

13

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 55/2004

Date of decision: 11.09.2006

Hon'ble Mr. Kuldip Singh, Vice Chairman

Hon'ble Mr. J P Shukla, Administrative Member.

I M Gauri S/o Shri Gaffoor Mohammed, aged 43 years resident of village and post Badnore District Bhilwara.

Official Address: I M Gauri, Tradesman/D, RAPS 1 & 2 and Rawat Bhate PO Anushakti Distt. Chittorgarh.

: Applicant.

Rep. By Mr. R.S. Saluja: Counsel for the applicant.

VERSUS



1. Union of India through the Secretary to the Government of India, Department of Atomic Energy, Anushakti Bhawan, CSM, Marg, Mumbai.
2. The Senior Manager (P&IT) Nuclear Power Corporation of India, Ltd. Rajasthan Atomic Power Project PO, Anu Shakti Rawabhata Distt. Chittorgarh.
3. The Deputy Secretary to Government of India, Department of Atomic Energy, Anushakti Bhawan, CSM Marg, Mumbai.
4. The Additional Secretary to Government of India, Department of Atomic Energy, Anushakti Bhawan, CSM Marg, Mumbai.

: Respondents.

Rep. By Mr. Arun Bhansali : Counsel for the respondents.

ORDER

Mr. Kuldip Singh, Vice Chairman.

The applicant has assailed the order dated 03.03.2004 (Annex. A/1) passed by the respondents, wherein a penalty of reduction to lower stage of Rs. 4500/- in the time of scale of

[Signature]

pay of Rs. 4500-125-7000 for a period of two years with cumulative effect with immediate effect. The appeal preferred by the applicant against the said order was also dismissed vide Annex. A/2, which is also under challenge.

2. The facts in brief are that the applicant was earlier proceeded against departmentally on the allegations that he has been unauthorisedly absent continuously with effect from 18.08.83 and frequently without any valid reasons; the applicant had not obeyed the orders given to him for reporting for duty. The charge sheet was also issued for accepting petty contracts in Rajasthan Atomic Power Project (RAPP for short) in the name of his father Shri Ghaffar Mohd and his wife Smt. Rahana Khan; he was engaging himself in the contract work at RAPP taken in the name of his father and wife for personal gain without obtaining prior approval of the competent authority.

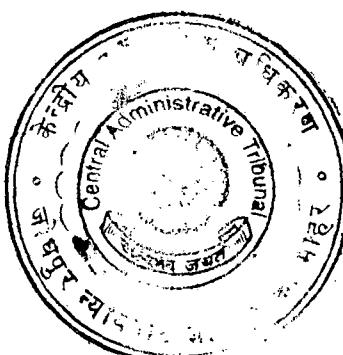


3. After enquiry he was held guilty and vide order dated 23.03.98 the applicant was removed from service. Against that order the applicant preferred an appeal on 16.08.96 and he was given a personal hearing on 01.10.97. The appeal was also dismissed confirming the penalty imposed vide order dated 19/23.03.98. Challenging those orders the applicant had filed O.A. No 172/98. In view of the pendency of the said O.A the respondent department did not consider the revision petition filed by applicant. This Tribunal by its order dated 31.07.2000,

A handwritten signature or mark, appearing to be a stylized 'K' or a similar character, located at the bottom right of the page.

quashed the penalty order 23.05.96 and the Appellate Order dated 19/23.03.98 and he was reinstated in service without back wages. However, the respondents were given liberty to initiate denovo proceedings from the stage as was then existed on 15.03.95. It was thereafter the applicant was called upon to submit his brief. In the denovo inquiry, the inquiry officer again found him guilty of charges 1 & 2 regarding unauthorized absence with effect from 18.08.93 and for disobeying the orders and instructions given by superiors and the other charge regarding taking petty contracts in the name of his father and wife has been held as not proved. A copy of the inquiry report was sent to the applicant and he was asked to make representation if he desired so. He submitted another representation on 25.01.2003. But the Disciplinary Authority after going through the inquiry report, other records of the case and the representation dated 25.01.2003 had agreed with the findings of the inquiry officer and imposed the penalty of reduction to the lower stage of Rs.4500/- in the time scale of pay of Rs. 4500-125-7000 for a period of two years with cumulative effect with immediate effect. Appeal against the same was also filed, but the same was also rejected vide Annex. A/2.

