

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

ANNEXURE

CA 817/87 INDEX SHEET

CAUSE TITLE OF

NAME OF THE PARTIES..... J. N. Dandale

Applicant

Versus

UOI & Co.

Respondent

Part A, B & C

Sl. No.	Description of documents	Page
1	Index sheet	A1 to A2
2	Order sheet	A3 to A6
3	Judgement order dt 02-5-89	A7 to A20
4	Petition writ with Annexure	A21 to A32
5	Counter Affidavit	A33
6	Rejoinder Affidavit	A39 to A56
7	Any papers	A57 to A73
8	Power	A74 to A81
9	Index sheet dt. 06-06-2011	A82 to A183
10		
11		
12		
13		

CERTIFICATE

Certified that no further action is required to taken and that the case is fit for consignment to the record room (decided)

Check/OK

Dated, 01/10/2011

Counter Signed.....

Section Officer / In charge

Signature of the
Dealing Assistant

17/9

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 847 of 1987

APPLICANT (s) Jagdish Narain Dwivedi

RESPONDENT(s) U.O.I. through Secretary, Ministry of Defence

New Delhi & 3 others

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ?
2. (a) Is the application in the prescribed form ?
(b) Is the application in paper book form ?
(c) Have six complete sets of the application been filed ?
3. (a) Is the appeal in time ?
(b) If not, by how many days it is beyond time ?
(c) Has sufficient case for not making the application in time, been filed ?
4. Has the document of authorisation/Vakalat-nama been filed ?
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?

Ys

Ys

Ys

Ys, 6 sets filed

Ys

-

-

Ys

Ys

Ys

Ys

Ys

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?
11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with Annexures filed ?
- (a) Identical with the original ?
- (b) Defective ?
- (c) Wanting in Annexures
- Nos...../Pages Nos..... ?
13. Have file size envelopes bearing full addresses, of the respondents been filed ?
14. Are the given addresses, the registered addresses ?
15. Do the names of the parties stated in the copies tally with those indicated in the application ?
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?
17. Are the facts of the case mentioned in item No. 6 of the application ?
- (a) Concise ?
- (b) Under distinct heads ?
- (c) Numbered consecutively ?
- (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for indicated with reasons ?

Yes

Index filed, paging done in two copies only.

Yes

No.

Two copies signed.

Yes

Yes

-

-

No

Yes

Yes

No

No

Yes

Yes

Yes

Yes

Yes

19. Whether all the remedies have been exhausted.

If approved the case may be listed

On

17. 9. 87.

Lund 10. 9. 87

Subm. Heed & f
Chandran
10/9/87

आदेश पत्रक
ORDER SHEET

आ. नं. अ-18
I. A. T-1

अपील
निर्देश आवेदन रजिस्टर में सं.

No. in Reference Application Register
Appeal

CA 147-07

अपील अनिकरण
Appellate Tribunal

अपीलार्थी
आवेदक

Appellant
Applicant

अपीलार्थी
आवेदक द्वारा

बनाम

प्रत्यर्थी

Appellant
Applicant

Vs.

Respondent

प्रत्यर्थी द्वारा
Respondent

आदेश की क्रम संख्या और तारीख Serial number of order and date	संक्षिप्त आदेश, निर्देश देते हुए, यदि आवश्यक हो Brief order, mentioning reference, if necessary	पालन कैसे हुआ और पालन करने की तारीख How complied with and date of compliance
---	--	---

17-9-07

Mr. D.S. Mishra AM
Mr. G.S. Sharma J. &
On the application of
applicant counsel, the case is
adjourned to 21-9-07
AM J. &

21-10-87

DR
On the request of counsel for applicant respdt,
he is allowed to file reply by
12/11/87.

DR(J)

ORDER SHEET

AS
3

A
4

OFFICE REPORT

An application has been filed in this Tribunal for transferring the case No. 847/87 of to the Circuit Bench, Lucknow.

If approved, 20. July 1988 may kindly be fixed for hearing at Circuit Bench Lucknow. In this regard the notices may be sent to the parties counsel.

Shri Kumar
20-6-88

20-7-88

From: Ajay Dalm, M.A.

Shri Surendran P. files his representation on behalf of the applicant. The case be put up before the Division Bench on 22-7-88.

3/
A.M.

Ray

22-7-88

From: Ajay Dalm, M.A.

Shri K.B. Sinha for respondents. The case is adjourned to 26-8-88 as prayed.

3/

A.M.

Ray

26.8.88 Fixed for Hearing

(1/3)

4/5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUGANO.

O.A./T.A. No. 847 1987

J. N. Dwivedi

Applicant(s)

Versus

D. O. & ors.

Respondent(s)

Sr.No.	Date	Orders
	26.X.88	On the request of applicant, the case is adjourned to 28.X.88. h
	28/X/88	Hon. D. S. Misra, Am. Hon. G. S. Sharma, Jm. Sri Sundaram P. for the applicant filed rejoinder today. On the request of the Sri K. C. Sinha for respondents he is allowed to file supplementary counter affidavit within a month. It appears that the applicant has also sought relief of some medical reimbursement claims which is not connected with the main relief and the claim petition. This matter shall also be considered on the next date of hearing. Registry will fix the date of hearing after the filing of the supplementary counter affidavit. h

J.M.

Am.

Hon' Mr. D.S. Mishra, A.M.
Hon' Mr. D.K. Agarwal, J.M.

28/3/89

On the request received from the learned counsel for the applicant, the case is adjourned to 20-4-89 for hearing.

SR
S.P.L. Mishra
Adv. power filed
on behalf of the
applicant.
19/4

✓
J.M.

✓
A.M.

8

OR

Case was ad-
-journed for hearing
on 20.4.89.

Submitted for
hearing.

20.4.89.

Hon' Justice K. Nath, V.C.
Hon' Mr. D. S. Mishra, AM

Mr. Sundaram P. present for
the applicant. Arguments heard
in part. List this tomorrow for
further hearing.

Adj
19/4

✓

A.M.

Mr

V.C.

Adj
20/4

21.4.89

Hon'ble Justice K. Nath, V.C.

Due to indisposition of Hon'ble
Mr. D. S. Mishra, AM, the case
can not be taken today. Case
is released for hearing on 2.5.89
This case may not be taken
as tied-up case.

Mr

V.C.

Adj
21/4

Adj

OR

Case is submitted for
hearing.

Adj
1/5

2) Remand with
@
Chait K.C. Sub
Am
9/5/89

Registered

o/c

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, GANDHI BHAWAN
LUCKNOW

No. CAT/CB/LKO/

Dated : 09.05.89

OFFICE - MEMO

Registration No. O.A. 847 of 1937.
T.A.

Jagdish Narain Dwivedi Applicant's

Versus
Union of India Respondent's

A copy of the Tribunal's Order/Judgement dated 2nd May 89 in the abovenoted case is forwarded for necessary action.

For DEPUTY REGISTRAR (H)

Encl : Copy of Order/Judgement dated 09.05.89

To.

①

Shri P. Sundram

Jagdish Narain Dwivedi
Applicant
9.5.89

Advocate

dinesh/

Remd com
@
Chatterjee C. P. S.
Adv.
9/5/89

Shri

K. C. Sinha

Advocate

C. A. T. Allahabad.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

O.A.No. 847
~~Ex.A.No.~~

1987(L)

DATE OF DECISION 2-5-1989

JAGDISH NARAIN DWIVEDI Petitioner

Shri P. SUNDARAM Advocate for the Petitioner(s)

Versus

Union of India & ors Respondents

Shri K.C. Sinha. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, V.C.

The Hon'ble Mr. D.S. Misra, A.M.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether to be circulated to other Benches? No

Dinesh/

Prince

2/5/89

(A2)
A/9

CENTRAL ADMINISTRATIVE TRIBUNAL

Circuit Bench at LUCKNOW

.....

Gandhi Bhawan, Lucknow

May 2, 1989

Registration O.A. No. 847 of 1987

Jagdish Narain Dwivedi Applicant

Vs.

Union of India and ors Opp. Parties

Hon' Mr. Justice Kamleshwar Nath, V.C.

Hon' Mr. D.S. Misra, A.M.

(By Hon' Mr. Justice K. Nath, V.C.)

This is an application under section 19 of the Administrative Tribunals Act, No. XIII of 1985, for issue of an order in the nature of certiorari to quash the order dated 27-5-1987, contained in Annexure No. 24, whereby the applicant was reverted from the post of Upper Division Clerk to the post of Lower Division Clerk. There is also a consequential prayer for grant of salary and allowances for the post of Upper Division Clerk and for sanction of medical leave for the period between 15-3-1982 to 17-10-1983.

2. The facts of the case are not ⁱⁿ much dispute. The applicant was working as Lower Division Clerk when on 19-10-1981, he was transferred from Lucknow to Ramgarh. He did not proceed to join the assignment for the reasons of alleged illness. He remained absent from 15-3-82 to 17-10-83; in the meantime he was promoted on 24-3-1983 as Upper Division Clerk.

Jh

...2/-

(A1/2)

:: 2 ::

3. For his unauthorised absence from duty from 15-3-82 onwards, the disciplinary proceedings were started on the basis of charge sheet dated 20-5-83. The applicant filed a reply to the charge sheet on 5-6-83, and ultimately proceeded to join Ramgarh on 18-10-83.

4. It appears from the statements contained at page 93 of the paper book that for the period of his absence from 4-4-82 to 15-9-82, he despatched a medical leave application with a certificate on 15-10-82. Again for the period for his absence from 16-9-82 to 22-2-83, he despatched an application with medical certificate on 22-2-83. On 5-6-83, the applicant sent a medical certificate for his absence from 23-2-83 to 3-6-83. Again for the period of his absence from 4-6-83 to 14-9-83, he despatched a medical certificate in September, 1983.

5. The first inquiry report is dated 13-4-84 (Annexure No. 16). The Inquiry Officer held that for reasons beyond his control, the applicant was absent from 15-3-82 to 17-10-83, and since he, ultimately joined at Ramgarh depot on 18-10-83, the charge that he disobeyed the lawful orders of his superior officers was not proved. The matter was considered by the disciplinary authority, who passed an order on 10-5-84 (Annexure RA-1), holding that on account of procedural errors/lapses, in so far

2-

as, the provisions of Rule 14 (19) of the CCS (CC&A) Rules, 1965 had not been substantially followed, he directed a further inquiry to be conducted.

6. The result of the second inquiry is contained in Annexure Nos. 19, 20 and 21 dated 23-3-1985. The disciplinary authority held that although the charge of absence was proved, the absence was supported by medical certificate. When the matter figured before the disciplinary authority again, he held in his order dated 1-6-85 (Annexure No. 22), that the charge of disobedience of the superior authorities ~~is~~ stood proved. He, however, agreed with the report of the Inquiry Officer that the absence was supported by the medical certificate. Even so, the Inquiry Officer treated the absence to be unauthorised absence and awarded the punishment of dismissal of service with immediate effect.

7. The applicant preferred an appeal, contained in Annexure No. 23 (to the application), and the matter was considered by the Executive Committee of the Board of Control, Canteen Services. Shri Dinesh Chandra, Brig. of the Board issued the impugned order dated 27-5-87, annexed to Annexure No. 24, the communication thereof, in which it was held that benefit of doubt be accorded to the applicant and the appeal be allowed to the extent that the penalty of "dismissal ^{from} service with immediate effect" be modified to the penalty of reversion to the rank of Lower Division Clerk. It was further ordered that the period from 15-3-82 to 17-10-83 for which

(A)
4

A
12

:: 4 ::

the applicant remained on medical leave may be adjusted by the Canteen Stores Department against his earned and commuted leave, and the balance period may be treated as extraordinary leave without pay and allowances. It was further directed that the period from the date of dismissal and to the date of re-joining of duty on reinstatement as Lower Division Clerk would be treated as "on duty" for all purposes without pay and allowances.

8. Affidavits have been exchanged. We have heard the learned counsel for the applicant. We have no benefit of hearing the learned counsel for opposite parties; even so, we have gone through the entire record.

9. The first point urged by the learned counsel for the applicant is that, the disciplinary authority, while passing the order dated 1-6-85 (Annexure No. 22) mentioned that he had considered both the inquiry reports. The learned counsel for the applicant stated that the previous inquiry report having been washed off by the earlier order dated 10-5-1984 (Annexure R-1), it should not have been considered. Linked to this, his further submission is that the appellate authority did not appreciate that the disciplinary authority had considered both the inquiry reports and since the order of the disciplinary authority would be vitiated by consideration of both the inquiry reports, the appellate order would also stand vitiated.

gn

.....5/-

(A/S)

A/13

:: 5 ::

10. We are of the opinion that while the disciplinary authority was not justified in looking into the first inquiry report, no substantial injustice has been done by looking into it, because the result of the first, as well as, of the second inquiry report was the same. In other words, the contents of first inquiry report did not in any manner prejudice the second inquiry report. The disciplinary authority, therefore, in considering both the reports did commit any irregularity, which does not constitute an illegality, because it did not affect the merits of the matter before him. The court have to go essentially by the concept of substantial justice, where procedural matters are concerned. In view of what we think of this situation, the further contention that the appellate authority was not competent to pass the order also falls. The learned counsel for the applicant has referred to the case of Barad Kant Mishra Vs. State of Orissa and another, 1966 Service Law Reporter 186 in support of his contention that, if the disciplinary authority's order is void, the appellate authority is not capable of passing a valid order. That is not the law laid-down in this case. There, the disciplinary proceedings were initiated against an officer of subordinate judiciary. The High Court in exercise of its powers of control under Article 235 of the Constitution of India passed an order of reduction in rank. Subsequently on the basis of that very order, the High Court forwarded the case to the Governor with a ~~xxxx~~....

