

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 292/2000

WEDNESDAY, THIS THE 1st DAY OF MAY, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Jame Thomas Koikkarea
Koikkara House,
Kizhakkambalam

Applicant

By Advocate Mr. P. Santhalingam

Vs

1. Union of India represented by
Secretary, Ministry of Defence
New Delhi.
2. Civilian Administration Officer
Kommodore,
Supdt. Naval Air Craft Yard
Cochin-4
3. Kommodore
Chief Staff Officer
Headquarates, Southern Naval Command
Kochi-4
4. Flag Officer Commanding in Chilef
Southern Naval Command,
Kochi-4.

Respondents

By advocate Mr. C. Rajendran, SCGSC

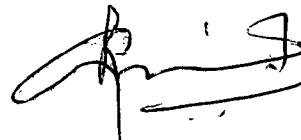
The Application having been heard on 1.4.2002 this Tribunal delivered the following on 1.5.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant aggrieved by A1 order dated 9.8.99 issued by the second respondent and A-3 order dated 16.9.98 issued by the third respondent imposing on him the penalty of dismissal from service and rejecting his appeal respectively filed this Original Application seeking the following reliefs:

- (a) Call for the records connected with the case



- (b) set aside A1 and A-III orders are arbitrary, illegal
- (c) Direct the authorities to reinstate the applicant service with all consequential benefits.
- (d) Declare that the applicant was absent due to his ailment and not on account of overseas employment.
- (e) Pass such orders as are deemed fit, fair and necessary in the circumstances of the case.

2. According to the applicant he joined service in Naval Aircraft Repair Origination which was subsequently redesignated as Naval Aircraft Yard (NAY for short) on 1st December, 1975 as Mechanic C. Subsequently he was promoted as Mechanic B and thereafter as Mechanic-A (Highly Skilled Grade-I). His wife was working as a Nurse in the Armed Force Hospital at Muscat from 1985 onwards and they were settled in Muscat from 1990 onwards. The applicant was getting regular medical reimbursement due to acute rheumatic complaints. In 1993 he could not bear the suffering due to acute and severe pain he was taken to Muscat to reside with his family. He was granted leave for a period of six months separately on three occasions. He came to know that authorities had initiated disciplinary proceedings against him for unauthorised absence. In view of the situation he requested for long leave and for that purpose he was asked to appear before the 2nd Medical Board. He came to know that the 2nd Medical Board had also confirmed that he was suffering from severe rheumatic complaint and required prolonged treatment. He submitted that on the basis of the report submitted by the second Medical Board and the assurance given by the officers he did not take any steps to visit the office or depute his family members to the office. he received A-1 order dated 9.8.99 informing him that for the alleged unauthorised absence he had been dismissed from service. He submitted A2 appeal to the third respondent which was rejected by A3 order



dated 16.11.99. Praying that AI and A-III orders were illegal, opposed to law and were passed in violation of principles of natural justice and without conforming to the prescribed procedures the applicant filed this O.A. seeking the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant. According to them the applicant while working as Mechanic Highly Skilled Grade-I requested for six months leave from 23rd October, 1993 to 20th April, 1994 on medical grounds stating that he was suffering from "Sandhi Vatam." The leave requested for by him was granted by the respondents. Subsequently he requested for extension of leave on three occasions viz. from 20th April, 1994, 17th October, 1994 and 15th April, 1995 on medical grounds were granted. As the disease mentioned in the Medical Certificate was ambiguous, respondents referred his case to the District Medical Officer (DMO), Ernakulam for a second medical opinion in accordance with Rule 19 of the Central Civil Services (Leave) rules, 1972 in order to confirm the veracity of the medical certificate produced by him. The DMO Ernakulam had scheduled a medical board on 8.11.1994 but the applicant did not appear before the Board. However, the applicant reported to the medical authorities on 21.11.1994 and DMO (Ernakulam) recommended leave for a further period of six months as the applicant was suffering from Sandhi Vatam. In order to verify the statements of the applicant, the Superintendent of Police, Ernakulam (Rural) Alwaye was requested to carry out an investigation. He by his R3(A) letter dated 23.12.1994 reported that the applicant had left India to Foreign Country since April, 1994. Since the applicant had proceeded abroad on leave without obtaining approval of the Leave Sanctioning

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Authority, the leave requested for by him was not granted and the applicant was issued with a charge sheet under Rule 14 of the CCS (Classification, Control and Appeal) Rule 1965. vide Memorandum dated 22nd July, 1995 for the following misconduct:

- (a) Unauthorised absence from duty w.e.f. 21st April, 1994 to 22nd July, 1995.
- (b) Produced false Medical Certificate for misleading the Administration in support of his absence.
- (c) Obtained Passport H-809782 dated 12th September, 1990 without obtaining No Objection Certificate from the Department.
- (d) Left India to a Foreign Country viz. Muscat and secured employment without obtaining permission.