4. The learned counsel for the applicant submitted that the inquiry officer had taken on record the documents submitted by the Presenting officer which show the period of absence of the



applicant, but the said documents were not proved by tendering evidence regarding the authorship of those documents and they were simply taken on record hence those documents cannot be relied upon by the department to prove the charges. In support of the above argument, the learned counsel for the applicant relied upon one of the judgements of the Apex Court in the case of **M/s Bareilly Electricity Supply Co Ltd vs. The Workmen and others** [AIR 1972 SC 330]

and submitted that if those documents are excluded then there is no evidence against the applicant to hold him guilty of charges 1 & 2. The learned counsel also submitted that the Disc. Authority while passing the impugned order did not take into consideration the reply submitted by the applicant to the show cause notice issued before the punishment. The learned counsel further submitted that the Appellate Authority has not passed any speaking order and hence the same is also liable to be quashed.

5. The learned counsel for the respondents submitted that as regards the proof of documents placed on record by the Presenting Officer is concerned; the applicant himself had neither denied nor contested the same. Hence the inquiry officer was well within his rights to take into consideration those documents placed on record by the Presenting Officer while submitting his final report. In support of this contention, the learned counsel for the respondents referred to the brief

JK

submitted by the applicant before the inquiry officer (Annex. A/8) and stated that in the brief itself the applicant had been giving explanation as to why he was absent and as to when he had informed his HOD before proceeding on leave and what was the circumstances under which he could join duty after the expiry of leave and the documents on record speak about the same and thus there is admission on the part of the applicant himself regarding the period of absence and it was for inquiry officer to accept or not to accept the explanation and this Court has only to see whether there is some evidence on record which may lead a reasonable person to arrive at the conclusion whether there is unauthorized absence or not and this Court cannot sit in appeal to reappraise the evidence. As regards the non-application of mind at the time of passing of the impugned order by the Disciplinary Authority is concerned, the learned counsel for the respondents referred to the order passed by the Disciplinary Authority and submitted that while passing the impugned order the said authority considered the due facts given in the brief submitted by the applicant i.e he had to go out for the treatment of the family members and as to why he could not resume duty after the expiry of leave and requested the authorities to exonerate from the charges framed against him and assuming that it was absolutely necessary for him to attend to the ailing family members it was incumbent upon him to inform the section head and therefore the contention of the delinquent officer is untenable and accepted the inquiry report.



K

The learned counsel further contended that the Disciplinary Authority had fully applied its mind and passed the impugned order of punishment and had taken a lenient view instead of removing him from service which punishment was imposed earlier, reduced him to the lower stage in the pay scale. As regards the order of the Appellate Authority is concerned, the learned counsel for the respondents submitted that the appellate authority's order is also quite speaking order and once the Appellate Authority has also considered all the points raised by the applicant in his appeal and he gave a personal hearing it cannot be said that the Appellate Authority's order is not a speaking order. Further he stated that it was the discretionary power of the Appellate Authority and the Appellate Authority had found that the applicant had not raised any new ground after passing of the order by the disciplinary authority and the Appellate Authority had also gone through carefully the facts of this case and the appeal filed by the delinquent officer and had come to the conclusion that the penalty imposed by the Disciplinary Authority is just and does not require any interference of the Appellate Authority. Thus the learned counsel for the respondents submitted that there is no defect in the procedure followed by the Disciplinary Authority as well as by the Appellate Authority and the Court should not intervene in this matter.



