

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 239/97 with M.A. 199
T.A. No. 125/97

DATE OF DECISION 23.05.2000.

Dharmendra

Petitioner

Mr. J.K. Kaushik,

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent (s)

Mr. Vineet Mathur,

Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO

2. To be referred to the Reporter or not ? Yes

3. Whether their Lordships wish to see the fair copy of the Judgement ? NO

4. Whether it needs to be circulated to other Benches of the Tribunal ? NO

Gopal Singh
(Gopal Singh)
Adm. Member

2
(A.K. Misra)
Judl. Member

प्रक्रिया (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क अ

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Copy of order dated 14.02.2001 passed in MA No. 166/2000
in OA No. 239/97.

The Union of India & Ors Vs. Dharmendra

Date of order :

14.02.2001

Mr. K.S.Gill, Adv. brief holder for Mr. Vineet Mathur, counsel
for the applicants (respondents in OA).

The learned counsel for the applicants (respondents in OA)
has submitted a photo copy of the order dated 6.9.2000, with the
submission that vide this order, the order of this Tribunal
passed on 23.5.2000, in OA No. 239/97, has been complied-with.
Consequently, time for compliance be extended up to 6.9.2000.

We have considered the application of the applicants
(respondents in the OA) and have gone through the order passed.

The order passed by us in the O.A. has been substantially
complied-with and the time for compliance is extended up
to 6.9.2000, as prayed for by the learned counsel for applicant.
The order dated 6.9.2000 showing the compliance, is taken on
record and M.A. is disposed of accordingly.

Sd/-

(A.P. NAGRATH)
ADM. MEMBER.

Sd/-

(A.K. MISRA)
JUDL. MEMBER.

प्रमाणित सही प्रतिलिपि

16/2/2001

प्रनुभाग अधिकारी (न्यायिक)

रेन्डीय प्रशासनिक अधिकरण

जोधपुर

(10)

In the Central Administrative Tribunal, Jodhpur Bench, Jodhpur

Date of order : 23.5.2000.

1. O.A.NO.239/97
2. M.A.NO.125/97 (In OA 239/97)

Dharmendra, Waterman, MR No.2445/88, JAF, Jodhpur, S/o Shri Lala Ram Gurjar, H.No. 31, (Near Gora House) Gali No.3, Opp. Air Force Officers Mess, Old Pali Road, Jodhpur.

.....Applicant.

vs.

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

2. Chief of the Air Staff, Vayu Bhawan, Rafi Marg, New Delhi.

3. Air Officer Commanding-in-Chief, South Western Air Command, Ratanada, Jodhpur.

4. Air Officer Commanding, Air Force Station, Ratanada, Jodhpur.

.....Respondents.

CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

.....
Mr.J.K.Kaushik, Counsel for the applicant.

Mr.Vineet Mathur, Counsel for the respondents.

.....
PER MR.GOPAL SINGH, ADMINISTRATIVE MEMBER :

In this application under Sec. 19 of the Administrative Tribunals Act, 1985, applicant, Dharmendra, has prayed for quashing the impugned order dated 13.9.95 at Annex.A/1, imposing the penalty of removal from service upon the applicant with effect from 14.9.95.

2. Applicant's case is that the departmental inquiry was held/

ex-party

Gopals

and he came to know of it only when the order dated 13.9.95 (Annex.A/1) was served upon him. It is the contention of the applicant that he was not given opportunity to defend his case and, therefore, entire disciplinary proceedings were illegal and violative of principles of natural justice.

3. In the Counter, the respondents have contested the application on the ground that the applicant was well aware of the departmental inquiry proceedings and had participated in the departmental inquiry proceedings. The respondents have also contended that the applicant has not submitted any appeal against the orders of disciplinary authority and, therefore, he has not availed the remedy available before approaching the Tribunal and as such, the application is not maintainable being pre-mature. Further, it has been asserted by the respondents that the application is barred by limitation.

4. With a view to appreciate the conflicting submissions by the rival parties, we had directed learned counsel for the respondents to produce before us the departmental inquiry file. The same has since been produced.

5. None of the parties has submitted the chargesheet detailing the charges against the applicant, nor the inquiry report contains the details of the charge. It is also seen from the records that the applicant has admitted his guilt before the inquiry officer. The applicant had also received the notice of hearing by the inquiry officer and had also attended the inquiry. Thus, it is wrong on the part of the applicant that the inquiry was held ex-party. It is inferred from the order dated 13.9.95 of the disciplinary authority that the applicant was charged with the misconduct of absenting himself from duty without prior permission and the applicant was charged for absenting himself from duty on specific dates and periods between 22.10.93 to 25.5.94. The disciplinary authority has further

Lopals J

added the period of absence between 29.7.94 to 24.7.95 in his order dated 13.9.95. It is also seen from the file produced before us that the entire period of absence, except the period from 24.1.95 to 24.7.95, was regularised by grant of EOL without pay. Absence during this period also did not form part of the charges. It is also seen from records that the copy of the inquiry report was not supplied to the applicant so as to enable him to put up his defence. Non-supply of the inquiry report to the applicant is clear-cut violation of principles of natural justice. Further, when the period of absence has been regularised by grant of EOL without pay, the stigma of misconduct does not remain.

6. In the light of above discussion, the order of the disciplinary authority dated 13.9.95 is not sustainable in the eyes of law and deserves to be quashed.

7. In regard to Limitation, it is pointed out that the applicant had demanded a copy of the inquiry report vide his letter dated 14.9.95 so as to enable him to file an appeal against the disciplinary authority orders dated 13.9.95, but there was no response from the respondents and this application was filed on 15.7.97. Considering six months time as reasonable for awaiting respondents reply and thereafter one year for filing the application, there has been a delay of four months in filing this application. The delay has been satisfactorily explained in the M.A. No.125/97 in O.A.No. 239/97 and, therefore, we condone the delay and allow the M.A.

8. The applicant had waited for sufficiently long time for a copy of inquiry report so as to enable him to submit an appeal but without any response from the respondents. The respondents cannot now be permitted to raise the objection of non-exhaustion of departmental remedy.

Copies of

9. The O.A. is accordingly partly allowed. The order dated 13.9.95 (Annex.A/1), is quashed. The respondents are directed to reinstate the applicant on the post from which he was removed, within a period of three months from the date of receipt of a copy of this order, but without any back wages.

10. Parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)

Adm.Member

AM 23/12/2000

(A.K.MISRA)
Judl.member

jrm

Possible members (2) / (1)
Lib - - - / 20/2

R/603
a 20/5/00
36/2
(B.Khan)

Part II and III destroyed
in my presence on 20/5/00
under the supervision of
section officer () as per
order dated 23/5/00

Section officer (Record) *[Signature]*

Copy Recd/
V.S. Gill 20/5/2000
for D.K. Mukherjee