... 6/-

recommendation for dismissal of the Officer. The Governor, basing his finding on the order of reduction in rank, passed the order of dismissal. The Hon'ble Supreme Court held that the power to pass an order of reduction in rank vests in the appointing authority under Article 311(1) of the Constitution of India and does not extend to the High Court, under its powers and control under Article 235 of the Constitution. The order of reduction in rank, therefore, was held to be unconstitutional. The Hon'ble Supreme Court then went to say that the substratum of order of the order of dismissal, that is, the order of reduction in rank, being unconstitutional, the order of dismissal cannot have any legal force. It is in this background that the decision contains an observation that if the order of ~~judicial~~^{disciplinary} authority is void, the order of appellate authority cannot make it valid. That is not the case before us. The order of disciplinary authority, for reasons recorded above, was not void or invalid; it was irregular, but not illegal. The appellate authority, therefore, was quite competent to pass the impugned order of reversion.

11. The learned counsel for the applicant then referred the Rule 27 (2) (b) of the CCS (CC&A) Rules, 1965 and says that the appellate authority did not record a finding that the finding of the disciplinary authority^{was} warranted by evidence on record. Here[^] again the learned counsel for the applicant placed reliance upon the fact that the disciplinary authority has referred to both the

(A)
7

A
15

:: 7 ::

reports, while the appellate authority did not mention it. We have already dealt with the aspect of this case and need not repeat it here. What is important is that, in the impugned order, annexed to Annexure No. 24, it was stated that the case was considered by the Executive Committee of Board of Control Canteen Services. The factual and circumstantial features of this case adduced during the inquiry were taken into consideration. It is true that the evidence which was produced during inquiry and the circumstantial evidence which figured in case were not set out in express words in the impugned order; but the order leaves no manner of doubt that all these material were considered. It would definitely have been better, and that is what should normally be done, to set out the basic features of the evidence adduced in the course of inquiry, but, in so far as the appellate authority concurred with the findings of the disciplinary authority, it was not absolutely necessary in the eye of law to reproduce the entire set of reasoning adopted by the disciplinary authority.

12. The next point of the learned counsel for the applicant is that while the applicant's appointing authority is Major General, the appellate order has been passed by Brigadier who is an officer of lower rank to the appointing authority i.e. Major General. This contention of the learned counsel must be turned down on a plain reading of impugned order dated 27-5-87. The impugned order in express term says that the case was considered

....8/-

AI
8
A
16

by Executive Committee of the Board of Control,
Canteen Services.

13. At the end, where Dinesh Chandra, Brig. signed the orders in his capacity as Secretary, Board of Control Canteen Services, it is clearly mentioned that he did so, " for and on behalf of Executive Committee of the Board of Control Canteen Services, ". The decision was taken by the Executive Committee of Board of Control Canteen Services; Brig. Dinesh Chandra only authenticated it. In this connexion, it is interesting to refer to relief No. 1, as set out in para 7 of the application itself. The relief seeks " a direction in the nature of certiorari quashing the order dated 27-5-87 passed by the Board of Control of Canteen Services". Plainly the applicant himself has said that the order was passed by the Board of Control of Canteen Services.

14. The next point urged by the learned counsel for the applicant that the disciplinary authority being Chairman of the Department, is also a member of the Board of Control of Executive Committee, and, therefore, the order is invalid. The plea set out in para 42 of the rejoinder is that, since the disciplinary authority is a Chairman of the Department, and, therefore, a member of the Board of Control Executive Committee, and the impugned order is an out come of his influence. What has been challenged in the application is not an illegality of the order on account of

...9/-

Q

AT
9

13

participation, if at all, of the disciplinary authority as a Member of the Board of Control, but on account of supposed exercise of his influence upon the Board. There is no evidence that either the disciplinary authority was actually deliberating in the proceedings of the Board of Control when the Executive Committee took a decision, or that the impugned order was a result of his influence.

15. The next point urged is that the appellate authority itself recorded a finding that the applicant was entitled to a benefit of doubt and that being so, a major penalty could not have been inflicted or, indeed, there could have been no penalty at all. The decision does not spell out the purport of the expression "benefit of doubt," but the expression must be read in the entire context in which it appears. The benefit of doubt, as indicated in the order, persuaded the Executive Committee of the Board of Control to allow the appeal to the extent shown thereunder; and the most important part of the extent is the conversion of the punishment of dismissal into reversion to lower rank. The established facts, as would appear from what has been stated above, are that after the applicant was ordered to be transferred to Ramgarh, he did not proceed to Ramgarh and instead, he became absent from 15-3-82 and continued to remain absent till 17-10-83. The applicant joined Ramgarh after the disciplinary inquiry had started, charge sheet had been served and reply has been submitted by him. It is also clear from the admitted facts that every time, the applicant sent medical certificate

R

...10/-

(A)
10

A
18

:: 10 ::

of illness after he had already spent his period of leave; the commencement of any period of leave did not coincide with his submission of medical certificate. In a way, every time he confronted the Department with fait accompli. Even so, the Inquiry Officer found that the absence was supported by medical certificate which had not been controverted by any medical examination by the authorised medical attendant of the Department itself. One may wonder how this could have been done, when the medical certificates were being submitted after the expiry of the period for which leave was sought. But, failure to report at Ramgarh despite orders of transfer was prima facie disobedience, and the absence from duty with submission of medical certificate after the period of absence, is prima facie inappropriate. The only fetter which could be open to scrutiny was, whether this act of the applicant was deliberate or on account of causes beyond his control. The inquiry authorities thought that on account of illness, it was beyond his control. The disciplinary authority did not agree and found him to be guilty of disobedience. It was perhaps between these two findings that the Executive Committee of Board of Control was to decide which way the balance tilted and then, it appears they thought that there was some doubt of which the benefit could be given to the applicant. The doubt, therefore, could not be for culpability, it could only be for mitigation. It is this mitigation, which found impression in the ultimate view of the Board of Control that the order of dismissal be modified to an order of reversion. We do not think, therefore,

Q

....11/-

(A2)
A/9

CENTRAL ADMINISTRATIVE TRIBUNAL

Circuit Bench at LUCKNOW

.....

Gandhi Bhawan, Lucknow

May 2, 1989

Registration O.A. No. 847 of 1987

Jagdish Narain Dwivedi Applicant

Vs.

Union of India and ors Opp. Parties

Hon' Mr. Justice Kamleshwar Nath, V.C.

Hon' Mr. D.S. Misra, A.M.

(By Hon' Mr. Justice K. Nath, V.C.)

This is an application under section 19 of the Administrative Tribunals Act, No. XIII of 1985, for issue of an order in the nature of certiorari to quash the order dated 27-5-1987, contained in Annexure No. 24, whereby the applicant was reverted from the post of Upper Division Clerk to the post of Lower Division Clerk. There is also a consequential prayer for grant of salary and allowances for the post of Upper Division Clerk and for sanction of medical leave for the period between 15-3-1982 to 17-10-1983.

2. The facts of the case are notⁱⁿ much dispute. The applicant was working as Lower Division Clerk when on 19-10-1981, he was transferred from Lucknow to Ramgarh. He did not proceed to join the assignment for the reasons of alleged illness. He remained absent from 15-3-82 to 17-10-83; in the meantime he was promoted on 24-3-1983 as Upper Division Clerk.

Jh

...2/-

(A1/2)

:: 2 ::

3. For his unauthorised absence from duty from 15-3-82 onwards, the disciplinary proceedings were started on the basis of charge sheet dated 20-5-83. The applicant filed a reply to the charge sheet on 5-6-83, and ultimately proceeded to join Ramgarh on 18-10-83.

4. It appears from the statements contained at page 93 of the paper book that for the period of his absence from 4-4-82 to 15-9-82, he despatched a medical leave application with a certificate on 15-10-82. Again for the period for his absence from 16-9-82 to 22-2-83, he despatched an application with medical certificate on 22-2-83. On 5-6-83, the applicant sent a medical certificate for his absence from 23-2-83 to 3-6-83. Again for the period of his absence from 4-6-83 to 14-9-83, he despatched a medical certificate in September, 1983.

5. The first inquiry report is dated 13-4-84 (Annexure No. 16). The Inquiry Officer held that for reasons beyond his control, the applicant was absent from 15-3-82 to 17-10-83, and since he, ultimately joined at Ramgarh depot on 18-10-83, the charge that he disobeyed the lawful orders of his superior officers was not proved. The matter was considered by the disciplinary authority, who passed an order on 10-5-84 (Annexure RA-1), holding that on account of procedural errors/lapses, in so far

2-

...3/-

as, the provisions of Rule 14 (19) of the CCS (CC&A) Rules, 1965 had not been substantially followed, he directed a further inquiry to be conducted.

6. The result of the second inquiry is contained in Annexure Nos. 19, 20 and 21 dated 23-3-1985. The disciplinary authority held that although the charge of absence was proved, the absence was supported by medical certificate. When the matter figured before the disciplinary authority again, he held in his order dated 1-6-85 (Annexure No. 22), that the charge of disobedience of the superior authorities ~~is~~ stood proved. He, however, agreed with the report of the Inquiry Officer that the absence was supported by the medical certificate. Even so, the Inquiry Officer treated the absence to be unauthorised absence and awarded the punishment of dismissal of service with immediate effect.

7. The applicant preferred an appeal, contained in Annexure No. 23 (to the application), and the matter was considered by the Executive Committee of the Board of Control, Canteen Services. Shri Dinesh Chandra, Brig. of the Board issued the impugned order dated 27-5-87, annexed to Annexure No. 24, the communication thereof, in which it was held that benefit of doubt be accorded to the applicant and the appeal be allowed to the extent that the penalty of "dismissal ^{from} service with immediate effect" be modified to the penalty of reversion to the rank of Lower Division Clerk. It was further ordered that the period from 15-3-82 to 17-10-83 for which

(A)
4

A
12

:: 4 ::

the applicant remained on medical leave may be adjusted by the Canteen Stores Department against his earned and commuted leave, and the balance period may be treated as extraordinary leave without pay and allowances. It was further directed that the period from the date of dismissal and to the date of re-joining of duty on reinstatement as Lower Division Clerk would be treated as "on duty" for all purposes without pay and allowances.

8. Affidavits have been exchanged. We have heard the learned counsel for the applicant. We have no benefit of hearing the learned counsel for opposite parties; even so, we have gone through the entire record.

9. The first point urged by the learned counsel for the applicant is that, the disciplinary authority, while passing the order dated 1-6-85 (Annexure No. 22) mentioned that he had considered both the inquiry reports. The learned counsel for the applicant stated that the previous inquiry report having been washed off by the earlier order dated 10-5-1984 (Annexure R-1), it should not have been considered. Linked to this, his further submission is that the appellate authority did not appreciate that the disciplinary authority had considered both the inquiry reports and since the order of the disciplinary authority would be vitiated by consideration of both the inquiry reports, the appellate order would also stand vitiated.

gn

.....5/-

(A/S)

A/13

:: 5 ::

10. We are of the opinion that while the disciplinary authority was not justified in looking into the first inquiry report, no substantial injustice has been done by looking into it, because the result of the first, as well as, of the second inquiry report was the same. In other words, the contents of first inquiry report did not in any manner prejudice the second inquiry report. The disciplinary authority, therefore, in considering both the reports did commit any irregularity, which does not constitute an illegality, because it did not affect the merits of the matter before him. The court have to go essentially by the concept of substantial justice, where procedural matters are concerned. In view of what we think of this situation, the further contention that the appellate authority was not competent to pass the order also falls. The learned counsel for the applicant has referred to the case of Barad Kant Mishra Vs. State of Orissa and another, 1966 Service Law Reporter 186 in support of his contention that, if the disciplinary authority's order is void, the appellate authority is not capable of passing a valid order. That is not the law laid-down in this case. There, the disciplinary proceedings were initiated against an officer of subordinate judiciary. The High Court in exercise of its powers of control under Article 235 of the Constitution of India passed an order of reduction in rank. Subsequently on the basis of that very order, the High Court forwarded the case to the Governor with a ~~xxxx~~....

