

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 352/2005

Date of Order: 28/11/2008

HON'BLE MR. N.D. RAGHAVAN, VICE CHAIRMAN
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Tulsidas son of Shri Jeet Mal, by caste Nai, aged years, resident of Tiba Para near old police chowki, Jaisalmer.

Office Add.: as a Mazdoor O/o, Garrison Engineer, (AF), Jaisalmer.

...Applicant.

Mr. K.R. Choudhary, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief Engineer (Air Force), Military Engineering Services Camp Hanuman, Ahmedabad - 380 003.
3. Commander Works Engineer, Head Quarters (Air Force), Jodhpur - 342 001.
4. Garrison Engineer (Air Force), Jaisalmer - 345 001.

...Respondents.

Mr. Mahendra Godara, proxy counsel for
Mr. Vinit Kumar Mathur, counsel for respondents.

ORDER

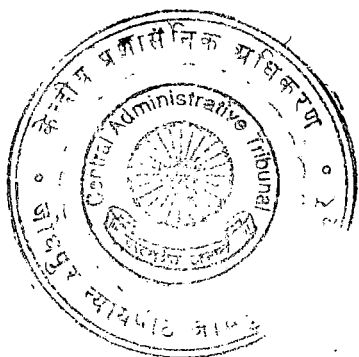
[Per Mr. Tarsem Lal, Administrative Member]

The brief facts as relevant to this case are that the applicant was initially appointed as Mazdoor by the Garrison Engineer, Jaisalmer vide order dated December 17, 1981 and he joined his duties on December 18, 1981. The applicant all of a sudden fell sick on 01.10.1982 and he sent his application for sanction of the leave with medical certificate by

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ordinary post. Due to sudden attack of paralysis, the applicant was taken to Jodhpur for further treatment as per advice of Dr. Mughal, where he continuously remained under treatment. The applicant regularly sent the applications for grant of leave to the Garrison Engineer, Jaisalmer by ordinary post and ultimately, he was fully cured and he submitted his application dated 17.04.1995 (Annex. A/3) for joining duty in the month of April 1995 to Garrison Engineer, Jaisalmer, along with fitness certificate and other documents. Thereafter, the applicant sent representations dated 12.05.1997 (Annex. A/4), 19.05.1997 (Annex. A/5) and 09.06.1997 (Annex. A/6) for allowing him to resume his duties but he did not receive any response to the above representations.



2. The applicant sent a registered notice through his counsel, Shri O.P. Mehta, Advocate, on 05.01.2000 (Annex. A/7) for allowing him to join his duties. In response to the above legal notice, the respondent no. 4 sent letter dated 10.01.2000 (Annex. A/8) for submitting certain documents. The documents required by the respondents were submitted by the applicant through his advocate vide notice dated 05.04.2000 (Annex. A/9).
3. The order dated 02.05.2000 (Annex. A/11) was passed by respondent no. 4 for holding enquiry against the

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applicant and Mr. R.K. Budhlakoti, AEN was appointed as Inquiry Officer. The applicant raised objections that neither he has been supplied the names of the witnesses nor particulars of the documents likely to be relied upon have been mentioned in Annexure III and Annexure IV and as such he has been kept in dark. He denied all the allegations since he had regularly informed the respondents about the reasons for his remaining absent on account of his illness.

4. The applicant filed reply and denied the charges of misconduct and he made submissions that he had timely submitted the applications for sanctioning of leave to the respondent no. 4 by ordinary post along with medical certificate of the concerned Doctor, as the disease was beyond his control. The applicant submitted his defence statement dated 09.06.2001 (Annex.A/14) to the Inquiry Officer.



5. Thereafter, a show cause notice dated 18.01.2003 (Annex. A/15) for imposing penalty under Rule 11 (VIII) and Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 was issued to the applicant. The applicant submitted a detailed reply on 02.02.2003 (Annex. A/16) to the respondent no. 3 and requested that in the event of imposing penalty, he may be accorded personal hearing.

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6. After considering the reply of show cause notice for imposing penalty and after going through the enquiry report, the respondent no. 2 directed the applicant vide order dated 13.05.2004 (Annex. A/17) to join his duty immediately with further direction to bring all original documents along with zerox copies for verification and further necessary action.

