

17/14

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Applications No.230/2010

Jodhpur, this the 21st February, 2013

[Reserved on 15.02.2013]

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Oma Ram S/o Shri Kashi Ram aged about 45 years, resident of Village Agarnava, Post Surpura Mandor, District Jodhpur, at present employed on the post of Mazdoor in the Office of Garrison Engineer (Air Force), MES, Jaisalmer.

.....Applicant.

(Through Adv. J.K.Mishra)

Versus

1. Union of India, through Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer (Air Force), Camp Nanuman, Ahmedabad – 380 003.
3. Commander Works Engineer (Air Force), Jodhpur.
4. Garrison Engineer (Air Force), MES Jaisalmer – 345001.
5. Engineer-In-Chief, AHQ, Integrated HQ of MOD (Army), Rajaji Marg, Kashmir House, New Delhi.

.....Respondents

(Through Adv. Vinit Mathur)

ORDER

Per: K.C. Joshi, Judicial Member :

The applicant by way of this application challenged the order of punishment passed vide Annex.A/4 dated 4.8.2001 by the disciplinary authority.

2. As brought out in the OA the applicant was initially appointed to the post of Mazdoor at Jodhpur in Military Engineering Service (MES) in a lower formation of Engineer-In-Chief's Branch. He suddenly fell ill on 6.2.1994 and could not attend his duties from 7.2.1994. He suffered from the mental disorder and it was beyond his control to attend his duties. He could become normal and fit to join his duties on 31.12.1999. He submitted the medical certificate of sickness and joining report dated

I/15

1.1.2000. The documents were accepted but he was not taken on duty. He was issued with a Chargesheet alleging unauthorized absence from duty without information. He was made to move from pillar to post and post to pillar but was neither taken on duty nor paid any salary. He approached this Tribunal vide OA No. 226/2000 and it was disposed of on 02.03.2001 with the directions to the competent authority to complete the inquiry within a period of six months.

"The respondents are directed to complete the enquiry initiated against the applicant in accordance with law, on the basis of the charge-sheet dated 17.7.99 (Annexure R/15), as soon as possible, but not later than six months from today. It is duty of the applicant to co-operate with the enquiry, and for that purpose, the applicant is directed to appear before the disciplinary authority for further instructions regarding departmental enquiry on 3.4.2001. This order shall not be understood as reinstating the applicant. However, it is open to the department to pass any appropriate orders during the pendency of enquiry."

The Garrison Engineer (AF), MES, Jaisalmer was appointed the inquiry officer. He was supplied with a copy of the inquiry report dated 28.7.2001. The penalty order was passed by the Commander Works Engineer, Air Force, Jodhpur just after 7 days of the supply of the copy of the inquiry report despite giving 15 days time to respond to the inquiry report from the date of the receipt of the inquiry report. His appeal was dismissed vide 13.10.2001 and against the above order of appeal he approached this Tribunal vide OA No. 6/2002, the same was disposed of vide order dated 16.1.2002 with a direction to the 3rd respondent to pass a fresh order on the appeal. Fresh order dated 01st May, 2002 (Annex.A/6) was passed by the respondent No. 3 Chief Works Engineer (Air Force), Jodhpur with the penalty of dismissal. The applicant has challenged this orders (Annex.A/6) in the present O.A. on various grounds including the ground that the punishment order was not passed by the competent authority and also that the initial chargesheet

2

dated 17th July, 1991 (Annex.A/1) was issued by the Garrison Engineer who was not the competent authority to issue chargesheets as only appointing authority can issue chargesheets.

3. Respondents in their reply denied the grounds raised in the application contending that the applicant remained willfully absent for a long period of five years and that the penalty is proportionate, all opportunities for hearing was granted and, therefore, prayed to dismiss the petition. They also contended that a fresh ground has been raised regarding the competence of the issue of chargesheet and this was not even raised in the earlier O.A. No. 226/2000 and OA No. 06/2002.

4. The counsel for the applicant contended that a similar issue arose in OA No. 34/2003 - *Mohan Lal Vs. UOI and Ors.* and vide order dated 07.01.2005 the penalty order passed by the authority which was not competent was quashed by the Division Bench of this Tribunal.

5. Per contra the learned counsel for the respondents contended that the order has been passed by the competent authority and is legal and sustainable.

