

1/12

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No. 195/2012 with MA 87/2012
Jodhpur this the 22nd day of October, 2013.

CORAM

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

Biru S/o Shri Madan Lal, aged about years, R/o Harizan Basti,
Bhagat Ki Kothi, Near Ganda Nala, Jodhpur (Raj.) (Safaiwala
working under respondent No. 2.)

.....Applicant

(None present)

Versus

1. The Union of India through the Secretary, Ministry of
Defence, Raksha Bhawan, New Delhi.
2. The Administrative Commandant Station Head Quarter
(Army), Jodhpur.

(Through Adv. Ms K. Parveen)

..... Respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

No one is present on behalf of the applicant. Although, we
are inclined to dismiss this OA for default but looking to the fact
that the applicant has challenged the legality of dismissal order
(Annex. A/1), we are deciding the matter on its merit.

2. The applicant has also filed MA No. 87/2012 for
condonation of delay. It is always justified to decide the case on
merit rather than on technical grounds and condonation of delay

always advances the cause of justice. Therefore, the MA is allowed for the reasons recorded in MA itself.

3. The short facts of the case are that the applicant was initially appointed as a Conservancy Safailwala in the respondent-department and he was implicated in a criminal case for the offence under section 302, 365, 404 IPC and he faced the trial for more than 3 years. The applicant was acquitted from the alleged charges, and therefore, was reinstated in service and his service was effected from 01.12.1991. The applicant remained in service upto 1995 and he was not paid a single penny from year 1986 to 1992, thereafter the applicant was regularly paid from the year 1992 to 1995. The applicant suddenly got ill and he became mentally sick. The applicant could not join his services and several letters were also issued to the applicant regarding his long absence from the job. As the applicant became the person of unsound mind, he was dismissed under CCS (Classification, Control & Appeal) Rules, 1965. By way of this application, the applicant has challenged the legality of the order Annex. A/1 dated 02.03.2005.

4. The respondent-department by way of counter has averred that the applicant was absent from 01.10.1986 to 31.12.1989, therefore, no payment was made and the period from 01.01.1990 to 31.01.1994 all the payments have been made to the applicant. It

has been further averred that the applicant was not paid any pay and allowance from 01.02.1994 to 28.02.2005 due to his absence from duty. The applicant was dismissed from service as he was continuously absent from duty for 11 years beyond the permissible period of absence in terms of para 7 of Appx 21 of CCS (CCA) Rules, 1965. It has also been averred in the reply that several notices were given to the applicant from time to time and letters were also written to the Superintendent of Police, Jodhpur to find out the whereabouts of the applicants vide letter dated 07.11.1998 and 07.06.2000 and it was replied by the Superintendent of Police through his letter dated 20.07.2000 that the applicant was not found at the given address. Therefore, the applicant being habitual long absentee from duty was terminated.

5. We have perused the record. The applicant has annexed only 3 documents in support of his application. The Annex. A/1 is the dismissal order, Annex. A/2 is appointment letter and Annex. A/3 is posting order and no other document has been produced by the applicant to prove his long sickness or any other document regarding unsoundness of his mind. It is an admitted fact that the applicant remained absent from service w.e.f. 01.02.1994 to 28.02.2005 and such long absence is a justifiable reason for dismissal from service because a public servant is expected to inform the disciplinary authority or controlling officer regarding his absence but in the present case the applicant remained absent

1/5

without any information and further he failed to produce any document showing the reason of his illness in support of his OA so as to explain his long absence. Therefore, we are not inclined to interfere in the order Annex. A/1.

6. Accordingly, OA lacks merit and the same is dismissed with no order as to costs.



(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER



(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

SS