7. The applicant was also directed by the Garrison Engineer (AF), Jaisalmer, by Telegram (Annex.A/18), to meet him with certain documents mentioned therein. The applicant submitted an affidavit of Shri Ashok Nath, Municipal Council along with some documents to the Superintendent of Police, Jaisalmer and applied for the character certificate, which was given to him by the Superintendent of Police, Jaisalmer on 30.04.2004.



8. The applicant appeared before the Medical Board constituted by the respondents and he was found physically fit for doing the service and his identity as Tulsidas Mazdoor was also ascertained by the Superintendent of Police, Jaisalmer and other authorities and then only he was asked to join his duty on 15.05.2004 (Annex. A/19).

9. After concluding the first enquiry and submission of the reply to the imposed penalty, the applicant was taken on duty and in this way the matter had come to an end.

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But without assigning any reason regarding first enquiry, the second enquiry was ordered by the Garrison Engineer, Jaisalmer on 22.12.2004 (annex. A/20) and one Mr. Ram Bahadur Subedar Major Office Superintendent of the Office was appointed as Inquiry Officer. The enquiry was again conducted and the enquiry report dated 22nd January, 2004 (Annex. 21) was submitted by the Inquiry Officer. The applicant filed a detailed reply in which it was submitted that only after satisfying with the reply of the show cause notice of imposing penalty in the first enquiry, the matter of the applicant was finalized and he was directed to resume his duty and no order regarding imposing of penalty was passed. It appears that the applicant was discharged from all the charges of misconduct, therefore, second enquiry is not maintainable in the eyes of law without assigning reasons by the Authority for holding second enquiry.



10. A show cause notice of second enquiry was given for imposing penalty to which reply was submitted by the applicant on 07.06.2004 in which, it was precisely prayed that he may be discharged from the charges leveled against him and in pursuance of first enquiry, the matter has been finalized and the applicant has been taken on duty. The applicant requested that his period of absence may kindly be regularized and he be



allowed to continue in service with all consequential benefits.

11. The applicant further submitted that without arriving at the decision on second enquiry, third enquiry was ordered vide order dated 22.12.2004 (Annex. A/23). The applicant filed reply dated 23.12.2004 (Annex. A/24) to the show cause notice regarding remaining absent. After conducting the third enquiry, the enquiry report was submitted on 19.01.2005 (Annex. 26) against which the applicant made a representation on 23.02.2005 (Annex. A/27).



12. Without giving any opportunity of hearing on his representation, the applicant was removed from service vide order dated 04.04.2005 (Annex. A/1). The applicant filed appeal dated 02.05.2005 (Annex. 28) against the impugned order of removal dated 04.04.2005 to the Chief Engineer Headquarters Camp Hanuman, Ahmedabad, Gujarat and the same has been rejected by the impugned order dated 18th July, 2005 (Annex. A/2).
13. The applicant claims that the impugned order dated 04.04.2005 (Annex. A/1) was not passed by competent authority i.e. by Engineer-in-Chief, so the same is without jurisdiction, illegal and unconstitutional.

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14. The applicant made an application on 16.07.2004 (Annex. A/31) seeking for defence assistant Shri S.S. Mishra but the same was not made available to him.
15. The applicant in this O.A. prayed that the impugned order dated 04.04.2005 (Annex. A/1) for removing him from service and the appellate order dated 18.07.2005 (Annex. A/2) may kindly be quashed and set aside; the applicant may kindly be reinstated in service with all consequential benefits.
16. The respondents have contested this O.A. by filing a detailed reply. They have pleaded that the applicant was appointed by the Garrison Engineer, Jaisalmer vide letter dated 17.12.1981 as a Mazdoor (Temporary) on probation for a period of two years. The respondents have stated that neither any application was received from the applicant nor he has produced any photocopy/evidence of sending application/letter to the respondent-department informing his illness. The applicant did not communicate with the respondents from 01.10.1982 to 04.04.1995 i.e. during the period of 12½ years.
17. The applicant had absented himself from duty w.e.f. 01.10.1982 without any information or proper sanction of leave from the competent authority. The applicant being a resident of Jaisalmer claimed to have fallen ill