... 6/-

92

recommendation for dismissal of the Officer. The Governor, basing his finding on the order of reduction in rank, passed the order of dismissal. The Hon'ble Supreme Court held that the power to pass an order of reduction in rank vests in the appointing authority under Article 311(1) of the Constitution of India and does not extend to the High Court, under its powers and control under Article 235 of the Constitution. The order of reduction in rank, therefore, was held to be unconstitutional. The Hon'ble Supreme Court then went to say that the substratum of order of the order of dismissal, that is, the order of reduction in rank, being unconstitutional, the order of dismissal cannot have any legal force. It is in this background that the decision contains an observation that if the order of ^{disciplinary} ~~judicial~~ authority is void, the order of appellate authority cannot make it valid. That is not the case before us. The order of disciplinary authority, for reasons recorded above, was not void or invalid; it was irregular, but not illegal. The appellate authority, therefore, was quite competent to pass the impugned order of reversion.

11. The learned counsel for the applicant then referred the Rule 27 (2) (b) of the CCS (CC&A) Rules, 1965 and says that the appellate authority did not record a finding that the finding of the disciplinary authority ^{was} warranted by evidence on record. ^{here} again the learned counsel for the applicant placed reliance upon the fact that the disciplinary authority has referred to both the

(A)
7

A
15

:: 7 ::

reports, while the appellate authority did not mention it. We have already dealt with the aspect of this case and need not repeat it here. What is important is that, in the impugned order, annexed to Annexure No. 24, it was stated that the case was considered by the Executive Committee of Board of Control Canteen Services. The factual and circumstantial features of this case adduced during the inquiry were taken into consideration. It is true that the evidence which was produced during inquiry and the circumstantial evidence which figured in case were not set out in express words in the impugned order; but the order leaves no manner of doubt that all these material were considered. It would definitely have been better, and that is what should normally be done, to set out the basic features of the evidence adduced in the course of inquiry, but, in so far as the appellate authority concurred with the findings of the disciplinary authority, it was not absolutely necessary in the eye of law to reproduce the entire set of reasoning adopted by the disciplinary authority.

12. The next point of the learned counsel for the applicant is that while the applicant's appointing authority is Major General, the appellate order has been passed by Brigadier who is an officer of lower rank to the appointing authority i.e. Major General. This contention of the learned counsel must be turned down on a plain reading of impugned order dated 27-5-87. The impugned order in express term says that the case was considered

....8/-

AI
8
A
16

by Executive Committee of the Board of Control,
Canteen Services.

13. At the end, where Dinesh Chandra, Brig. signed the orders in his capacity as Secretary, Board of Control Canteen Services, it is clearly mentioned that he did so, " for and on behalf of Executive Committee of the Board of Control Canteen Services, ". The decision was taken by the Executive Committee of Board of Control Canteen Services; Brig. Dinesh Chandra only authenticated it. In this connexion, it is interesting to refer to relief No. 1, as set out in para 7 of the application itself. The relief seeks " a direction in the nature of certiorari quashing the order dated 27-5-87 passed by the Board of Control of Canteen Services". Plainly the applicant himself has said that the order was passed by the Board of Control of Canteen Services.

14. The next point urged by the learned counsel for the applicant that the disciplinary authority being Chairman of the Department, is also a member of the Board of Control of Executive Committee, and, therefore, the order is invalid. The plea set out in para 42 of the rejoinder is that, since the disciplinary authority is a Chairman of the Department, and, therefore, a member of the Board of Control Executive Committee, and the impugned order is an out come of his influence. What has been challenged in the application is not an illegality of the order on account of

...9/-

Q

AT
9

13

participation, if at all, of the disciplinary authority as a Member of the Board of Control, but on account of supposed exercise of his influence upon the Board. There is no evidence that either the disciplinary authority was actually deliberating in the proceedings of the Board of Control when the Executive Committee took a decision, or that the impugned order was a result of his influence.

15. The next point urged is that the appellate authority itself recorded a finding that the applicant was entitled to a benefit of doubt and that being so, a major penalty could not have been inflicted or, indeed, there could have been no penalty at all. The decision does not spell out the purport of the expression "benefit of doubt," but the expression must be read in the entire context in which it appears. The benefit of doubt, as indicated in the order, persuaded the Executive Committee of the Board of Control to allow the appeal to the extent shown thereunder; and the most important part of the extent is the conversion of the punishment of dismissal into reversion to lower rank. The established facts, as would appear from what has been stated above, are that after the applicant was ordered to be transferred to Ramgarh, he did not proceed to Ramgarh and instead, he became absent from 15-3-82 and continued to remain absent till 17-10-83. The applicant joined Ramgarh after the disciplinary inquiry had started, charge sheet had been served and reply has been submitted by him. It is also clear from the admitted facts that every time, the applicant sent medical certificate

R

...10/-

(A)
10

A
18

:: 10 ::

of illness after he had already spent his period of leave; the commencement of any period of leave did not coincide with his submission of medical certificate. In a way, every time he confronted the Department with fait accompli. Even so, the Inquiry Officer found that the absence was supported by medical certificate which had not been controverted by any medical examination by the authorised medical attendant of the Department itself. One may wonder how this could have been done, when the medical certificates were being submitted after the expiry of the period for which leave was sought. But, failure to report at Ramgarh despite orders of transfer was prima facie disobedience, and the absence from duty with submission of medical certificate after the period of absence, is prima facie inappropriate. The only fetter which could be open to scrutiny was, whether this act of the applicant was deliberate or on account of causes beyond his control. The inquiry authorities thought that on account of illness, it was beyond his control. The disciplinary authority did not agree and found him to be guilty of disobedience. It was perhaps between these two findings that the Executive Committee of Board of Control was to decide which way the balance tilted and then, it appears they thought that there was some doubt of which the benefit could be given to the applicant. The doubt, therefore, could not be for culpability, it could only be for mitigation. It is this mitigation, which found impression in the ultimate view of the Board of Control that the order of dismissal be modified to an order of reversion. We do not think, therefore,

Q

....11/-

(A)
H

A
19

:: 11 ::

that the use of expression "benefit of doubt" in the impugned order conflicts with the ultimate order passed.

16. The last point urged is that the applicant should have been given an opportunity of personal hearing by the appellate authority itself.

Reliance is placed upon the decision in the case of Ram Chander Vs. Union of India (1986) S.C. case

103. It is unnecessary for us to go into consideration in detail upon the point, ^{because} we are of the opinion that even on the finding arrived at by the appellate authority, the punishment of reduction in rank is excessive. The learned counsel for the applicant says that he has no objection to the applicant being awarded with a lesser punishment. The doctrine of excessive punishment has been set out by the Hon'ble Supreme Court in the cases of Rama Kant Mishra Vs. State of U.P. (1982) S.C. 1552 and Bhagat Ram Vs. State of Himachal Pradesh (1983) (2) S.C. cases 442. We are aware that the Department

in which the applicant was working is a Defence Department which calls for a strict discipline and obedience to the orders of superiors. We would also like to mention that apart from the various rights of the citizen of this country, which has been guaranteed in the Constitution, there are also fundamental duties which are set out in Article 51 (A) of the Constitution of India.

The rights and duties have to be balanced and it is ordinarily very difficult to ^{countenance} ~~consonance~~ with ^{an} ~~the~~ employee of the Defence Department, who is

AJ
12

A
20

:: 12 ::

disobedient, and would not conform to the norms of straight conduct. Even so, the applicant after all did join at Rangarh and has suffered in some measure by the lapse of time and loss of salary during the period of absence. We think that having regard to all the facts and circumstances, rights and obligations, it would be fair and just to reduce the punishment of reversion to stoppage of two annual increments with cumulative effect. Similar reduced punishment was given by the Hon'ble Supreme Court in the two cases cited above.

17. The application is partly allowed, and the impugned order dated 27-5-87 contained in Annexure No. 24 to the application reverting the applicant from the post of Upper Division Clerk to Lower Division Clerk is quashed and instead the applicant is awarded a punishment of stoppage of two increments with cumulative effect with effect from 27-5-87, the date of the impugned order. We notice that the impugned order has already treated the period from the date of applicant's dismissal to the date of his rejoining duty on reinstatement to be " on duty " for all purposes without pay and allowances. That direction, as also the direction regarding adjustment of his leave contained in para 3 (b) of the impugned order, do not call for any interference. The parties shall bear their own cost.


MEMBER (A)


VICE CHAIRMAN

(sns)

Lucknow

MAY 2, 1989.

Noted 17.9.87

Lallougi

9.9.87

Reg. No. 847 of 1987

Central Administrative Tribunal

Additional Bench At Allahabad

Date of Filing..... 9/9/87

Date of Receipt
by Post

By Registrar

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL
BENCH AT A L L A H A B A D

I N D E X

IN

REGISTRATION CASE NO. OF 1987
(Under section 19 of the Central Admtn. Tribunals Act, 19

:Distt. Lucknow:

Jagdish Narain Dwivedi -- -- -- Applicant

versus

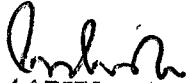
Union of India and others-- -- -- Opp. Parties

<u>Sl. no.</u>	<u>Particular of documents</u>	<u>Pages</u>
1-	<u>Application</u>	1- 6
2-	<u>Claim petition</u>	7- 34
3-	<u>Annexure-1</u> copy of transfer order dated 19.10.1981	35
4-	<u>Annexure-2</u> copy of applicant's representation dated 12.11.1981	36-39
5-	<u>Annexure-3</u> copy of transfer order rejecting the petitione 's representation dated 19.3.1982	40-44
6-	<u>Annexure-4</u> copy of applicant's representation dated 10;4-1982	45-47
7-	<u>Annexure-5</u> copy of order dated 21-4.1982 passed by the Manager CSD Lucknow	48-49
8-	<u>Annexure-6</u> copy of Movement order dated 21.4.1982.	50-54
9-	<u>Annexure-7</u> copy of applicant's representation dated 26.8.1982	

- 10- Annexure-8 copy of applicant's representation dated 15.10.1982 S2 - 53
- 11- Annexure-9 copy of telegram dated 14-2-1983 from CSD (Admn.) S4 - 56
- 12- Annexure-10 copy of applicant's representation dated 22.2.1983 - 57 - 59
- 13- Annexure-11 copy of telegram dated 21-2-1983 from CSD (Admn.) 60 - 62
- 14- Annexure-12 copy of Memorandum dated 28.5.1983 63 - 65
- 15- Annexure-13 copy of statement of Articles of charge. 66 - 72
- 16- Annexure-14 copy of petitioner's reply to the charges dated 5.6.1983 73 - 77
- 17- Annexure-15 copy of applicant's application dated 14.9.1983 78 - 79
- 18- Annexure-16 copy of assessment report of the Inquiry officer dated 13.4.1984. 80 - 81
- 19- Annexure-17 copy of brief submitted by the presenting officer to the Inquiry officer alongwith proceedings and statements of parties. 82 - 90
- 20- Annexure-18 copy of applicant's statement by means of his application dated 24.9.1984 submitted before the Inquiry officer. 91 - 94
- 21- Annexure-19 copy of assessment of evidence by the Inquiry officer 95
- 22- Annexure-20 copy of findings of the inquiry officer 96
- 23- Annexure-21 copy of opinion of the Inquiry Officer dated 23.3.1985 97
- 24- Annexure-22 copy of impugned order 1.6.1985 of dismissal 11

- 25- Annexure-23 copy of applicant's appeal dated 18.7.1985 presented before the Board of Control 101-108
- 26- Annexure-24 copy of covering letter along- with order passed in appeal of the appellant by the Board of Control of Canteen services. 109-112
- 27- Annexure-25 copy of order dated 25.8.1987 113-114
- 28- Vakalatnama 115

Dated: Sept. 1987


(ARUN TANDON)
Counsel for the applicant



A
20
(A2)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH AT A L L A H A B A D

REGISTRATION CASE NO. _____ OF 1987
(Under section 19 of the Central Admtn. Tribunal Act, 1985)

:Distt. Lucknow

JAGDISH NARAIN DWIVEDI -- -- -- Applicant

versus

Union of India and others - - - Opp. Parties

d e t

DETAILS OF APPLICATION

1-Particular of the applicant

1-Jagdish Narain Dwivedi aged about 46 years.
Son of Sri Bhagwat Prassad Vaidya, Resident of
Pili Kothi, Saadatganj Bara Chabutra, Lucknow

-- -- -- Applicant

2- Particular of the respondents

1-Union of India through Secretary, Ministry of
Defence, Government of India, New Delhi

Jagdish

A2
3

- 2 -

2-Secretary ,Board of Control Canteen Services,
Ministry of Defence, L-II Block, Room No.35
Church Road, New Delhi

3-General Manager and Chairman, Board of Administration
Canteen stores Department, Ministry of Defence
"ADELPHI" 119, M.K.Road, Bombay

4-The Regional Manager (Central) Canteen Stores,
Department Lucknow

3- Particular of the orders/action against which
the application is made

1-The instant application is being made for a
direction in the nature of certiorari quashing the
order dated 27.5.1987 passed by the Board of Control
Services as communicated vide letter dated 3.7.1987
and received by the applicant on 14.7.1987, reverting
the applicant from the post of Upper Division Clerk
to the post of Lower Division Clerk and imposing
other minor punishment.

