

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 519 of 2007

Allahabad this the 28th day of April, 2014

**Hon'ble Mr. Justice S.S. Tiwari, Member-J
Hon'ble Mr. U.K. Bansal, Member-A**

Chiraunji Lal son of Makhan Lal resident of Village Paratas Pur, P.O.
Mohan Pur, District Bareilly.

Applicant

By Advocate: Mr. R.K. Singh

Vs.

1. Union of India through Secretary Ministry of Defence, Delhi.
2. Brigadier Officer Incharge Records, Jat Regiment Abhilekh Karyalaya, Records, Bareilly.
3. Anil Tiwari, Upper Division Clerk, Abhilekh Karyalaya, Jat Regiment Centre, Bareilly.

Respondents

By Advocate: Mr. Himanshu Singh

(Reserved on 28th March, 2014)

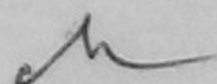
ORDER

Delivered by Hon'ble Mr. Justice S.S. Tiwari, Member-J

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following relief(s): -

"(i) To direct respondent No. 2 to reinstate the applicant on its original post i.e. Daftari and to pay all consequential benefits thereof;

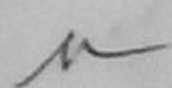
(ii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the interest of justice;




(iii) To award the cost of the litigation."

2. The applicant - Chiraunji Lal was appointed in the office of respondent No. 2 as Peon on 01.12.1988 in the pay scale of ₹750-12-870-EB-14-240. The applicant was performing his duty with great satisfaction and devotion but to his utter surprise he received a letter dated 25.06.2005 issued by respondent No. 2 intimating about his discharge from service w.e.f. 30.09.2005. The applicant was referred to the Chief Medical Officer, Bareilly on 25.05.2006 by the respondents for examining the medical fitness of applicant to continue in service and in the meantime he was discharged from service. The applicant moved several representations before the authorities for his reinstatement but all in-vain. Hence, applicant filed the present O.A. mainly on the grounds that he has arbitrarily and illegally been discharged from service by the respondents. No such alleged application dated 21.05.2005, as mentioned in the aforesaid discharge order, was moved by the applicant. During the pendency of medical proceedings, he was discharged from service which was unjust and improper. His salary and consequential benefits for the months of January, 2005 to June, 2005 have illegally been withheld by the respondents.

3. The respondents on the other hand have taken a preliminary objection regarding maintainability of the O.A. on the ground of delay in moving this O.A. by the applicant. It

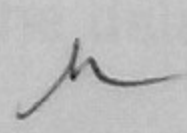


is also contended by respondents that the applicant has never been sincere in his service, particularly after 2000 several verbal as well as written warnings by the Appointing Authority, Commanding Officer, and Administrative Officer have been issued to him from time to time for his bad performance. The applicant himself had submitted two applications, one dated 21.05.2005 and the other dated Nil received in the office of answering respondents on 23.06.2005 in his own handwriting which are self explanatory. The applicant had sought voluntary discharge on the ground of domestic problems vide his application dated 21.05.2005 as well as by other undated application received in the office of respondents on 23.06.2005. The applicant was not performing his official duties as per rules rather remained absent without leave application for most of times due to his domestic problems well known to him. The respondents have considered the application of applicant for discharge from service and the same has been allowed by the respondents. His subsequent denial that he has not moved any such application shows only his malafide which is an afterthought. After being discharged from service by accepting his application, the applicant started moving representation after representation. The respondents did not refer the applicant to Chief Medical Officer, Bareilly on there own rather it was only on the request of applicant in his handwritten application dated 21.05.2005 which was



received in the office of respondents on 24.05.2005. He was referred to Chief Medical Officer, Bareilly for his medical board on 25.05.2005 as before this reference he remained absent from duty w.e.f. 16.03.2005 to 23.05.2005 (sixty nine days). After referring his matter to the Chief Medical Officer, Bareilly, he again absented himself on 26.05.2005, 30.05.2005, 02.06.2005 to 04.06.2005, 09.06.2005, 15.06.2005 and 19.06.2005 to 30.09.2005. He himself did not appear before the Chief Medical Officer, Bareilly nor he informed about any development or about the report of Chief Medical Officer, Bareilly. In the meantime, he again submitted an application dated Nil which was received in the office of answering respondents on 23.06.2005 in his own handwriting (by post) stating that he should be voluntarily discharged from service due to his domestic problems and also requested for payment of his G.P.F. and amount of insurance.

4. The applicant was required to submit his application for regularisation of his absence period and then only his pay and allowances were required to be claimed. The applicant has not submitted any such application for regularisation of his absence period (except two leave applications). Accordingly, no pay and allowances were claimed from CDA (Army), Meerut. The applicant has not completed the period of 20 years of service hence he is not entitled for any



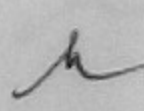
pension. The applicant has no case and the O.A. deserves to be dismissed.

5. The applicant has placed reliance on documentary evidence which is annexure-1 to annexure-4 on record. On the other hand, the respondents have placed reliance on documentary evidence which is annexure CA-1 to annexure CA-5 on record.


6. We have heard the learned counsel for the parties and perused the documents on record.

7. The respondents' counsel has raised a preliminary objection that the O.A. is barred by limitation as it has been filed after the prescribed period of limitation under Section 21 of the Administrative Tribunals Act, 1985. It is submitted by him that the prescribed period of limitation under the aforesaid provision is one year to challenge the impugned order from the date of its passing. Apparently, the impugned order has been passed on 25.06.2005 and this O.A. has been filed on 01.05.2007 which is apparently beyond the prescribed period of limitation.