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due to paralysis attack and further moved to Jodhpur to get treatment from an unrecognized Medical Practitioner i.e. Dr. M.B. Mugal having fake Registration No. 9765, instead of consulting and getting proper medical treatment from an authorized Medical Practitioner or from Medical College, Jodhpur. The medical fitness certificates issued by Dr. M.G. Mugal, Rasala Road, Jodhpur, for treatment of Paralysis, which was submitted by him are unauthentic and fictitious. A reference was made to the Registrar, Rajasthan Medical Council, Jaipur to confirm the authenticity of Registration No. 9765 in respect of Dr. M.B. Mugal, Rasala Road, Jodhpur, who had issued medical certificate for continuous paralysis treatment over a period of 12 years and 6 months and also issued fitness certificate. The Registrar, Rajasthan Medical Council, Jaipur had disowned the registration of the said Doctor who had issued medical fitness certificates to the applicant. Thus, the so called medical fitness certificate issued to the applicant proved to be unauthentic and fictitious.



18. The applicant was directed to join his duty along with all original documents for verification and necessary action. The applicant has not submitted medical certificate from the competent medical authorities.

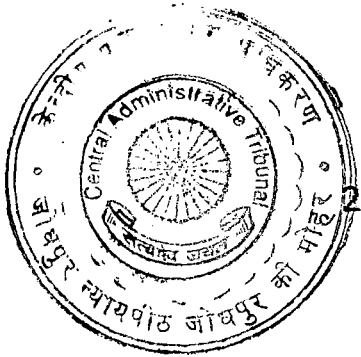
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19. The respondents pleaded that the application dated 16.07.2004 for seeking defence assistant of Shri S.S. Mishra has not been submitted by the applicant.

20. In view of this, the respondents have stated that the applicant is not entitled to get any relief from this Tribunal in the present O.A., hence it deserves to be dismissed.

21. Learned counsels for the parties have been heard. They generally reiterated their arguments already given in their respective pleadings.



22. Learned counsel for the applicant prayed that the applicant was generally sick and was not able to join his duties during the period of his treatment, and ultimately he was taken on duty without any reservation. No action was taken on the first and second enquiries, which were got conducted by the respondents without assigning any reason. As regard producing of fake certificate, no correspondence in this regard has been given to the applicant for verification or cross examination in the enquiry report.

23. Learned counsel for the applicant relied upon the case of **Smt. Surjeet Kaur vs. State of Rajasthan & Ors.** [2005(2) WLC (Raj.) 777], wherein the Hon'ble Rajasthan High Court at Jodhpur, has held as under:

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"Disciplinary Proceedings - Propriety - Delay - Appellant retired on ground that she was on deputation whereas she was transferred - Instead of paying dues to appellant, departmental inquiry initiated - Appellant proceeded on medical leave on 18.4.1992 and on return told that she was retired - Memo of charges served on her on 27.6.2000 - No justifiable reason for delay in initiation of enquiry - Delay prejudicial to appellant - No worthwhile material for enquiry - Enquiry quashed."

In view of this, learned counsel for the applicant requested that the O.A. may be allowed and the applicant may be taken on duty with all consequential benefits.



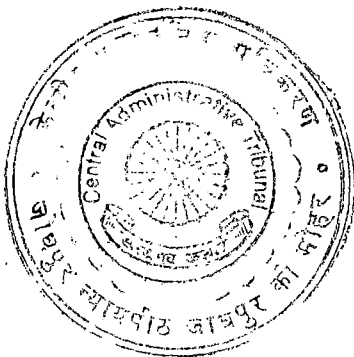
24. Learned counsel for the respondents explained that the applicant proceeded on leave without any prior sanction of leave w.e.f. 01.10.1982. He did not submit any application upto 04.04.1995. He produced medical and fitness certificate from a private Doctor whose registration was confirmed by the competent authority as fictitious, hence the same are bogus. The applicant remained on willful and unauthorized absence for a period of more than 12½ years and independent enquiry has been got conducted by the respondents. The applicant has been removed from service by the competent authority under the disciplinary powers originally vested with him. No irregularity in this regard has been committed by the respondents.