2-Further direction may be issued to respondent
no.2 in the nature of mandamus directing the
respondents to permit the applicant to function as
Upper Division Clerk and to pay him salary and other
allowances admissible thereto as such between
15.3.1982 to 17.10.1983 and for the period between
1.6.1985 to the date of reinstatement.

Indu

3-to issue a mandamus directing the respondents to treat the applicant to sanctioned medical leave to the applicant between 15.3.1982 to 17.10.1983 and to pay him salary accordingly alongwith other allowances etc.

4-to issue a mandamus directing the respondents to treat the applicant on duty with pay and allowances for the period between 1.6.1985 to the date of reinstatement alongwith all benefits.

4-Jurisdiction of the Tribunal

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal

5-Limitation

The applicant further declares that the application is within limitation prescribed in section 21 of the Central Administrative Tribunals Act, 1985.

6- Facts of the case

The facts of the case are annexed separately.

7- Reliefs sought

(1) That the instant application is being filed for a direction in the nature of certiorari quashing the

Indran

A2
5

12/24

- 4 -

order dated 27.5.1987 passed by the Board of Control, Canteen services, as communicated vide letter dated 3.7.1987 and received by the applicant on 14.7.1987, reverting the applicant from the post of Upper Division Clerk to the post of Lower Division clerk and imposing other minor punishments.

(ii) to issue further direction to the respondent no.2 in the nature of mandamus directing the respondents to permit the applicant to function as Upper Division clerk and to pay him salary and other allowances admissible thereto as such between 15.3.1982 to 17.10.1983 and for the period between 1.6.1985 to the date of reinstatement.

(iii) to issue a mandamus directing the respondents to ~~treat the applicant~~ sanction the medical leave of the petitioner between 15.3.1982 to 17.10.1983 and to pay him salary accordingly along with allowances etc.

(iv) to issue a mandamus directing the respondents to treat the applicant on duty with pay and allowances for the period between 1.6.1985 to the date of reinstatement along with all benefits.

Indali

Q

A3
6

A
28

- 5 -

8- Interim order

In view of the facts stated above it is necessary in the interest of justice that the interim order may be issued staying the operation of the order dated 27.3.1987 insofar as it directs reversion of the applicant from the post of Upper Division Clerk to the post of Lower Division Clerk and further the respondents may be directed to ^{permit} ~~promote~~ the applicant to discharge duties of Upper Division Clerk and to pay his salary and allowances in the said grade during the pendency of the aforesaid petition. To issue any other order or direction as this Hon'ble court / Tribunal may deem fit and proper in the circumstances of the case.

9- Details of the remedies exhausted

No remedy is available against the order dated 27.3.1987

10- Matter not pending with any other court etc.

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11- Particulars of the Bank Draft/Postal order in respect of the application fees:

- (i) Name of the Bank on which drawn
(ii) Demand draft no.

Indra

h

(A2)
5

A
29

-6-

- (3) Number of Indian Postal order(s) 2) 533111
(4) Name of the issuing post office High court Allahabad
(3) Date of issue of postal order(s) 8.9.87
(4) Post office at which payable

12-Details of index


An index in duplicate containing the details of the documents to be relied upon is enclosed.

13- List of enclosures

In Verification

I, Jagdish Narain Dwivedi a/a 46 years Son of Sri Bhagwat Prasad Vaidya Resident of Pili Kothi, Saadatganj Bara Chabutra, Lucknow do hereby verify that the contents from paras 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place: Allahabad
Dated: 9th Sept. 1987


Signature of the applicant

To,

The Registrar,
Central Administrative Tribunal,
Additional Bench at Allahabad

A.T.P.
2

A3
8

8/30

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD

REGISTRATION NO. OF 1987
(Under section 19 of the Central Admmt. Tribunal Act)

: Distt. Lucknow:

Jagdish Narain Dwivedi a/a 46 years Son of
Sri Bhagwat Prassad Vaidya, resident of Pili
Kothi, Saadatganj Bara Chabutra, Lucknow

-- -- -- Applicant

versus

- 1- Union of India through Secretary, Ministry of
Defence, Govt. of India, New Delhi
- 2- Secretary, Board of Control, Canteen Services
Ministry of Defence, L-II Block, Room No. 35 Church
Road New Delhi
- 3- General Manager and Chairman, Board of Administration
Canteen stores Department, Ministry of Defence
"ADELPHI" 119, M.K. Road Bombay
- 4- Regional Manager (Central) Canteen Stores, Deptt.
Lucknow

-- -- -- Opp. Parties

The humble application of the applicant
abovenamed MOST RESPECTFULLY SHOWETH AS UNDER:

Indu

2

A3
9 21

- 8 -

- 1- That the applicant was appointed as Lower Division Clerk in the Canteen Stores Deptt., Lucknow on 17th Oct. 1966 and was subsequently promoted as Upper Division Clerk. During the whole of his 19 years service in the department, the petitioner although maintained an unblemished and meritorious record of service, so much so that not a single complaint arose against him and not a single adverse entry was ever communicated to him at any time, and his work and conduct were althrough found to be to the entire satisfaction of his superiors.
- 2- That by order dated 19.10.1981 passed by the Assistant General Manager (Admn.) Canteen service Stores Deptt. Bombay the petitioner was ordered to be transferred to Ramgarh CSD Depot. A true copy of the said transfer order dated 19.10.1981 is being filed herewith and marked as Annexure- 1 to this petition
- 3- That the petitioner felt aggrieved against his transfer to Ramgarh and represented against his transfer on the ground that the petitioner was not in a position to leave Lucknow because he had to attend court case ~~te~~ in which he was a party; he had a large family to support at Lucknow being the only earning member, he lost his father and younger son and was looking after a large family including his two younger unmarries sisters whose marriages were to be arranged by him only, his wife was constantly keeping sick and

Lucknow

Q

(A3)
10
8/32

- 9 -

required regular medical check ups and treatment at Lucknow, the petitioner himself was not keeping normal health etc.

4- That the petitioner explained in detail his hardships and difficulties in leaving Lucknow and suggested as an alternative that I could be posted in R.M.(Control) office in terms of circular no.3/A-2/1208/5084 dated 20.10.1981 for the vacancies of UDC against which the petitioner had already applied. The petitioner also enclosed with his representation the following documents in support of his request for cancellation of his transfer order.

- 1- Copy of police challan dated 24.5.1977 under section 145 Cr.P.C.
- 2- copy of order sheet in the court of Additional Sub Divisional Magistrate Lucknow
- 3- Medical certificate of the department of Obstetries and Gynaecology, K.C. Medical college
- 4- Treatment advise card of Queen Mary Hospital
- 5- Medical treatment and advice card for further treatment by Dr. H.C. Rastogi, MBBS.

5- That in view of the above exigencies and compelling circumstances the petitioner was handicapped from moving out of Lucknow and he had submitted documentary proof in support of his contentions. A true copy of the petitioner's representation dated 12.11.1981 addressed to the Chairman Board of Administration CSD Bombay, responder no.3 is being filed herewith and marked as Annexure-2 to this petition.

Indul

Q-

A3
11
4/33

-10-

6- That no reply was received from the Head office Bombay even after several reminders and representations. To the misfortune of the petitioner he was taken sick and had to proceed on leave on medical grounds from 15.3.1982. The petitioner submitted his leave application along with supporting medical certificate from a registered Medical Practitioner Dr. H.C. Rastogi. These applications and certificates have been acknowledged vide letter dated 21.4.1982 issued by the Manager Canteen Stores, Deptt. Lucknow.

7- That vide order dated 19.3.1982 issued by the Administration Branch of the Head office Bombay the petitioner's representations were rejected and the petitioner was directed to proceed to Ramgarh irrespective of the adverse circumstances which he had been facing. A true copy of the said rejection order dated 19.3.1982 is filed herewith and marked as Annexure-3 to this application.

8- That the petitioner again represented vide his representation dated 10.4.1982 and prayed the Head office to reconsider its decision in view of the pitiable circumstances of the petitioner as explained in the representation itself. The petitioner also offered to work even as LDC in RM(C) office Lucknow. A true copy of the representation dated 10.4.1982 is being filed herewith and marked as Annexure-4 to this petition.

Indul

Dr

A3
12
A
34

-11-

9- That the petitioner was surprised to receive an order dated 21.4.1982 issued by the Manager CSD Lucknow asking the petitioner to explain for his alleged unauthorised absence from duty directly to the Manager CSD Ramgarh, as the petitioner's name was struck off from the strength of Lucknow dept with effect from 21.4.1982 and the petitioner was directed to report to Ramgarh forthwith. In this order, while most of the petitioner's applications for leave were acknowledged, it was wrongly and incorrectly stated that the alleged absence of the petitioner from 1st to 3rd April 1982 and from 16th April onward had not been enclosed accounted for and that no medical evidence was furnished. Although the other applications were all acknowledged, still a threatening was given to the petitioner that the period of the alleged absence 15th March onward will be treated as unauthorised absence. A true copy of the said letter dated 21.4.1982 issued by the Manager CSD Lucknow is being filed herewith and marked as Annexure-5 to this petition.

10- That by means of Movement order (On transfer) dated 21.4.1982 issued by the Manager CSD Lucknow the petitioner was shown to have been relieved from CSD Lucknow and directed to report to Ramgarh, although the petitioner was confined to bed due to acute illness like hypertension, low blood pressure, etc. in respect of which medical certificates had been submitted along with the petitioner's leave applications. A true copy of the Movement order dated 21.4.1982 is being filed herewith and marked as Annexure-6 to this petition.

Indulge

h

A3
13

4/35

-12-

11- That by means of his representation dated 26.8.1982 the petitioner once again requested the Chairman Board of Administration, Bombay kindly to reconsider his decision, in view of the petitioner's helplessness and the fact that the petitioner was not being paid any salary etc. and he was also not advanced any advance sum to proceed on transfer. A true copy of the said representation dated 26.8.1982 is being filed herewith and marked as Annexure-7 to this petition.

12- That the petitioner developed hypertension and remained confined to bed on account of acute illness so much so that the doctors did not advise him to move even from bed, what to say of going to Ramgarh. However, having lost all hopes of getting mercy at the hands of opposite parties the petitioner, though not physically fit to go to hills being patient of hypertension was forced to offer vide his representation dated 15.10.1982 that he was ready to move to hills against the advise of medical experts, leaving his ailin, wife and school going children at the mercy of God. He therefore requested the opposite party no.3 for providing him with necessary financial assistance to enable him to undertake the journey and to arrange for double establishments- one for himself at Ramgarh and the other for the family at Lucknow. A true copy of the said representation dated 15.10.1982 is being filed herewith and marked as Annexure-8 to this petition.

Inducer

2

A3
14

A
36

-13-

13- That alongwith the above representation the petitioner sent all medical certificates in respect of his medical leave from 4.4.1982 to 15.9.1982 .It may be stated here that though the petitioner regularly and in time sent all his leave applications duly supported with medical certificates, which were duly acknowledged, the deptt. never referred the petitioner to his authorised medical attendant or to a Govt. hospital. The petitioner himself could not approach the hospital since it was at a distance of about 11 to 12 Kms , away from the petitioner residence and it was too costly affair to go there for treatment, especially when the petitioner's salary was not being paid by the department. It is respectfully pointed out that in case the deptt. did not place reliance on the medical certificates issued by the private medical practitioner, it ought to have referred the case of the petitioner for medical examination and report to the authorised Govt. doctor, which it never did and arbitrarily insisted on the petitioner to proceed on transfer to hills even against medical advice.

14- That by means of circular letter no.3/A-2/1202 /5256 dated 26.10.1982 followed by another Govt. order dated 25.11.1982 issued by the respondent no. choice stations for promotion as Upper Division clerk were called for from empanelled candidates including the petitioner. In response to this letter and circular the petitioner have his choice by means of his representation dated 18.12.1983 and requested the respondent no.3 that the petitioner be adjusted in a vacancy of LDC/UDC either at Lucknow depot or

Indexical

A3
15
A
31

-14-

in the office of the Regional Manager (Central) Lucknow and to allow the petitioner to join his duties at either of these installations.

15- That contrary to their own offer inviting choice from various empanelled candidates, they rejected the petitioner's choice made in response to their above circular by means of telegram dated 14.2.1983. A true copy of the said telegram dated along with endorsement thereon by post is being filed herewith and marked as Annexure-9 to this petition

16- That from the above it would be clear that the deptt. , on the one hand invited choice stations while on the other, it turned down the choice made by the applicant. However by means of his another application dated 22.2.1983 the petitioner then made a request that if the deptt. was so keen to transfer me, I could be posted at Agra where a vacancy was existing or till that time when any promotion became due, the applicant could be attached at Lucknow RM Office for the time being. A true copy of the said application dated 22.2.1983 is being filed herewith and marked as Annexure-10 to this petition.

17- That in his above application the petitioner clearly stated that the petitioner had no money and was almost starving on account of payment of salary to him what to say of going to Ramgarh and meeting the expense.

in

Inducted

A3
16
A36

- 15 -

of any treatment and family expenses. In this application also however the petitioner assured that as soon as he gets over his illness, he will join at Ramgarh.