8. First of all we consider the point of limitation in filing the O.A. and the preliminary objection raised by the respondents. After hearing the submissions made by learned counsel on the point of limitation, we allow the M.A. No. 1088 of 2007 and condone the delay in filing the O.A.



9. As regards merit of the case, the main point to be considered is as to whether the applicant had submitted an application before the respondents for voluntary discharge from service due to his domestic problems on 21.05.2005 and the other application dated Nil, received in the office of respondents on 23.06.2005. It had been submitted on behalf of applicant in the O.A. that no such voluntary discharge application was moved by the applicant. The respondents have filed both applications alleged to have been moved by the applicant one dated 21.05.2005 and the other dated Nil, received in the office of respondents on 23.06.2005. In these applications, particularly in application dated 21.05.2005 it is mentioned that the applicant due to continuous illness is not performing his official duty regularly and due to it there is quarrel in his family hence he has requested that he should be given medical board out and voluntarily discharge from service. On this application, it is submitted by the respondents that they referred his matter by sending a request letter to the Chief Medical Officer, Bareilly to constitute a Board to examine as to whether the applicant has actually been ill due to which he had been absent from duty. The applicant was also directed to appear before the Chief Medical Officer, Bareilly but there is no evidence on record that the applicant ever appeared before the Chief Medical Officer or the Medical Board for his medical

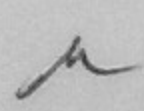


examination. In the meantime, second application of the applicant dated Nil was received in the office of respondents on 23.06.2005 in which applicant had again requested that due to his personal problem he is unable to perform his duty and he should be given voluntary discharge from service and the amount of G.P.F. and Insurance may be paid to him. According to respondents, this application of the applicant was accepted and he has been given voluntary retirement from service which was informed to him on 25.06.2005 with clear intimation that his retirement would be deemed from 30.09.2005 (afternoon). After this voluntary retirement letter, applicant moved several representations to the higher authorities, first one is dated 25.01.2006. In this representation, applicant has not said that he had not moved any application for voluntary discharge from service. Similarly, the other letter/representation submitted by the applicant is dated 31.01.2006. In this letter also the applicant has not stated that he has not submitted any application particularly application dated 21.05.2005 and the application having no date received in the office of respondents on 23.06.2005. Similarly, another letter/representation dated 21.02.2006 is on record. In this letter also, it is nowhere stated that he has not submitted any such application for voluntary discharge from service. The last letter/representation sent by the applicant to Major General B.S. Nagar is dated 06.12.2006, in this letter also there is no



whisper that the respondents have manipulated the aforesaid applications for voluntary discharge of the applicant from service. In these letters/representations, the applicant has mentioned some dispute between the employees of department with the applicant on due payment of the applicant. Thus, in view of the above discussions, it is clear that the theory of denial of voluntary discharge application by the applicant is an afterthought which has been mentioned at one place in the O.A. Even in the O.A., in the 'Grounds', this fact has not been mentioned.

10. It is also submitted by learned counsel for the respondents that the applicant has never been sincere in performing his official duty. A detailed chart of his absence from duty without prior information is filed as annexure CA-2 which shows that from September, 1997 the applicant had been frequently absent from his duty. Even thereafter several letters have been sent by the respondents to the applicant showing his absence from duty and also giving advice to the applicant to become punctual and regular in his service. Several show cause notices have been issued to the applicant by the respondents warning him to be punctual, copies of same have been filed on record. It also appears from perusal of annexure CA-1, filed by the respondents, that the willful absence of applicant from January, 2001 to 30.09.2005 has been regularised later on by granting due

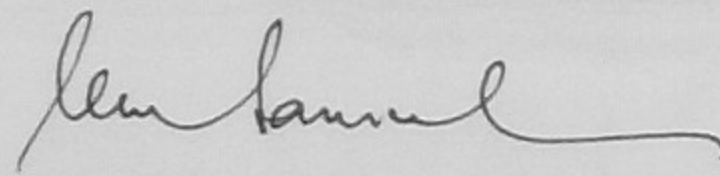


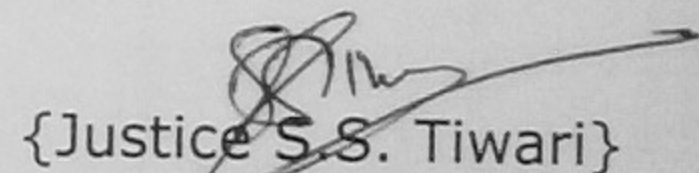
leave to him and still 104 days are to be regularised as the applicant did not submit any application for it.

11. It is also worth to mention that the applicant has not availed of the departmental remedy, available to him, against the impugned order dated 25.06.2005.

12. Before parting with the O.A., we would like to observe that there is nothing on record from either side to prove that the GPF amount, Insurance amount and other legal dues have been paid to the applicant or not. Hence, the applicant is directed to move a comprehensive representation before the respondents in this regard within a period of one month from today and the respondents in turn will pass suitable order regarding payment of aforesaid dues i.e. G.P.F. and Insurance and pay the legal dues to the applicant, if any, within a reasonable period.

13. With the aforesaid directions, O.A. stands disposed of.
No order as to costs.


(Mr. U.K. Bansal)
Member - A


{Justice S.S. Tiwari}
Member - J

/M.M/