6. We have considered the rival submissions made on behalf of both the parties.

7. It is settled legal position that strict rules of evidence are not applicable to the departmental inquiry and every violation of procedure does not vitiate the inquiry. It is also settled position that this Tribunal does not have any power to appreciate or reappreciate the factual aspect and to substitute its own judgment for that of the competent authority. It is only when the conclusion upon consideration of evidence reached by the authorities concerned is perverse or suffers from patent error on the

11/17

face of record or based on no evidence at all or the decision making process was faulty or the order is otherwise perverse, the intervention of the Court may be warranted.

8. If we come to the factual aspect of the case it is a fact that chargesheet has been issued by the Garrison Engineer (Annex.A/1) who is a subordinate authority to CWE (Engineer-In-Chief) who has issued the penalty order (Annex.A/4). It is the specific plea of the respondents that the Garrison Engineer (A), Jaisalmer, was competent to issue the chargesheet and progress the disciplinary case up to an oral inquiry report. It is a fact that punishment order was passed as per Article 311 (1) of the Constitution and the appointing authority who is the disciplinary authority has passed the penalty order in this case. As per Rule 2 (a) of the rules governing the service conditions of the applicant, the appointing authority of the applicant is the authority who has appointed him or the authority who is competent to appoint him. As per the Schedule Part V, the appointing authority is Engineer-In-Chief. However, it is not the case of the respondents that the power to appoint was delegated by the Engineer-In-Chief to the Garrison Engineer in respect of the Group 'D' employees. Now turning to the main controversy a bare reading of the rules makes it clear that the disciplinary proceedings can be initiated only by the disciplinary authority, or any authority who has been delegated with such powers as indicated in the schedule to the rules. It is also clear that one who has power to impose any of the penalties may impose any penalty. It is also borne out from Rule 14 of the rules that the disciplinary authority may either himself inquire into or appoint an authority to inquire into the truth of the imputation of the misconduct or misbehaviour.

2

9. In the instant case, it is clear that the Garrison Engineer has not been vested with any power to impose any of the penalties not even a minor penalty on any employees. Thus it is clear that such authority cannot initiate a disciplinary case against any of the employee and therefore any initiation of the disciplinary inquiry against the applicant is without jurisdiction and the same shall have to be called void ab initio and non-est in the eye of law.


10. We have also to examine the effect of the issuance of the penalty order of the competent authority. This issue does not require any elaborate discussion since the competent authority or higher authority cannot legalize such void ab initio and non-est order by passing a legal order and we are supported with this proposition of law by the decision of the Hon'ble Supreme Court in the case of *Baradakanta Mishra vs. High Court of Orissa and Anr.* Reported in AIR 1976 SC 1899.

11. In view of the discussions hereinabove made we are of the view that the penalty order and the appellate orders are not sustainable as held by us in the previous paragraphs. In normal course whenever any order is held as not sustainable in the eye of law especially for want of jurisdiction, the courts grant a liberty to the competent authority to take recourse to fresh proceedings in accordance with law, but in the instant case we do not find such necessity for the twin reasons; firstly the incidence relates to February 1994 and by now about 17 years have elapsed and the matter has also been considered in two previous separate OA, i.e. OA No. 226/2000 and OA No. 06/2002, the applicant has neither been in the employment nor paid any salary, and secondly in view of the order we propose to pass in this O.A. This course is

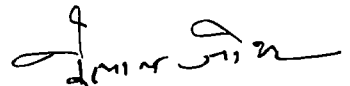
considered expedient so as to put an end to the litigation relating to an incident of a period of February 1994, as well.

12. Accordingly, in our view the application merits acceptance in part, as the chargesheet was not issued by the competent authority and same stands allowed accordingly. The impugned order Annex.A/4 dated 04.08.2011 and the order passed by the appellate authority dated 01.05.2002 (Annex.A/6) are hereby quashed. The applicant shall be entitled for all the consequential benefits on notional basis by bringing him in a position which he would have got if none of the impugned orders were ever in existence but the actual payment would be admissible only from the date of the joining. It is therefore directed that (1) the period for which he remained absent i.e. 7.2.1994 to 31.12.1999, the competent authority shall pass orders as per rules and (2) for the rest of the period i.e. from the date of the dismissal to the date on which he joins the service the consequential benefits on notional basis shall be allowed to him. But no actual salary shall be paid for this entire period i.e. from the date of dismissal to the date of the joining.

13. In the facts and circumstances of the case, the parties are directed to bear their own costs.



(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER



(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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147

22/2/13

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25/2/13