18- That the department appeared to be ossi-
obstinately bent on torturing the petitioner. Instead of
referring the petitioner for medical check up and report
to the military hospital, it chose to threaten the
petitioner with disciplinary action and remained adamant
with its insistance for joining at Ramgarh irrespec-
tive of the likelihood if the petitioner dies there. The
department rejected the petitioner's representation dated
22.2.1983 by means of Telegram dated 21.3.1983 and
threatened to take disciplinary action in case the
petitioner did not join Ramgarh. A true copy of the said
telegram dated 21.3.1983 is being filed herewith and
marked as Annexure-11 to this petition.

19- That the apathy of the department towards the
petitioner is further revealed from the fact that the
deptt. did not give any financial advance to the
petitioner even after repeated requests therefor to
perform the transfer journey and it was with great
difficulty that the advance could be given to the
petitioner.

20- That by means of Memorandum dated 20th May
1983 issued under the signatures of Sri B.N. Dhar, Major
General, General Manager, CSD Bombay acting as disciplinary

Indu

2

AS
17
A
39

- 16 -

authority of the petitioner, the petitioner was asked to submit within ten days of receipt of the said memorandum a written statement of his defence against the substance of imputations of misconduct or misbehaviour in respect of which an inquiry was proposed to be held on the basis of statement of articles enclosed with the said memorandum. It was informed that an inquiry will be held only in respect those articles of charge as are not admitted. A true copy of the said memorandum dated 28th May 1983 is being filed herewith and marked as Annexure-12 to this petition.

21- That alongwith the above memorandum statement of articles of charges framed against the petitioner was enclosed a, alongwith the statement of imputations of misconduct in support of each articles of charges and list of documents and witnesses. Article I of the statement related to the alleged disobedience of the orders of the petitioner's superiors in not proceeding on transfer to Ramgarh and failure on the part of the petitioner to maintain devotion to duty. The Article-II related to the alleged unauthorised absence of the petitioner from duty w.e.f. 15.3.1982. A true copy of the statement of articles of charges is being filed herewith and marked as Annexure-13 to this petition.

22- That it may be mentioned here that although charges of disobedience of the orders of superiors and alleged unauthorised absence from duty were levelled

Indra

Q.

A3
18

A
40

-17-

against the petitioner but no mention was made about the leave applications supported by medical certificates submitted by the respondent no.3 was made, while the leave applications were acknowledged by the respondent no.3.

23. That the petitioner submits that he neither disobeyed the orders of his superiors nor was he on unauthorised absence from duty. Both the charges are malicious and have been levelled against the petitioner just to harm and harass him. Numerous representations made by the petitioner with cogent grounds and supported by genuine medical certificates as also the 16th years service career of the petitioner will speak for themselves. The petitioner submits before this court that no Govt. servant could be compelled to join a place of posting against medical advice and at the risk of one's life. If the medical certificate submitted by the petitioner in support of his leave application did not satisfy the officers of the deptt, , they could have well got the petitioner examined through a Govt. doctor, which they did not do, nor did they at any point of time, asked the petitioner to produce a certificate of a government doctor, meaning thereby that they were satisfied with the medical certificates produced by the petitioner in support of his leave applications. They are therefore estopped from charging the petitioner with disobedience of duties. Similarly, the concerned officers are estopped from alleging that the petitioner was on unauthorised absence while they have already acknowledged the leave applications vide Annexure-5.

A2
19
41

-18-

24- That the applicant submitted his detailed reply to the above memorandum, vide his application dated 5.6.1983, denying all the allegations and again enclosing the original medical certificate of his medical practitioner. A true copy of the said application dated 5.6.83 is being filed herewith and marked as Annexure-14 to this application.

25- That the applicant suffered su heavily on account of his poor health condition, acute financial stringencies and other family circumstances and he was shocked to find that the department, instead of considering his reply in a human like manner, arbitrarily subjected the petitioner to disciplinary enquiry having been instituted against him by the Board of administration on the alleged charge of disobedience of the orders passed by superior authorities and the alleged unauthorized absence of from duty.

26- That by means of order dated 9.8.1983 the respondent no.3 in purported exercise of powers under rule 14 of CCA Rules instituted an inquiry against the applicant and appointed Sri S.C. Kapur Manager CBD Depot, Calcutta as inquiry officer to enquire into the charges framed against the petitioner and also appointed Sri K.S. Bhat, Asstt. Manager, CSD Lucknow as Presenting officer.

Q

A3
20

A
12

- 19 -

27- That the applicant represented by means of his application dated 14.9.1983, against the institution of inquiry against him and offered to comply with the transfer orders, as he had recovered from illness. The applicant also submitted a fitness certificate from his attending physician and prayed that necessary TA advance be sanctioned to him for the journey. A true copy of the said application dated 14.9.1983 is being filed herewith and marked as Annexure-15 to this petition.

28- That the applicant joined his duties at Ramgarh on 18.10.1983 and thus obeyed the orders of the superior authorities after having been declared fit to travel and resume duties as per fitness certificate dated 14.9.1983.

29- That the inquiry officer gave his findings in respect of both the charges vide his note dated 13.4.1984. A true copy of the assessment of the case as carried out by the Enquiry officer is being filed herewith and marked as Annexure-16 to this petition.

30- That with regard to the first charge contained in Article I regarding the alleged disobedience of the orders of higher officers in not reporting to CSD Ramgarh the inquiry officer gave the following findings;

"1-Article of charge I could not be proved as Sri J.N.Dwivedi reported at Ramgarh on 18-10-1983 "

2

A3
21

A
43

-20 -

31- That with regard to the second charge contained in Article -II regarding the petitioner's alleged unauthorised absence from duty the Inquiry officer gave the following findings:

"2-Article of Charge-II though has been proved beyond doubt and Sri J.N.Dwivedi has absented with effect from 15.03.1982 to 17 10.1983, but for the reasons beyond his control. His absence has been supported by the Medical certificate sent to H.O. from time to time."

32- That as would appear from both the findings arrived at by the Inquiry officer that the applicant had not committed any disobedience or higher orders nor had he unauthorisedly absented himself from duty. The first charge of disobedience stands nullified by the fact that the petitioner complied with the transfer orders by joining at Ramgarh, though on 18.10.1983, The delay in joining at Ramgarh also stands justified by the medical certificates submitted to the respondents which were accepted and acknowledged by the respondent no.3 The second charge of unauthorised absence also stands clarified by the fact that the petitioner was sick and had to take medical leave and it was beyond the control of the petitioner to attend office or to go to Ramgarh during his absence sickness and as per advice of the medical practitioner, the petitioner could not move out of course the petitioner sent regular applications supported by medical certificates from time to time and the said medical certificates were

Indul

never challenged or objected to by the department. Hence the medical leave taken by the petitioner on the basis of medical certificate cannot be termed to be 'unauthorised' absence from duty."

-21-

33- That although the Inquiry officer had recorded his findings on the basis of the material which was placed before him by the Presenting officer and the petitioner's reply thereto, yet the respondent no.3 was not satisfied with the above findings. With a view therefore to harm and harass the petitioner some how or the other he maliciously passed an order dated 10.5.1984 remitting the case to the same Inquiry officer for further inquiry and report. In the said order dated 10.5.1984 it was stated that:

"the undersigned (General Manager CSD Bombay) considers that the case requires further inquiry on account of procedural errors/lapses in that the provisions under sub rule 19 of Rule 14 of CCS (CO & A) Rules, 1965, were not substantially followed "

34- That sub rule 19 of Rule 14 reads as follows:

"The Inquiry authority may, after the completion of the production of evidence hear the Presenting officer, if any, appointed, and the Govt. servant, or permit them to file written briefs of their respective case, if they so desire.

HS
23

4/4

(A3)
23

A
45

-22-

35- That it has wrongly and incorrectly been stated in the order dated 10.5.1984 as quoted above, that provisions of sub rule (19) of Rule 14 were not followed. Infact the said provision was fully complied with by the Inquiry officer. The Presenting officer submitted a brief to the Inquiry officer who heard the Presenting officer as well as the Petitioner Govt. servant. A true copy of the brief submitted by the presenting officer to the Inquiry officer alongwith the statement of the petitioner made before the Inquiry officer is being filed herewith and marked as annexure-17 to this petition.

36- That it would thus be obvious that neither there were any procedural errors or lapses, nor was there any non compliance of the provisions of any rules committed by the Inquiry officer. It was the sheer malice and prejudice of the General Manager CSD respondent no.3 against the petitioner that the former, just to confuse and complicate issues, unnecessarily referred back the case for further inquiry without specifying the points on which further inquiry was necessary.

36- That the malice and prejudice of the respondent no.3 was further apparent from the facts that on the face of the petitioner having already complied with transfer orders and having joined at Ramgarh and the Inquiry officer having submitted his findings on the basis of the material before him and after hearing the Presenting officer as well as the petitioner It was not at all necessary to remit back the case to the same inquiry officer for further inquiry.

Indulge

Q

A3
24
A
16

-23-

37 That after remitting back the case to the Inquiry officer for further enquiry the petitioner was asked by the Inquiry officer to send his brief for his defence against the charges levelled against him by the Presenting officer. The petitioner submitted his detailed statement of replies explaining the whole position. A true copy of the petitioner's statement by means of his application dated 24.9.1984 is being filed herewith and marked as Annexure-18 to this petition.

38- That after going through the oral and documentary evidence on record and after hearing the parties the enquiry officer submitted his assessment of the evidence Findings and opinion. A true copy of the Assessment of evidence of the inquiry officer is being filed herewith and marked as Annexure-19 to this petition and a true copy of the finding is being filed herewith and marked as Annexure-20 to this petition and a true copy of opinion of the inquiry officer dated 23.3.1985 is being filed herewith and marked as Annexure-21 to this petition.

39- That the observations of the enquiry officer as contained in Annexure, 19, 20, 21 of the petition are as under:

ASSESSMENT Having gone through the evidence record, no new evidence has been produced except the Medical certificates Exhibits 'A' and 'K'

Indicates

Ch

A3
25

A
47

-24-

These certificates had been submitted by the delinquent to the CSD Head office at Bombay in support of his illness. The individual had never been asked to report for Medical Exam. at the M.H. Lucknow or to the authorised medical attendant under the AMA rules, The Medical certificates produced had never been challenged by the department or by the Depot at any stage.

OPINION -The charge of absence though proved are supported by the Medical certificates.

40- That after submission of the report by the enquiry officer the respondent no.3 kept the matter pending for nine months and on 1.6.1985 the General Manager respondent no.3 issued order dated 1.6.1985 dismissing the petitioner from service with immediate effect. The entire period of the petitioner's alleged unauthorised absence was ordered to be treated as leave due and admissible.

41- That in the order of dismissal order aforementioned it has been stated-

"the Inquiry officer after conducting an inquiry has submitted the inquiry reports dated 13.4.84 and 23.3.1985 (copies enclosed) held that Article I of the charge is not proved and Article-II of the charge is proved."

It has further been stated in the said order that-

Indra

pu

A3
26
48

-25-

"the undersigned after careful consideration of both the inquiry reports has not accepted the findings against Article II for the following reasons-

"Shri Dwivedi was relieved from his duties from Lucknowa on 21.4.1982 (AN) with instructions to report at Ramgarh after availing admissible joining time of 12 days vide reference No: LUD/EST/PN-1541/765 dated 21.4.1982 whereas he reported at Ramgarh on 19.10.1983 only. He therefore cannot be said to have obeyed the lawful orders of his superiors."

42- That it may be submitted that in para 3 of the said order it is stated that "findings against Article-II have not been accepted while in para 4 of the same order it is stated that the undersigned has accepted the findings of the Inquiry officer in respect of Article-II

43- That it is further pointed out that Article No. I relates to the charge of disobedience while Article-II relates to the charge of unauthorised absence. The reasons shown for not accepting the findings regarding disobedience relate to Article-I and not to Article-II which appears to be a typographical error in the order. So it is presumed that findings in respect of Article-I have not been accepted.

Inchell

Q

A3
27

8/49

-26-

44- That para 4 of the said order reads as under:

"..... the undersigned has accepted the findings of the then inquiry officer in respect of Article-II and after going through the evidence on record has come to the conclusion that both the Articles of charges are proved beyond doubt and the said Sri J.N.Dwivedi is not a fit person to be retained in service."

45- That both the conclusions drawn in respect of findings on both the articles are erroneous, deliberately misinterpreted and arbitrarily construed in accordance with whims and motives of the respondent no.3 himself, who appears to be bent on putting unnecessary harm and harassment to the petitioner. This is borne out from the fact that-

(i) In none of the impugned orders, mentioned about medical leave taken by the petitioner finds place

(ii) The fact that the petitioner ultimately joined at Ramgarh on 18.10.1983 after having been declared fit by the doctor, does establish that the petitioner never disobeyed the lawful orders of his superiors. The delay however in joining the new place has been fully justified by means of the leave applications and medical certificates which were submitted to the respondent no.3 and were acknowledged by him."