I
19

6. We have heard at length the arguments advanced by the learned counsel for the parties and perused the records very carefully. We have also gone through report of the inquiry officer as well as the brief submitted by the applicant. It is cardinal principle that technical rule of evidence are not applicable to the domestic inquiry and in the instant case, the delinquent official had not denied the absence from duty and had not challenged the documents placed on record by the Presenting Officer regarding his absence. The inquiry officer had observed that the letter dated 24.07.92 (exhibit p.7) submitted by the applicant himself corroborates the allegation that even though he was informed through telegrams to report for duty he failed to report that he is in a habit of absenting himself very frequently without any valid reasons and had taken frequent leaves sometime in the past and assured that he will not repeat it in future for any reason but he remained absent 68 days in 1992 and 242 days in 1993 without any valid reason. Thus it appears that the applicant had not contested the documents, which reflected his unauthorized absence. The Apex Court judgement relied on by the applicant in the case of **M/s Bareilly Electricity Supply Co Ltd.** (supra), in the head notes it makes it clear that observance of principles of natural justice- though evidence Act is not applicable to the Industrial Tribunals that does not mean that where issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with. In that



A handwritten signature in black ink, appearing to read 'K' or 'K. K.' followed by a stylized surname.

case the Apex Court had observed that it is only in seriously contested cases documents are required to be proved. In cases where documents are impliedly admitted, we are of the considered opinion that the technical rules of evidence to prove documents can be dispensed with. Hence the applicant cannot rely upon the ratio of above judgement since the facts in the instant case are different. Hence we hold that there is no fault on the part of the department even if the documents had not been technically proved as per the evidence act.

7. The next contention of the learned counsel for the applicant is that the authorities have not considered the reply to the show cause notice properly. A perusal of the Disciplinary Authority's order would go to show that there is no force in this contention also. The next contention of the learned counsel for the applicant is that whatever explanation given by the applicant in the brief submitted has not been discussed either by the Disciplinary Authority or by the Appellate Authority. In our considered view, the Disciplinary Authority and the Appellate Authority have discussed each and every explanation submitted by the applicant. The Disciplinary Authority in the order has specifically mentioned that the applicant in his representation dated 25.01.2003, had stated reasons as to why he was out of station for the treatment of his family members and those reasons were not enough to absolve him from the charges.



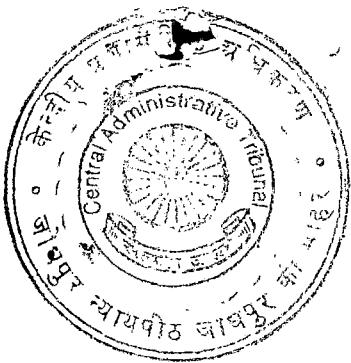
8. The learned counsel for the applicant also took us through the earlier order passed by this Bench of the Tribunal in O.A No.172/1998, filed by the applicant. He submitted that the inquiry officer in his report while holding the applicant guilty of charges 1 & 2, had stated that the delinquent official had not produced any oral or documentary evidence to refute the allegations. With regard the charges 1 & 2 the learned counsel for the applicant submitted that certain oral witness were examined by the delinquent officer before the inquiry officer and they have deposed before him but there is no mention of the same while discussing the charges 1 & 2. However a perusal of the inquiry report would go to show that the inquiry officer in the same page mentioned about the oral evidences tendered on behalf of the applicant i.e by (i) Shri Nand Lal (ii) Shri Mohd Shakoor and (iii) Shri Babu Mohd Mansoori. Their statements have been discussed with regard to charge no. 3 relating to accepting of petty contracts as these persons may be working as mazdoors. These persons statements have nothing to do with the charges 1 & 2 relating to unauthorized absence probably they have not deposed any thing about the unauthorized absence and their statements may be relevant for charge No. 3 only i.e. accepting petty contracts and their statement may be relied on to prove whether any contract work had been undertaken during the period of unauthorized absence. Hence this contention of the learned counsel for the



A handwritten signature in black ink, appearing to be 'K' or 'K.' followed by a stylized surname.

applicant is also not tenable. The applicant has not pointed out any procedural lapse.

9. In view of the above discussion, we are of the considered opinion there is no merit in this O.A and no intervention is called for from this Tribunal. The O.A is therefore dismissed with no order as to costs.



[Signature]
(J P Shkula)
Administrative Member

[Signature]
(Kuldeep Singh)
Vice chairman

Jsv.

Recd Copy 12.09.06
Sangjibher
adv

Recd (Copy)
Sd
13/8/06

Part II and III destroyed
in my presence on 11.4.14
under the supervision of
Section Officer () as per
order dated 31.12.14.

Section Officer (Record)