

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 17th day of November, 2003.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 263 of 2003

O.N. Mehrotra, aged about 56 years S/O Shri B.N. Mehrotra

R/O 67, Rani Mandi, Allahabad.....

..... Applicant.

Counsel for applicant : Sri S. Lal.

Versus

1. Union of India through its Secretary, Ministry of Defence,
New Delhi.

2. Director General, Ordnance Services (OS-8C), Army Head-
quarters, D.H.Q., P.O. New Delhi.

3. Officer-In-Charge, Army Ordnance Corps., Records A.D.C.
Records Office, Secunderabad.

4. Commandant, Ordnance Depot, Allahabad Fort.

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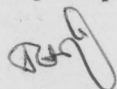
..... Respondents.

Counsel for respondents : Sri R. Sharma.

O R D E R (ORAL)

BY HON.MR. JUSTICE S.R. SINGH, V.C.

The applicant, who is an employee of Ordnance Depot, Allahabad, was chargesheeted vide charge memo dated 11.11.1992 under Rule 14 of CCS(CCA) Rules 1965. According to the Article of charge, the applicant was chargesheeted for misconduct of absence from duty without leave and disobedience of orders. In fact, the applicant absented himself from duty from 4.5.92 without prior permission and despite direction, vide letter No.114548/2/X/EST-NI dated 19.6.92, he failed to report for duty or to submit a medical certificate together with leave application. The said letter, it appears, was received back from the postal authorities with the remarks 'refused'. The above mentioned charge memo was issued thereafter on 1.12.92 but no reply was received and the Enquiry Officer conducted the enquiry ex-parte and submitted his report. In fact, the Enquiry Officer, as would appear from the counter affidavit,



had sent three letters to the applicant directing him to appear but all the letters were returned undelivered with the postal remarks 'refused!'. The Enquiry Officer, finding no alternative submitted his report ex-parte. A copy of the enquiry report was sent to the applicant which was received by the applicant on 20.2.1995. The applicant was directed to submit his representation, if any, within 15 days of receipt of the letter but no representation was received from the applicant. Ultimately, the Disciplinary Authority, on the basis of the enquiry report, passed the order of removal of applicant from service on 4.10.1995, a copy of which has been annexed as Annexure A-1. Thereafter, an appeal was preferred, not by the applicant, but by his wife against the order of removal from service. The appeal dated Sept.95 came to be rejected. In fact, the wife of applicant had preferred a revision under Rule 29 of CCS(CCA) Rules, 1965. A copy of the memo has been annexed as Annexure A-3. The said memo was rejected vide letter dated 21.3.96 with advice to submit representation through the applicant to the Appellate Authority through proper channel. The appeal, it appears, was thereafter preferred but it was considered as time barred and the applicant was informed accordingly vide letter dated 4.9.2002. The said order, however, came to be set aside by the Tribunal vide judgment and order dated 13.11.2002 in O.A. No.1235/02. The Appellate Authority was directed to consider the submissions made by the applicant in appeal on merit and pass speaking order within a period of three months. Consequent upon the directions given by the Tribunal, the matter was taken up by the Appellate Authority afresh on merit. The Appellate Authority dismissed the same vide impugned order dated 19.2.2003, a copy of which has been annexed as Annexure A-2.

A perusal of the appellate order would indicate that the Appellate Authority considered the following points and found no substance in appeal and accor-

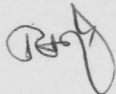


dingly upheld the penalty of the order of Disciplinary authority as under :-

"(a) The appellant remained absent without leave during the year 1992 (i.e. wef 04 May 92 to till the date of removal 30 May 95). The appellant was directed to submit leave application from AMA/CGHS/RMP but he neither applied for leave nor joined duty till date of his removal. He was served with charge sheet at his residence by post and the appellant acknowledged the letter on 01 Dec.92, similarly other related correspondence were also served on him at his residence and acknowledged either by him or his son or his brother. The appellant has failed to attend the oral inquiry. Thereafter, ex parte decision was taken and based on the findings, the Appellant was removed from service. The removal order was acknowledged by his son Shri Manish Mehrotra. Another copy of the order was sent to him through civil Police which was returned by the police with their report that Shri ON Mehrotra had left the house and started living in Mumbai. However later the same was also published in local news paper.

(b) Medical fitness certificate can be obtained at any time to indicate the state of health at that point of time without reference of the past illness. In case he was actually sick few years back, he or his family members should have reported the same at that juncture itself supported by medical certificates which will have allowed the depot to take decision for future course of action to send the appellant for second opinion or to consider the absence as genuine. Hence, contention of the appellant in this regard is not tenable.

(c) Due to the appellant irresponsible attitude towards his service for remaining absent more than 03 years and not informing the depot about his illness, the disciplinary authority has to impose the ibid penalty after its publication in the News paper. The penalty commensurate with the offence committed, hence contention of the appellant as to the severity of the punishment is not tenable.

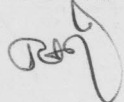


- (d) On examining the relevant documents, it is revealed that disciplinary authority has properly examined the case and then imposed the said penalty hence contention of the appellant that the penalty has been imposed without applying the mind by the disciplinary authority is not correct."

2. Being aggrieved, the applicant has preferred the present O.A.

3. Legal position well settled is that the Tribunal has no jurisdiction to sit in appeal over the orders passed in disciplinary matters except to examine the illegality and impropriety including perversity and procedural infirmity leading to injustice. In the instant case, as stated hereinabove, the applicant submitted no reply to the charge memo or to the enquiry report. In fact, it is conceded in the memo that the applicant absented from duty without leave for years together and ultimately in 1995, he disappeared. Unauthorised long absence from duty, in our opinion, would justify the extreme penalty of removal from service.

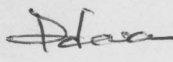
4. Learned counsel for the applicant has placed reliance on a decision of Hon'ble Supreme Court in Union of India & others Vs. Dinanath Shanta Ram & others 1998 SCC (L&S) 1832 in support of his contention that the service of charge memo and enquiry report was not sufficient and this is tantamount to procedural irregularity warranting interference by the Tribunal. The decision relied on by the counsel has no application to facts of the present case. In the case relied upon by the counsel, the charge sheet sent by the registered post was received back with the remarks 'not found' while in the instant case it has been received back with the postal endorsement 'refused'. Service was thus sufficient. That apart it is conceded by the applicant that he had disappeared from 1995 and his whereabouts were not known. In the

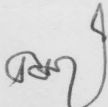


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circumstances, therefore, we find no infirmity in the impugned order.

5. The O.A. being devoid of merit is dismissed with no order as to costs.


A.M.


V.C.

Asthana/