8

A3
28
A
SC

- 27 -

46- That the findings of the Enquiry officer have been interpreted just to suit the whims and prejudices of the disciplinary authority inasmuch as the guilt has not been established against the petitioner. A true copy of the order of dismissal as passed by the General Manager and Chairman, Canteen Stores, Deptt., dated 1.6.1985 is being filed herewith and marked as Annexure-22 to this petition.

47- That the dismissal of the petitioner contrary to the findings of the enquiry officer is arbitrary, unwarranted, illegal and without jurisdiction and establishes the mala fide of the respondent no.3 against the petitioner.

48- That the Inquiry officer did not find the petitioner guilty of any offence or irregularity, yet enquiry was again and again ordered with a pressure on the enquiry officer to report against the petitioner. However every time the enquiry officer came to the same conclusion and could not find a single fault on the part of the petitioner.

49- That although the enquiry officer did not find any guilt on the part of the petitioner the respondent no.3 assumed guilt against the petitioner out of his own accord, and inflicted the punishment of dismissal out of sheer malice and prejudice against the petitioner.

Indra

Q

A2
29

4/5

- 28 -

50- That in the last the enquiry officer has found that the medical certificates have been submitted by the petitioner to the CSD Head office at Bombay in support of his illness. The petitioner was never asked to report for medical examination at the Military Hospital Lucknow or to the authorised medical attendant under the AMA Rules. The medical certificates produced by the petitioner had never been challenged by the deptt. or by the depot at any stage, as such it must be assumed sufficient evidence on behalf of the petitioner.

51- That the allegations of 'disobedience' and unauthorised absence' levelled against the petitioner were fully controverted by the petitioner's joining at Ramgarh on 18.10.1983 in compliance of the transfer orders; and submission of leave applications duly supported by the medical certificates which remained acknowledged by the respondents and stood unchallenged. There was thus no disobedience of the orders of superiors nor was there any unauthorised absence from duty.

52- That while referring the matter for enquiry, and thereafter subjecting the petitioner to punishment, the fact of medical certificates, applications and petitioners representations was conveniently overlooked and only one sided conclusion was drawn against the petitioner.

53- That the enquiry officer has found the absence of the petitioner fully explained and he was satisfied that the petitioner was not on unauthorised leave and as such no

Indu Ch

Q

A3
30

A/57

- 29 -

disciplinary action could be taken against the petitioner.

54- That feeling aggrieved against the dismissal order, the petitioner preferred an appeal under section 22/23 of the Central Services CCA rules 1965 before the Board of Control, Canteen services, Govt. of India, Ministry of Defence-II Block room No. 35 Khruch Road, New Delhi. A true copy of the said appeal is being filed herewith and marked as Annexure-23 to this petition.

55- That no decision whatsoever was communicated by the respondents. The petitioner in these circumstances filed Writ petition in the High court of Judicature at Lucknow bench of this Court being Writ petition No. 5491 of 1985 Jagdish Narain Dwivedi Vs. Union of India and others. However, during the pendency of the said writ petition Central Administrative Tribunal Act, 1985 came into force and application was filed on behalf of the petitioner that the present proceedings may be transferred to the said Central Administrative Tribunal, Allahabad and appropriate order to that effect has been passed.

56- That however in the meantime the petitioner has been communicated the decision of the appellate authority dated 27.5.1987 alongwith covering letter dated 3.7.1987 which was received by the petitioner on 14.7.1987. A true copy of the covering letter alongwith order passed in appeal of the petitioner by the Board of Control of Canteen services is being filed herewith and marked as Annexure-24 to this petition.

A3
21

53

- 30 -

57- That by means of the aforesaid order the appellate committee has been pleased to substitute the order of dismissal from service with an order of reversion to the rank of Lower Division Clerk.

58- That at the very out set it is stated that the ^{was} said order/ passed by the appellate committee without affording any opportunity of hearing to the petitioner and behind the back of the petitioner. It is stated that no notice nor any date was ever communicated to the petitioner for the purposes of hearing the said appeal by the Board of Control, Canteen services. The said order is as such non est being in violation of principles of natural justice.

59- That without prejudice to what has been stated above it is submitted that the said order does not contain any reason and as such the same is manifestly arbitrary and violative of Article 14 and 16 of the Constitution.

60- That it may be stated that the duty to give reasons is incident of judicial process and the appellate authority discharging the quasi judicial function must have given reasons for the decision communicated to the petitioner.

61- That in absence of any reasons having been assigned and in absence of any opportunity of hearing having been afforded to the petitioner the order of Board of control

Inclined

Q

A3
32

A
54

-31-

dated 27.5.87 is liable to be quashed by this Hon'ble Tribunal.

62- That it may also be stated that from the facts stated above in the present petition no charges were made out against the petitioner and consequently there could have no justification for imposing any penalty upon the petitioner.

63- That once the appellate committee has set up set the order of dismissal from service there could be no justification for refusing payment of salary to the petitioner for the period between the date of dismissal to the date of reinstatement. It is ~~be~~ stated that once the appellate committee itself came to the conclusion that ~~once~~ the petitioner was entitled to the benefit of dues there could have been no justification for refusing salary to the petitioner between 15-3.1982 to 17.10.1983.

64- That the effect of the impugned order of the appellate committee would be that the petitioner shall not be paid even single penny between 15.3.1982 to the date of his reinstatement.

65- That for the reasons stated above it is clear that the penalty which has now been imposed upon the applicant is on the face of it too harsh and is not commensurate to the charges levelled against the petitioner

Indelible

A3
33

1/55

-32-

66- That to the utter surprise of the petitioner he received another letter dated 25.8.1987 from the respondents requiring the petitioner to withdraw his petition and to confirm the same by 15.9.1987. It is submitted that the said letter is an interference with the proceedings initiated by the petitioner in the High court and virtually amounts to contempt of court.

67- That there can be no justification for directing the petitioner to withdraw the said petition inasmuch as Constitutional right has been conferred upon the petitioner to challenge the said order under Article 226 of the Constitution of India. A true copy of the order dated 25.8.1987 is being filed herewith and marked as Annexure-25 to this petition. The said letter further establishes unhealthy and arbitrary conduct of the respondents.

68- That having regard to the facts and circumstances of the case it is necessary in the interest of justice that the portion of the order so far as it directs reversion from the post of Upper Division clerk to the post of Lower Division clerk may remain stayed during the pendency of instant writ petition, and the petitioner may be permitted to join as Upper Division Clerk.

69- That the petitioner having no other remedy is filing the present petition before this Hon'ble Tribunal inter-alia on the following grounds:

A3
34
A
56

- 33 -

G R O U N D S

- a/- BECAUSE the order was passed by the appellate committee without affording any opportunity of hearing to the petitioner and behind the back of the petitioner .
- b/- BECAUSE no notice nor any date was every communicated to the petitioner for the purposes of hearing the said appeal by the Board of Control of Canteen services .The said order is non est ,being in violation of principles of natural justice.
- c/- BECAUSE the said order is manifestly arbitrary and violative of Article 14,16 of the Constituti
- d/- BECAUSE in absence of any reason having been assigned and in absence of any opportunity of hearing having been afforded the order of Board of Control dated 27.5.88 is liable tobe quashed.
- e/- BECAUSE no charges were made out against the petitioner and consequently there could have been no justification for imposing any penalty upon him.

Subell

A3
35
A/S

-34-

f/

Because once the appellate committee has up set the order of dismissal from service there could be no justification for refusing payment of salary of the petitioner for the period between the date of dismissal to the date of reinstatement.

g/-

BECAUSE the penalty which has now been imposed upon the petitioner is on the face of it too harsh and is not commensurate to the charges levelled against the petitioner.

h-

BECAUSE the impugned order is bad and illegal.

Dated 9th Sept. 1987

Petitioner through Counsel

(ARUN TANDON)
Counsel for the applicant

35 (A3/36) 58
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Annexure-1

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others Opp. Parties.

...

GOVERNMENT OF INDIA

Ministry of Defence

Canteen Stores Department

'Adolphi' 19 H.K. Road

Bombay - 400 000

Ref. 3/A-2/1209

19 Oct. 81

TRANSFER ORDER No. 155/81

<u>Sl. P. NO.</u>	<u>Name</u>	<u>Desig.</u>	<u>From</u>	<u>To</u>	<u>Remarks</u>
1. 3209	Shri Maya Shankar	LDC	Ramgarh	Lucknow	Tenure completion basis
2. 1541	JN Dwivedi	LDC	Lucknow	Ramgarh	Longest stayee basis

2. Both the above transferees are eligible for all transfer benefits admissible as per rules.

3. Shri N.N. Dwivedi may be relieved latest by 12.12.81 and Shri Maya Shankar on relief only.

Sd. Asstt. Geh. Manager
Administration
C.G. Manerikar

DISTRIBUTION.

1. DGM (P&A)
2. The Manager, CSD Depot, Ramgarh
3. The Manager, CSD Depot, Lucknow, You may engage a daily rated LDC after relieving Shri JN Dwivedi for Ramgarh if necessary till reporting of Shri Maya Shankar.
4. Shri Maya Shankar (Through the concerned
5. Shri JN Dwivedi (depot Manager)
6. Sub Groups 3/A-1/A-7/B-6/B-7.

True copy

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Annexure- 2

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others Opp. Parties.

...

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

Canteen Stores Department

' ADELPHI ' M.E. Road,

Bombay - 400 020

To,

The Chairman

Board of Administration.

CSD Bombay

Through proper channel

Respected Sir,

Sub: Transfer Order No. 155/81 dated 19.10.81

In respect to your letter under reference, due to odd and miserable crux and predicament circumstances enumerated as under, I am not in position to move to Ram Garh.

1. A court case under Cr. PC 145 is going on in the Hon'ble Court of Sub Divisional Magistrate Lucknow bench which is quite in progress now. In the event of posting me to Ram Garh it would be very difficult rather impossible to present myself on each and every hearing fixed by the above Hon'ble court to get the justice

A3
57

36

8/9

Jagdish

A3
38

37
10

-2-

in the said case. The long distance and meagre pay will be also major obstacles to come and attend the Hon'ble court on different hearing dated, besides moving to a fro for the purpose would be a time consuming factor which on one hand ruin me physically, mentally and monetary and on the other hand also hamper my sincerity devotion and adoration to duties towards the official works.

2. My wife has got mental depression due to untimely sudden death of my younger son and she is becoming weak by day. Resultantly she has become the patient of Neuratic and Female disceases. I have had consulted to so many reputed Doctors, Vaidyas and Hakims etc. Since she has gone under the treatment of Depart of Obsetrics and Gynaecology, King George's MEDICAL COLLEGE, LUCKNOW. There is slight improvement in her condition. Timely checking constant medical treatment and her lookafter is very essential. At this stage if I ~~have~~ leave her alone along with two small childrens aged 4 years and 9 years, respectively, it is quite sure that neither I would be in position to afford expendes of her treatment nor proper care of my two growing small childrens. It would be jeopardise for her critical condition as well as to my small childrens fate. In the event of my transfer, with such a meagre pay after deduction approimate Rs.400/- which I am getting will be imposse for two establishments in such hard days.

3. My father who died of a heart attach leaving behind two marriageable sisters and old mother.

Indale

A3
39

38

8/1

-3-

I being elder member of the family I am duty bound to cope the responsibilities which are fallen on me. I would however arrange the marriage of only one sister till now. For my younger sister who is 24 years of age I am making best efforts for suitable match. In this connection I had already requested you for G.P.F. loan and cooperative loan etc. for every purposes as it is inevitable and can not be post poned. In case of my transfer to out station the entire planning of my sister's marriage will come to end for no fault of either mine or her own.

All the aforesaid reasons and multifarious condition I petition and pray that the impending T/ order may kindly be cancelled.

Every pluse best bring a way of life, with this hope under your circular No. 3/A.2/ 1203/5084 dated 20.10.81 for the ~~xx~~ vacancies of U.D.C. post I had earnestely requested your honour to post me R M(C) office Lucknow and my application was forwarded to you under LUD/Est/ 288/5497 dated 2.11.81. Sir, I once again request you with folded hand to consider sympathetically my genuine request and save me from any further eventualities.

Hoping to be considered favourably.

For this act of kindness I shall ever be grateful.

With sanguine hope.

Yours faithfully,

Sd. Jagdish Narain Dwivedi

P. 1541 LDC

Encl As under (Five) CSD Depot Lucknow.

Final

A3
40

39

A
L2

-4-

dated 12.11.81

1. Copy of police challan dt. 24.5.77 under
145 Cr.P.C.
2. Copy of order sheet in the court of Add.Sub.
Divisional Magistrate, Lucknow Bench.
3. Medical Certificate of department of obsetrics
and Gynaecology, King George Medical College,
Lucknow.
4. Treatment Advice card of Queen Merry Hospital,
LKO.
5. Medical Treatment and advice card for further
treatment Dr. H.C.Rastogi, M.B.B.S. Lucknow.

A.T.e.

...

True copy

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Annexure- 3

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others Opp. Parties.

....