25. Learned counsel for the respondents further pleaded that this Tribunal can exercise powers of judicial review

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and cannot re-appreciate the evidence produced before the Inquiry Officer.

26. Learned counsel for the respondents relied upon the case of **Union of India and others vs. Narain Singh** [(2002) 5 SCC 11], wherein the Hon'ble Supreme Court has observed that it is not for the court to determine the quantum of punishment once charges are proved. In this case it cannot be said that the punishment of dismissal is not commensurate with the charges. It is not for the court to interfere on misplaced grounds of sympathy and/or mercy.



Learned counsel for the respondents also relied upon the case of **Chairman & Managing Director V.S.P. and Others vs. Goparaju Sri Prabhakara Hari Babu** [(2008) 5 SCC 569], wherein the Hon'ble Apex Court has held that well-reasoned order of departmental authority cannot be interfered with on the basis of sympathy or sentiments. The court ordinarily ought not to disturb penalty where procedural requirements have been complied by departmental authority, except that principle of proportionality can be invoked in appropriate case.

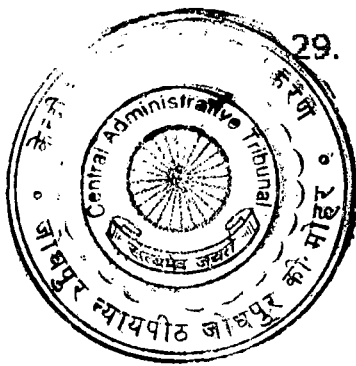
In view of the above, learned counsel for the respondents requested that the instant O.A. may be dismissed.

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27. We have considered the rival contentions and perused the documents placed on record.

28. It is admitted fact that the applicant proceeded on leave from 01.10.1982 and submitted his application dated 04.04.1995 for joining his duties and on satisfaction about the identity and character of the applicant, he was allowed to join his duties on 15.05.2004. Subsequently, independent enquiry has been held and the charges leveled against him have been proved.



29. The applicant produced medical certificate from a private practitioner whose registration has been held to be fictitious and bogus by the competent medical authorities. The applicant although was on leave for more than 12½ years, he did not prefer to take treatment from any AMA or Govt. hospital. It, therefore, appears that submitting of medical and fitness certificate is an afterthought to seek regularization of period of willful absence. Further, applicant had willfully absented himself from his duties for a period more than 12½ years without even completing his probation period. He produced bogus medical and fitness certificates for his absence from a private medical practitioner for such^a long period.

30. The judgment cited by the learned counsel for the applicant; in the case of **Smt. Surjeet Kaur vs. State**

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of Rajasthan & Ors (supra) is not of much help to him as in the above case, the applicant remained absent from duty for a period of more than 8 months and there was a gross delay of 8 years in initiating the enquiry against the applicant, therefore, order of enquiry was quashed and set aside whereas the facts of the instant case are entirely different.

31. In so far as judicial review of disciplinary proceedings are concerned, the Hon'ble Apex Court in catena of judgments has held -

"(i) in the case of Government of Tamil Nadu vs. A. Rajapandian [AIR 1995 SC 561 : 1995 (2) SLJ 216 (SC)], as under:



'Administrative Tribunal cannot sit as a court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the Disciplinary Authority, it is not the function of Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority'.

(ii) in the case of State of Tamil Nadu vs. Thiru K.V. Perumal and Others [1996 (5) SCC 474 : 1996 (3) SLJ 43 (SC)], as under:

'It has been repeated held by this Court that it is not the province of the Tribunal to go into the truth or otherwise of the charges and the Tribunal is not an appellate authority over the departmental authorities.

Accordingly, the Tribunal must be held to have exceeded its jurisdiction in entering upon

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a discussion whether the charges are established on the material available.'

(iii) in the case of Ram Saran vs. IG of Police,

CRPF [(2006) 2 SCC 541, at page 543], as under:

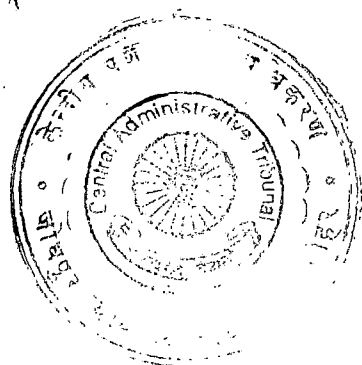
'The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.'

