

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 1143 of 1996

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. Shanker Raju, Judicial Member

Balak Ram Masih, S/o Late Doya Ram Masih,
working as Lascar in the Office of 25790, Air
Force, C/o 99 APO residing at Bhuttabari,
South Bagdogra, Dist: Darjeeling.

....Applicant

- Versus -

- 1) Union of India, through the Secretary, M/o Defence, New Delhi.
- 2) THE CHIEF of Air Staff Head Quarters, Vayu Bhawan, New Delhi.
- 3) Air Officer Commander in Chief, Eastern Air Command, C/o 99 APO.
- 4) Air Officer Commanding, 20 Wing Air Force C/o 99 APO.
- 5) Commanding Officer, No.273SU, Air Force, C/o 99 APO.
- 6) Commanding Officer, 257, Signals Unit, Air Force, C/o 56 APO.

..... Respondents

For the Applicant : None

For the Respondents: Mrs. K. Banerjee, Counsel

Date of Order : 01-10-02

ORDER

MR. S. RAJU, JM

The applicant in this O.A. had impugned the charge memo of minor penalty dated 29-2-1991 which culminated into punishment order dated 20-8-1994. The applicant also impugned the charge memo dated 8-9-95 as well as the penalty order in pursuance of the order dated

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5-10-95. The applicant has sought quashment of these orders and payment of salary and allowances from 17-6-1991 to 11-3-1992.

2. The applicant was proceeded for a minor penalty vide memo dated 1-8-1990 on the ground of taking false claim of LTC and penalty for recovery of LTC and withholding of increments was inflicted upon vide order dated 28-6-1991. Subsequently, the applicant made a representation but the same was cancelled. The applicant was attached to OIC Civil Administration and was further served with memo dated 10-10-94 for a major penalty for refusal of taking the order of attachment and absence from duty.

3. The applicant preferred an O.A. No.208 of 1992 challenging the order of attachment and by an order dated 29-6-1992 the O.A. was dismissed and the question of payment of pay and allowances to the applicant is subject to the ultimate outcome of the disciplinary proceeding.

4. In pursuance of the charge-sheet dated 29-2-1991 vide order dated 20-8-1994 the applicant was awarded a minor penalty.

5. Subsequently, the period of 268 days unauthorised absence from duty was treated as EOL on the principle of 'no work no pay'.

6. The applicant was served with a minor penalty charge-sheet dated 10-10-1994 for remaining absent from duty for 268 days which resulted into major penalty of withholding of increments of pay for three years with cumulative effect.

7. The applicant was also served with charge-sheet for remaining absent from duty for 268 days which culminated into the penalty of censure.

8. As none present for the applicant, we resort to rule 15 of the CAT Procedure Rules, 1987.

9. The contention taken in the pleadings assailing the impugned order that when the impugned order served under Article 4 of charge memo dated 29-6-1991 was finalised by penalty order dated 24-5-1993 subsequently penalty order dated 27-10-94 is violative of article 14 and 16 of the Constitution.

10. It is stated that as the penalty of censure was imposed upon the applicant, the pay and allowances for the period from 17-6-1991 to 11-3-1992 should be paid to the applicant.

11. On the other hand the respondents counsel Mrs. Bamrjee denied the contention and stated that the memo issued on 28-2-1991 was cancelled since the same was not issued by the competent authority. The applicant refused the order of attachment and remained unauthorisedly absent from duty for 268 days. As such major penalty was imposed on him. It is contended that the period of absence was treated as EOL as per FR 17 and the decision of the Hon'ble Apex Court (Palan Ramkrishna - Vs - Union of India & Ors.) reported in 1996 Vol.II SLJ 136. Therefore, the applicant is not entitled for pay and allowances.

12. We have carefully considered the rival contentions of the parties and perused the materials on record. In so far as the plea of the applicant is concerned the memo charge-sheet and penalty imposed was not passed by the competent authority. As such, in accordance with the law the same has been withdrawn and no prejudice was caused to the applicant. In so far as the earlier charge-sheet is concerned the same has also been withdrawn on technical ground which also cannot be found fault with therein. In so far as the absence of 268 days is concerned the same has been duly proved against the applicant and the period of absence has been rightly treated as EOL in view of FR 17 as well as in view of the decision of the Hon'ble Apex Court in P. Ramakrishna - Vs - Union of India & Ors, reported in 1996 Vol.II SLJ 136.

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