from or ~~entitled~~^{whittled} down his rights and opportunity. For this reason we do not think it

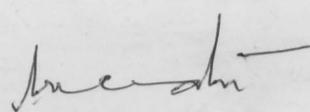


has caused any prejudice and we are not inclined to set-aside the fresh disciplinary action.

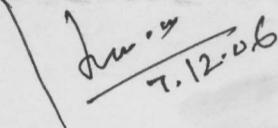
14. The point which remains to be decided is whether non payment of subsistence allowances can cause the disciplinary proceedings to be mollified. We have applied our mind to the relevant judgment to examine their applicability to this case. We notice that the circumstances of the cases relating to the judgments were somewhat different. This is a case in which de-novo disciplinary proceedings are conducted after over 20 years from the date of the first order of removal. The applicant had not rendered any services during this period. For this reason, this case is different from those cases and the context in which those judgments were pronounced were also different. Perhaps the respondents, correctly or incorrectly placed the applicant under suspension from 1974 after reinstating him as per the decision of the Tribunal thinking it was a corollary to an unavoidable consequence of the order of reinstatement, notwithstanding the fact that during long 20 years, the applicant did not serve in the department. Therefore, we are unable to say that the disciplinary proceeding has to be declared void for non-payment of subsistence allowance from 1974. The quantum of the subsistence allowance for this long 23 years would be equivalent to over 10 years salary. Knowing that the applicant did not render any service during this period, we cannot say that this is a legitimate expectation. For these reasons we are not able to allow this OA. However, we are of the view that subsistence allowance should be paid from the date on which the applicant was placed under suspension vide



order dated 18.12.1997, to the date of his removal from service on 16.10.1998. The respondents should also issue appropriate orders stating the manner in which this period ~~was~~ should be treated in accordance FR-24. The period between the first removal dated 11.6.1976 and the reinstatement dated 30.10.1997 should be treated as on leave as due and admissible under the relevant leave rules. With these orders, the OA is disposed of.



Member-A


7.12.06

Vice-Chairman

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