(iv) in the case of Union of India and Others vs.

Narain Singh (supra) [(2002) 5 SCC 11], as under:

'8. In the case of Apparel Export Promotion Council v. A.K. Chopra it has been held by this Court that it is within the jurisdiction of the competent authority to decide what punishment is to be imposed and the question of punishment is outside the purview of the High Court's interference unless it is so disproportionate to the proved misconduct as to shock the conscience of the Court. It has been held that reduction of sentence by the High Court would have a demoralizing effect and would be a retrograde step. It has been held that repentance/unqualified apology at the last appellate stage does not call for any sympathy or mercy.

9. As seen above, the Division Bench notes that the charges against the respondent are proved and that the charges are of serious nature. Once the Court came to the conclusion that the charges were proved and that the charges were of a serious nature, it was not the function of the Court to interfere with the quantum of punishment. The Division Bench was wrong in holding that factors viz. (a) the person is coming from which place (b) his family background, and (c) his service record etc. were to be kept in mind. In our view, the Division Bench was also wrong in holding that if a poor person pleads guilty to the misconduct, then extreme penalty of dismissal is uncalled for. In our view a court must not lightly interfere with sentences passed after a properly conducted enquiry where the guilt is proved. Reduction of sentence, particularly in military, paramilitary or police services can have a demoralizing effect and would be a



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retrograde step so far as discipline of these services is concerned. In this case the charges being of a serious nature the penalty was commensurate with the charges. Further the Division Bench has itself noted that this was the third time the respondent was punished.

10. Mr. Mehta tried to support the impugned order on the ground that the Division Bench had taken a just and kind view considering the fact that the respondent had served for a long time and came from a poor family. He submitted that the impugned order was a just order and should not be interfered with. We are unable to accept this submission. As stated above, the law is clear. It is not for the court to determine the quantum of punishment once charges are proved. In this case it cannot be said that the punishment of dismissal is not commensurate with the charges. It is not for the court to interfere on misplaced grounds of sympathy and/or mercy.



(v) in the case of **Chairman & Managing Director**

V.S.P. and Others vs. Goparaju Sri Prabhakara

Hari Babu (supra) [(2008) 5 SCC 569], as under:

"20. The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments (See Maruti Udyog Ltd. V. Ram Lal; State of Bihar vs. Amrendra Kumar Mishra; SBI v. Mahatma Mishra; State of Karnataka v. Ameerbi; State of M.P. v. Sanjay Kumar Pathak and Uttar Haryana Bijli Vitran Nigam Ltd. V. Surji Devi.).

21. Once it is found that all the procedural requirements have complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. (See Sangfroid Remedies Ltd. V. Union of India."

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In view of the above, it is very clear that the scope of judicial review of disciplinary proceedings is very limited to the deficiency in the decision-making process and not the decision. It is also settled law that Court could ordinarily not interfere with the quantum of the punishment awarded where charges were proved and were of serious nature. It is not open for the Court to reduce, on the misplaced grounds of sympathy and mercy, the punishment of dismissal to reinstatement.

32. In view of the above discussion and the settled law, the applicant has not made out any case for interference in the impugned order dated 04.04.2005 (Annex. A/1) by which the applicant was removed from service and order dated 18.07.2005 (Annex. A/2) by which the appeal of the applicant, against the removal order, has been rejected and upheld the penalty of removal from service. Thus, the O.A. deserves to be dismissed.

33. The Original Application No. 352/2005 is, therefore, dismissed with no order as to costs.




Tarsem Lal
[TARSEM LAL]

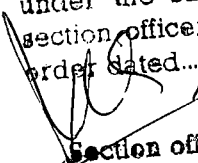
ADMINISTRATIVE MEMBER

N.D. Raghavan
[N.D. RAGHAVAN]

VICE CHAIRMAN

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Part II and III destroyed
in my presence on 19/11/14
under the supervision of
section officer () as per
order dated 19/8/2014

Section officer (Records)


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