GOVERNMENT OF INDIA

Ministry of Defence

Canteen Stores Department

' ADELPHI ' 19 M.K. Road

BOMBAY - 400 020

Head Office

The Manager

Admn. Branch

C S D Depot.

BOMBAY

LUCKNOW

3/A-2/ PN-1541/1565

19 March 82

TRANSFER

Reference your letter No .LUD/EST/PN-1541/3650 dated 13.11.81 forwarding a representation dated 12.11.81 from PN-1541 Shri J.N. Dwivedi, LDC (O).

2. The request of Shri J.N. Dwivedi, L.D.C. for cancellation of his transfer from Lucknow to Ramgarh ordered vide Transfer order No. 155/ 81 dated 19 Oct. 81 has been duly examined by the competent authority and not acceded to. Please, therefore ensure that

A3
41

40

43

Indeev

41

(A3/42)

A/41

-2-

the individual is struck off the strength of your Depot immediately on receipt of this letter with instructions to report to Ramgarh Depot without any further delay, notwithstanding any further representation the individual may choose to make and confirm action under advice to all concerned.

3. A copy of this letter which is endorsed to Shri J.N. Dwivedi may please be handed over to the individual against his signature and confirm having done so in due course.

J. Dwivedi

Sd. Asstt. General Manager

(Administration)

(C.G. MANERIKAR)

C.C. The Manager, C.S.D. Depot, Ramgarh

CC Shri J.N. Dwivedi (Through the Depot Manager)

C.C. File 3/A-2/1209.

A.T.C.

.. J

True copy

42 (A3/43) 15
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Annexure- 4

In

Writ Petition No. of 1987
Jagdish Narain Dwivedi Petitioner
Versus
Union of India and others Opp. Parties.

....

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

CANTEEN STORES DEPARTMENT

' ADELPHI ' 19 M.K. Road,

Bombay - 400 020

The Chairman

CSD Board of Administration

' ADELPHI ' Bombay

Sir,

Sub: Transfer order No. 155/ 81 dt. 19.10.81

my representation for retention at Lucknow
Depot/ alternative request for transfer to
RM(C) Lucknow as I am due for promotion to
UDC vide penal for UDC bearing No. 3/A-2/
1203/ 182 dated 12th Jan. 1982.

1. My transfer to Ramgarh cantt. has been ordered
vide transfer order No. 155/ 81 dated 19.10.81.
2. Being aggrieved by these orders I made
representation for cancellation of transfer
which was forwarded to you vide L.K.O Depot letter

No. LUD/Est./PN 1541 dated 13.11.81. The representation is self explanatory with documentary proves in support of the grounds for my stay has been enclosed with that.

3. That my litigation under 145 Cr.P.C. ailment of my wife, supervisory responsibilities of my family and marriage arrangement of my younger sister in the above representation. I had also stated the financial burden and difficulties that I shall have to undergo with the two establishment at lucknow and Ramgarh. Now and then my monthly income shall also be reduced by about 75/- p.m. and after that I will get salary about Rs. 320/- p.m. only after C.R.F. and coop. loan deduction. Sir, you, can well imagine that how can I be able to face the pititable situation and prevailing circumstances.

4. On the above above mulifarious condition I have had become a low blood pressure patient and thus my circumstances compelled me to request your honour, if you have over look my grievances my family as well as myself will be ruined.

5. As a loyal Employee of the department and obedient to my superiors I never think to defy the order of my transfer but earnestly request you to have lenient view and sympathetic consideration on my predicament circumstances.

In the event of request for absorb me in the RM(C) Lucknow as UDC with promotion

A3
44

A
60

43

Indeck

can not accede to, you may please post me in
RM(C) Lucknow as LDC for which I shall make no
claim. In this way I shall be able to face the
above pitiable situations.

In view of above and other relevant problems
explained by me kindly issue your revised order
as per my genuine/ humble request.

For this act of kindness I shall be ever
grateful to you.

10.4.1982

Yours faithfully.

Sd. Jagdish Narain Dwivedi

PN 1541 LDC

CSD Depot Lucknow

CC: The Manager, CSD Depot, Lucknow

CC: The Secretary, Ministry of Defence, Govt.
of India, New Delhi.

...
True copy

45
A3
46
A/88

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Annexure- 5

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner.

Versus

Union of India and others Opp. Parties.

....

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

CANTEEN STORES DEPARTMENT

' ADELPHI ' 119 M.K. Road

Bombay . 400 020

Registered.A.D.

LUD/MGPF/ 878

21.4. 1982

Confidential

PN 1541 Shri J.N. Dwivedi, LDC

S/o Pt. Bhagwati Prasad Vaidya

Pill Kothi, Saadat Ganj

Lucknow

Sub: UNAUTHORISED ABSENCE FROM DUTY

You are absent from duty since 15th March 82 till date without any prior sanction.

2. You have been sending your applications

46 (A3/47) 65

for leave stating therein about your unanoyance, fever and ill health through Shri R.C.sharma, who is looking after at present the Establishment Section, with your assurance to him that you will join your duty very shortly. Up till now you have sent 4 applications i.e. from 15th to 16th^M March 82, 17th to 20th. Mar. 82, 21st. to 30th. Mar. 82 and 4.4.82 to 16.4.82.

3. While going through your applications for the above period we find that you have not intimated about your absence from 1st. to 3rd. April 82 and also you have not mentioned any thing about your absence from 16th. April onwards.

4. For your so called sickness neither you have submitted any medical evidence in support of your absence nor you have bothered to get your self examined at Local Military hospital where you are fully entitled.

5. Under the circumstances, the period of your abosence from 15th March 82 to till date will be treated as unauthorised absence. You, are, therefore, directed to explain for your unauthorised absence directly to Manager CSD Depot., Ramgarh as you are struck off from the strength of this depot w.e.f. 21.4.82 (A.N) to report yourself to CSD Depot Ramgarh by 4th May 82 or earlier.

6. A copy of Head office letter No. 3/A-2/ PN 1541/1665 dated 19.3.82 is enclosed herewith for your compliance.

Indell

47
A3
48

7/10

-3-

7. This letter will be acknowledged.

Sd. Manager
Canteen Stores Department
N.B. Singh

Encl: 1

N 00:

Index
C.C. HO Sec. 3, CSD Bombay .. in compliance of
your letter No. 3/A-PN 1541 / 1565 dated 19th
March 82 (For Personal atten. AGM (A)

CC: H.O Sec. 6

CC: RM (C) Lucknow for information and necessary
guidance in the matter.

.... A.T.C.
Q

True copy

[Signature]

48
A3
49

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Annexure -6

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others... .. Opp. Parties.

w.p.t.c. 250 padas 100's (073) 6/82 CSF 16

CANTEEN STORES DEPARTMENT

Station Lucknow

Ref. No. LUD/EST/PN-1541/865 Date 21.4.1982

To

1541 Shri J.N. Dewivedi,

N. L.D.C. CSF Depot Lucknow

MOVEMENT ORDER ON TRANSFER

In accordance with Head Office Transfer order No. 155/81 dated 19.10.81 and HO No. 3/A-2/PN-1541/1566 dated 19 March. 82 you are/ will be relieved of your duties w.e.f. 21.04.82 (A N) with instruction to report to Manager, GSD Depot, Ram garh on 4th. May 82 after availing x days leave and 12 days joining time .
2. Particulars of leave remaining to your credit as on the date of relieving are given below:-

(a) EL 19 days (b) 32 days (c) SL. days
(d) CL days (e) restricted Holidays day

A3
50

49

4
72

.2.

3. (A)

(b) You are eligible for transfer benefits as per rules.

(NB* Strike out whichever is not applicable)

Signature

** Leave other than cause leave Name(N.B.SINGH)

should be sanctioned

Designation: Manager.

DISTRIBUTION:

1. CSD: HO Admn Branch (3A)
2. CSD, H.O. Accounts Branch (6D)
3. CSD Depot Ramgarh.
- H.O. Branch
4. Personal file

The individual's personal file and L.P.C. are enclosed

will follow.

A.T. e

Q

Index

50 (AS/51)
A/73
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Annexure. 7

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union Of India and Others Opp. Parties.

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

CANTEEN STORES DEPARTMENT

'ADELPHI '119 M.K. ROAD,

BOMBAY- 400020

To ,

Maj- Gen. K.C. Mehra

Chairman, Board of Administration,

Canteen Stores Department,

Bombay -20

Respected Sir,

Sub: Transfer

Ref: Your Transfer order No. 3/A-2/PN-1541/1565
dt. 19.3.83 and my representation dt. 12.11.81 and my
further representation No. Nil dt. 10.4.82.

Most humbly and respectfully I beg to
state that under your above transfer order NO. I was
relieved very sharp whereas I further had represented
my genuine case to you under Registered 609 dt. 17.4.82.

Incise

51 (A3/52) 7/4

.2.

In this regard your favour action is still awaited.

I have worked under you about 16 years with great loyalty, but circumstances prevailed me to represent my case for your kind consideration.

I was very much shocked to received the above Transfer order ignoring my genuine facts. When I look my family circumstances as well as court case under which I can be warranted on account of absence on the requirite dates.

My wife's health as well as my ill health and the family Eco- circumstances do not permit to move to Ramgarh at present.

By your above transfer order and my surrounding circumstances I am on the road without any job/ Salary from May 82.

With the above cru/Pititable circumstances and mental fructation I could not inform earlier you for that I am very very sorry .

I once again request you with folded hands to consider my whole jenuine request and save me from any further evantualities.

The medical certificates regarding leave will follow very soon.

Thanking you.

Your's Faithfully
Sd/(Jagdish Narain Dwi

ved1
Pili Kothi, Saadt ganj
Bara Chauraha,
Lucknow.

Date. 26.8.82.

A.T.C.
True copy

52 (A3/53) 4/75
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Annexure. 8

In

Writ petition No. of 1987

Jagdish Narain Dwivedi Petitioner.

Versus

Union Of India and Others..... .. Opp. Parties

....

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

CANTEEN STORES DEPARTMENT

ADEOPHI 119 M.K. Road

BOMBAY- 400 020

To,

Maj. General K.C. Mehra

Chairman, Board of Administration

Canteen Stores Department

Bombay-20

Respected sir,

Subject : TRANSFER

Reference your transfer order No. 3/A-2/PN-1541/ 1565 dated 19.3.82 and my representation dated 12.11.81 and my further representation nil dated 10.4.82 and a mercy appeal representation dated 26.8.82.

(1) Your reply is still awaited.

(2) Please find medical certificate regarding my

53 (A3/54) A 7/10
.2.

absence from duty from 4.4.82 to 15.9.82.

(3) By Your above order and my surrounding circumstances I am on the road without any job/ Salary from May '82'

(4) On the impact of it I am mentally and physically perturbed and economic condition is so worsen and the whole family is facing starvation.

(5) Sir, If my appeals are unaccounted and your ignore my genuine request and remain adamant on your above order, I am ready to move Ramgarh Cantt. leaving my ill wife and two small school going children. Firstly on the mercy of God and secondly on the mercy of you.

(6) Sir, I have got no signe money to meet my family requirments at here as well as to join Ramgarh cantt.

Please consider my request and send me financial assistance at this juncture.

For this act of kindness I shall ever be grateful.

Yours Faithfully

Sd/- (Jagdish Narain Dwivedi)

Encl. 7 (Seven)

PN-1541 LDC

Date : 15.10.82

Pili Kothi, Saadatganj Bara
Chauraha, Lucknow.

cc: Manager Canteen Stores Department P.D.

Karai, Area.

Ramgarh Cantt. for information please.

A.T.C.
Q

54

(A3/55)

A/17

BEFORE CENTRAL ADMINISTRATION TRIBUNAL, Allahabad.

Annexure. 9

In

Writ Petition No.

of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and Others Opp. parties.

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

CANTEEN STORES DEPARTMENT

'ADSLPHI' 119 M.K. ROAD,

BOMBAY- 400 020

TELEGRAM

JAGDISH NARAIN DWIVEDI

PILI KOTHI

SAADATGANJ

BARA CHAURAHA

LUCKNOW

REFY OURLET EIGHTEENTH DECEMBER EIGHTYTWO(.) YOUR
REQUEST FOR REJOINING LUCKNOW DEPOT OR (CENTRAL) OFFICE
AS LDC/UDC REJECTED BY COMPETENT AUTHORITY ACTION
FOR UNAUTHORISED ABSENCE

CANSIND

Sd/-
Asstt. General Manager
(Administration)
(R.K. PRASAD)

55 (A2/56)
A/78
.2.

Ref: No. 3/A-2/PN -1541/857

Date: 14 Feb. 83

Confirmatory copy by post to:

Shri Jagdish Narain Dwivedi

(PN-1541 LDC, CSD)

Pili Kothi Saadat Ganj

Bara Chauraha Lucknow.