4. An enquiry was conducted. The charges framed against the applicant were proved by deposition of witnesses and documentary evidences. The Disciplinary authority i.e.. third respondent after considering the inquiry proceedings and circumstances of the case imposed the penalty of Dismissal from Service on the applicant vide A-1 order. The applicant filed appeal to the 4th respondent. The 4th respondent considered the various contentions raised by the applicant in the appeal and disposed of the same by A3 in accordance with the provisions contained in Central Civil Services (Classification, Control and Appeal) Rules, 1965. According to them in terms of Rule 4 of CCS (Conduct) Rules, 1964, employment of near relatives of Government servants in any companies/firms should be intimated to his department and the applicant did not intimate the said fact to his department was in violation of the Conduct Rules 1964. As per the existing Govt. orders it was mandatory requirement to obtain specific No Objection Certificate from the competent authority for obtaining a Passport or renewal of Passport. But the said NOC did not authorise the person to



proceed to a foreign country. He was required to obtain specific NOC from the authority concerned prior to proceeding to a foreign country. Possession of Passport by an individual was not an authority to go to any foreign country. Further, a defence civilian employee desirous to visit foreign country on leave at his own expenses could not avail hospitality in any form from the foreigners or foreign Govt. or foreign commercial organisation or firms he would ensure compliance of current security instructions. Apart from this the Defence employee proceeding on leave to a foreign country is required to furnish a surety bond in a non-judicial stamp paper from the government servants of appropriate status. The applicant failed to comply with the orders. He obtained a passport bearing NO. H-809782 on 12.9.1990 without obtaining NOC from the competent authority. In his passport application form R-3(B) he had suppressed the fact that he was a Government servant in Sl.NO. 8(3) of the said form. In R-3(B) the applicant had shown his occupation as "private service." The chargesheet was sent to his residential address by Registered post with Acknowledgment Due but the same was returned to the Department by the Postal Authorities undelivered with remarks "addressee left India, hence returned to sender." Consequent on non-delivery of the said charge sheet the casualty was published in the Malayala Manorama daily dated 10.1.1996 (Annexure R-3(D)). Subsequently the departmental enquiry was ordered. The applicant was informed about the conduct of the hearing of the enquiry by the Enquiry Officer vide letters dated 26.4.96, 13.5.96, 29.5.96 and 13.6.96. But the said letters were returned by the Postal Authority with the remark that "the addressee out of India returned to sender." The Inquiring Authority having considered the statement of

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witnesses and material evidence adduced before the inquiry found that the applicant was guilty of all the charges framed against him by Memorandum dated 22.7.95. A copy of the inquiry report had been served to the applicant on 7.9.98 affording him an opportunity to represent against the findings of the Inquiring authority within a period of 15 days from the date of receipt of the same. Though the applicant had received the said letter on 17.10.98 as per postal acknowledgement, he had failed to submit any representation or submission. The Disciplinary authority having considered the inquiry proceedings and the entire circumstances of the case imposed the penalty of "Dismissal from Service" on the applicant by A-1 order duly following the principles of natural justice. Against the said penalty the applicant had preferred an appeal raising various contentions. The 4th respondent being the Appellate Authority had considered the various contentions raised by the applicant in his appeal disposed of the same by A-III order in accordance with the provisions contained in CCS (CC&A) Rules, 1965. The contentions raised by the applicant had no merit and the OA was liable to be dismissed.

5. Applicant filed rejoinder. Additional reply statement and additional rejoinder were also preferred by the parties.

6. Heard learned counsel for the parties.

7. We have given careful consideration to the submissions made by the learned counsel for the parties, rival pleadings and have perused the documents brought on record.

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8. Assailing A1 and A3 orders one of the grounds raised by the applicant was that A1 and A3 orders were bad in law. According to him he was taking bed rest due to paralytic attack. The 2nd medical Board had confirmed this facts in its report. Therefore there was no evidence to come to the conclusion that he was not suffering from rheumatic complaints. The conclusion that the applicant was unauthorisedly absent was not based on any evidence and hence perverse and was liable to be set aside by this Tribunal. According to the respondents, on the basis of the statements of witnesses and documentary evidence advanced during the enquiry the conclusion that the applicant was guilty could not be said to be one of a case of 'no evidence'.

9. The articles of charge against the applicant are as follows as seen from the material placed before us:

"(a) Unauthorised absence from duty with effect from 21 April, 1994 to 22nd July 1995."

(b) Produced false Medical Certificate for misleading the Administration in support of his absence.

(c) Obtained Passport H-809782 dtd. 12 sep 90 without obtaining No Objection Certificate from the department.

(d) Left India to a Foreign Country viz. Muscat and secured employment without obtaining permission."

10. It is now well settled that Courts/Tribunals while exercising powers of judicial review of administrative orders especially in matters involving action under the CCS (CCA) Rules, are more concerned with the decision making process rather than the decision itself. Further, Courts/Tribunals

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would generally not act as appellate authorities and reappreciate the evidence and arrive at findings and interfere in the matter. The standard of evidence required is not as in the case where an accused is tried for a criminal offence. What is to be satisfied is that there is some evidence to come to the conclusion arrived at by the authorities concerned. Courts/Tribunals interfere only in the case of 'no evidence' or the decisions are such that no ordinary person would come to the conclusion on the basis of the evidence available on record i.e. perverse. We find that the charge against the applicant was not that he was not suffering from rheumatic complaints. The charges were as stated in the para above.

11. On carefully going through the Disciplinary Authority's and Appellate Authority's orders we find that both authorities have analysed the issue in detail and have brought out as to how they have come to the conclusion that the charges are proved. On the basis of the same we cannot hold that this is a case of "no evidence." Even by the applicant's own statement in A-2 appeal as well as his averments in the pleadings before this Tribunal he had admitted that he had left for foreign country and this itself would indicate that he was not attending office. Further, R-3(A) and R-3(B) support the other charges and the same have not been specifically denied by the applicant. Hence we reject the ground of 'no evidence' advanced by the applicant.

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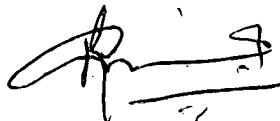
12. The next ground raised by the applicant is that the punishment imposed on the applicant was disproportionate to the charges levelled against him. We find that the applicant had been unauthorisedly absenting. When such is the charge and it had been proved, the respondents have dismissed the applicant from service. We are of the view that the charges quoted in earlier paragraphs are of a serious nature especially by an employee under the Indian Navy. Moreover, it is for the concerned authority to decide the quantum of punishment to be imposed on a delinquent Government servant. Generally Courts/Tribunals would not interfere with the quantum of punishment imposed on the petitioner unless it shocks "the judicial conscience." In this case we do not find the punishment imposed on the applicant as disproportionate to the offences committed. Hence we reject this ground.

13. Another ground advanced by the applicant was that there was no reliable evidence indicating that the applicant was unauthorisedly absenting from service and that only on account of surmises and suspicions the authorities had treated the absence of the applicant as unauthorised and willful. Merely because that some letters were returned with specific endorsement it could not be concluded that the applicant had abstained from duty to take up overseas employment. Along with the reply statement the respondents had produced copy of the application form made by the applicant for obtaining his passport as R-3(B). This passport application form had been filed by the applicant on 3.7.90. In the said application form the applicant had clearly indicated against item 10 that he was visiting the

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country for the purpose of employment. Further, in col. 18 he had shown his occupation as private service. These documents belie the ground raised by the applicant. Accordingly we do not find any merit in this ground.

14. The next ground raised by the applicant was that no attempt was made to serve the charge sheet or show cause notice on the applicant. The enquiry was held ex parte. The Inquiry authority considered only one version and the Disciplinary authority had imposed the punishment of dismissal from service and hence the order of dismissal was based on violation of the principles of natural justice. According to the respondents the charges against the applicant were published in the Malayala Manorama Newspaper as the notice issued to him through the postal means were returned undelivered with the endorsement that the addressee left India. We find from CSS (CCA) Rules 1965 that any communication should be sent to the concerned official by Registered Post with AD to the last address known and if the said document was not accepted by the addressee and was returned by the Postal authorities to the sender it has to be taken that the said notices have been served on the addressee. In the face of this Rule the ground of the applicant that no attempt was made to serve the charge sheet or show cause notice on the applicant is without any basis.

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15. One of the grounds raised by the applicant was that the procedure provided under the CCS (CCA) Rules have not been followed.. But the details of which procedure had not been followed had not been elaborated. Hence we are unable to accept this ground.

16. In the light of the above detailed analysis we are of the considered view that the applicant in this Original Application has not made out a case for the reliefs sought for by him. Accordingly, we dismiss this OA with no order as to costs.

Dated the 1st May, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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APPENDIX

Applicant's Annexures:

1. A-I : A true copy of the order No.CS 2693/52 dated 9th August, 1999 issued by the 2nd respondent.
2. A-II : A true copy of the Appeal dated 27th September, 99 submitted by Appeal Petitioner before the Hon'ble Flag Officer, Commanding-in-Chief, Southern Naval Command, Kochi.
3. A-III : A true copy of the order CS 2696/111 dated 16th November, 99 issued by 3rd respondent.

Respondents' Annexures:

1. R-3A : Photo copy of the letter No.286/GI/SBA/94/ER dt. 23.12.94 of the S.P of Police, Ernakulam.
2. R-3B : Photo copy of the Passport Application dated 3.7.90 of the applicant.
3. R-3C : Photo copy of the cover addressed to the applicant from the Naval Air Craft Yard.
4. R-3D : Photo copy of the Notice published by the Head Quarters, Southern Naval Command in the Malayala Manorama dated 10.1.96 and English translation.

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