The above telegram was sent to you today in reference to your representation dated 18.12.82. Your request for adjusting you in a vacancy of LDC/UDC either at Lucknow depot or office RM(Central) Lucknow and to allow you to rejoin duty at either of these installations has been examined by the competent authority and rejected, As such, vide your above telegraph you were asked to report to Ramgarh Depot forthwith. Your failure to report to Ramgarh Depot latest by 24th. Feb. 83 will entail disciplinary action treating your absence from 4.5.82 on which date you were to report at Ramgarh Depot as per Lucknow depot Movement order on transfer bearing reference No. LUD/EST/PN-1541/865 dated 21.4.82, as unauthorised. Though choice stations for promotion as UDC were called for/ received from empanelled candidates including you, promotions to the posts of UDC published vide Appendix 'C' to circular NO.3 AGM(A)/1109/5050 dated 13th. October 82 is under review. As such, your promotion on posting to your choice stations like other empaneled candidates can be ordered only after necessary amendments to the above panel are made which may take some time.

Indra

56

A3
51A
79

.3.

Your lapse in not reporting to Ramgarh Depot under some pretext or other after relieving you from Lucknow Depot on 21.4.82 (AN) as per Transfer order NO. 155/81 dated 19 Oct. 81 vide which you were transferred to Ramgarh on longest stay basis to accommodate a tenure completion case in considering as serious which may be noted. The receipt of the above telegram and this confirmation copy should be acknowledged.

cc. The Manager CSD Depot Ramgarh

cc. The Manager, (Group B) for necessary follow-up action.

A-7-e
True Copy

57
A3/58
50
BEFORE CENTRAL ADMINISTRATION TRIBUNAL, ALLAHABAD.

Annexure. 10

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner.

Versus

Union Of India and Others Opp. Parties.

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

CANTEEN STORES DEPARTMENT

'ADELPHI' 119 M.L. ROAD

BOMBAY-400020

To,

The Chairman,

Board of Administration

Canteen Stores Department,

Bombay-20

Respected Sir,

Subject: Transfer/ Regular permotion to
next higher post

Reference your telegram dated 14th February
1983 and your letter No. 3/A-2/PN-1541/1456 dated 25th.
November 82 and your circular NO. 3/A-2/1203/5256 dated
26th. Oct. 1982 and my responding letter No. nil dated
18.12.82.

Enclosed

58

AS
54

8/

.2.

Respectfully I beg to state that under my application dated 15.12.1982 I had submitted/ given my choice for Agra for next promotion as you asked me through your above circular/letter.

I am unable to understand regarding two types of policies of transfer/ choice station. An employee who met you directly at Bombay the case is considered either by his choice or charge station, but I have no via media to express my difficulties except through the letters/ representation etc. So I am not given any sympathetic consideration whereas I am reallysurrendering by walk of life due to responsibilities and ill health.

In this regards I had submitted to you my medical certificate alongwith the application dated 15.10.82. Now please find my medical certificate from 16.2.82 to 22.2.1983.

On the multifarious condition as explained in so many application/ representations, by lack of money I have had got mental ~~anxiety~~ depression and have become a low blood pressure patient. Sir I am still running under the treatment of Doctor.

Sir if you have thought regarding my pitiable conditions you can well realise that I am not pretending to join Ramgarh Cantt. As a loyal employee of the department and obedient to my superiors I am never think to defy your orders to join Ramgarh. but earnestly request you to have lenient view and sympathetic consideration on my predicament circumstances.

Indira

59
A3/60
8/2

.3.

Sir, you are well assure when I ever come from my deteriorating health I will join to Ramgarh cantt.

Sir, due to non availability of the salaries since long I have got not even a single money to continue my treatment as well as to look after my ill wife and two small children.

Sir, if you feel it is correct please accommodate me at Agra for next permotion or give temporary attachment at Lucknow depot for the chance of recouping ill health.

For this act of knndness I shall ever be grateful.

Yours Faithfully

Dated: 22.2.1983

Si/-

Encl. One Medical certificate (Jagdish Narain Dwivedi)
in original

PN-1541 Pili Kothi

(Bara Chaurasia, Saadatganj
Lucknow.

cc: The Manager CSD Depot ,Ramgarh,Cantt.

Lucknow/ Dated

A.T.e

Q

60 (A3/6) 8/3
BEFORE CENTRAL ADMINISTRATION TRIBUNAL, ALLAHABAD.

Annexure. 11

In
Writ petition No. of 1987
Jagdish Prasad Dwivedi Petitioner
Versus
Union of India and Others Opp. Parties

GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
CANTEN STORES DEPARTMENT
'ADELPHI' 119 M.K. ROAD
Bombay- 400020

TELEGRAM

JAGDISH NARAIN DWIVEDI
PILI KOTHI
SAADATGANJ
BARA CHAURAHA
LUCKNOW

RE FYOUR REPRESENTATION TWENTYSECOND FEBRUARY (2)
YOUR REQUEST FOR PROMOTION AS UDC AT AGRA REJECTED
BY COMPETENT AUTHORITY(.) YOU ARE BEING PROMOTED AT
RAMGARH IN EXISTING VACANCY(.) REPORT RAMGARH
FORTHWITH(.) FAILURE WILL ENTAIL DISCIPLINARY ACTION
FOR UNAUTHORISED ABSENCE.

CANSIND

6/ A3
64
61
62
.2.

Sd/-

(R.K. Prasad)

Asst. General Manager

(Administration)

Ref. 3/A-2/PN-1541/1775

Date : 21 March 83

Confirmatory copy by post to :

Shri Jagdish Narain Dwivedi

(PN-1541, LDC, CSD)

Pili Kothi, Saddatganj,

Bara Chauhraha, Lucknow.

The above telegram was sent to you in ~~reference~~ reference to your representation dated 22.2.83. Your request for your permotion as UDC on posting to Agra which is your choice station for promotion and to cancel your transfer to Ramgarh has been carefully considered by the competent authority and rejected, As per the decision of the competent authority you are being promoted in an existing vacancy of UDC Ramgarh. The above decisions have already been conveyed to you through our above telegram. As such , as already advised vide our telegram and its confirmatory copy bearing reference No. 3/A-2/PN-1541/857 both dated 14.2.83, you should report to Ramgarh dept without any further delay. If you fail to report there latest 4.4.83 disciplinary action for unauthorised absence from 4.5.82 will be initiated against you. The receipt of the above telegram and this confirmatory copy should be acknowledged.

Indra

62 (A3/63)
A
85
3.

cc: The Manager CSD D post Ramgarh : Telegraphic
advice may be sent regarding reporting otherwise
of shri Dwivedi 4.4.83

cc: The Manager (Group B) Adm. Branch your copy of
telegram confirmatory letter bearing reference No.
3/A-2/PN-1541/857 dated 14.2.83 refers.

A.T.C.

True copy



63 (13/64)
R
16

BEFORE CENTRAL ADMINISTRATION TRIBUNAL, ALLAHABAD.

Annexure. 12

In

Writ petition No. of 1987

Jagdish ~~Karnad~~ Narain Dwivedi Petitioner

Versus

Union of India and Others Opp. Parties.

CANTEEN STORES DEPARTMENT

'ADELPHI' 119 M.E. Road,

BOMBAY- 400 020

Ref.No. 3/A-3/PM-1541/ (603) / 534 dated 28 May 1983

/ CONFIDENTIAL /

28 May

Memorandum

CONFIDENTIAL

The undersigned proposes to hold an inquiry against shri Jagdish Narain Dwivedi L.D.C. C.S.D. Depot, RAMGARH under Rule 14 of the Central Civil services (Classification, control and appeal) rules 1965 made applicable to CSD employees vide service order No. 24/66. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of Articles of charges (Annexure-1). A statement of the

Indu

64 (A3/65) 87

.2.

the imputation of misconduct or misbehavior in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV).

2. Shri Jagdish Narain Dwivedi, is directed to submit within 10 days of receipt of this memorandum written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted, he shall, therefore, specifically admit or deny each article of charge.

4. Shri Jagdish Narain Dwivedi is further informed that if he does not submit his written statement of defence, on or before the date specified in para 2 above or does not ~~any other date specified~~ ~~in para 2 above or does not~~ appear in person before the inquiring authority or otherwise fails or refuses to apply with the provisions of Rule 14 of the CCS (CCA) Rules 1965 or the orders/ directions issued in pursuance of the said Rule the inquiry authority may hold the inquiry against him *ex parte*.

5. Attention of Shri Jagdish Narain Dwivedi is invited to Rule 20 of the Central Civil Services (Conduct) Rules 1964, made applicable to CSD employees vide service order No. 22/66, under which no CSD employee shall bring or attempt to bring any political or outside

Indust

65. (A7/6)
88

.3.

influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the CSD, if any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri Jagdish Narain Dwivedi is aware of such representation and that it has made at his instance and action will be taken against him for violating of Rule 20 of CCS (Conduct) Rules, 1964, as applied to employees of CSD vide service order No. 22/66 .

6. The receipt of the memorandum is to be acknowledged.

Sd.

(B.N. Dhar)
Major General
General Manager
Canteen Stores Department
Disciplinary Authority.

Encl. 13

To

PN- 1541- Shri Jagdish Narain Dwivedi
Pili Kothi, Sadar Ganj.
Bara hauraha, Lucknow . OW A.T.C. Registered A.D.

2
—
g
—
—

66 (A2/67) 89
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Annexure. 13

In

Writ Petition No. Of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union Of India and OthersOpp. Parties.

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

CANTEEN STORES DEPARTMENT

ADELPI 119 M.K. Road

Bombay- 400020

CONFIDENTIAL

ANNEXURE TO MEMOREANDUM NO. 3/A- 3/ PN-1541/ (603)/534
dated 28 May 1983

ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST PN-
1541
SHRI JAGDISH NARAIN DWIVEDI U.D.C. CSD DEPOT, RAMGARH

ARTICLE -I

That the said shro J.N. Dwivedi, while function
ing as an LDC at CSD, Lucknow disobeyed the lawful
orders of his superior officers in that he failed to
report at CSD Depot, Ramgarh on transfer as ordered.

That the said shri J.N. Dwivedi, by his
above act failed to maintain devotion to duty which

[Signature]

67 (13/68)
A/90

.2.

exhibited conduct unbecoming of a Government servant thereby violating rule 3 of CCS (Conduct) Rules 1964.

ARTICLE-II

That the said shri J.N. Dwivedi, While functioning as an LDC at CSD, Lucknow has remained unauthorisedly absent from duty w.e.f. 15.3.1982 onwards.

That the said shri J.N. Dwivedi, by his above act did not maintain devotion to duty which exhibited conduct unbecoming of a government servant thereby violating rule 3 of CCS (Conduct) Rules, 1964.

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST PN-1541 SHRI JAGDISH NARAIN DWIVEDI UDC CSD DEPOT, RAMGARH

ARTICLE -I

That the said shri J.N. Dwivedi while functioning as an LDC at CSD Depot. Lucknow was transferred to Ramgarh on longest stay basis vide order No.155/81 dated 19.10.1981 no was relieved of his duties on 21.04.1982 (AN) vide movement under No. LUD/CST/PN-1541 865 dated 21.04.1982 and advised to report to Ramgarh on 04.05.1982 after availing permissible joining time.

That the said shri J.N. Dwivedi had submitted the following representations for department/ cancellation of the above transfer order.

- (a) Representation dated 12.11.1981 requesting for the cancellation of transfer order

Indira

68

A3
69

A
91

.3.

on compassionate grounds.

(b) Representation dated 10.04.1982 addressed directly to General Manager and copy to BOCCs for promotion at Lucknow only or absorbing at RM(C) 's office as LDC.

(c) Mercy appeal dated 26.08.1982 to general Manager by name and copy to Board of control regarding financial grievances.

(d) Representation dated 12.02.1983 acknowledging the HO Adm. Telegram dated 14.2.1983 and requesting again for attachment at RM(C) 's office or posting at Agra.

That all the above mentioned representations were duly examined by the competent authorities and rejected. Further he was directed to report to Ramgarh without any delay and also advised that failure to do so will attract disciplinary proceedings against him. This position was conveyed to him from time to time through the following communications:-

a) HO Admn. Branch letter No. 1/A-2/PN 1541/ 1565 dated 19.03.1982.

b) letter No. BOCCS/00230/o/CAN dated 15.09.1982 directing the said shri

J.N.Dwivedi to obey the orders of superiors and report to Ramgarh or face the disciplinary action.

c) Admn. Branch letter No. 3/A-2/PN -1541,

69 (13/10)
4.

5984 dated 29.11.1982.

d) Confirmatory copy of telegram dated 14.02.1983 bearing reference No. 3/A-2/PN 1541 dated 14.02.1983

e) Confirmatory copy of telegram bearing reference No. 3/A-2/ PN- 1541/ 1775 dated 21.03.1983 from HO Admn. Branch.

That inspite of the instructions given vide above mentioned communications the said shri J.N.Dwivedi did not report to Ramgarh till date.

Thus the said shro J.N. Dwivedi did not comply with the orders of his superiors in that failed to report at his new station of posting thereby committing an act unbecoming of a Government servant.

ARTICLE-II

That the said shri J.N. Dwivedi while functioning as an LDC at CSD Depot, Lucknow was transferred to Ramgarh vide transfer order No. 155/ 81 dated 19.10.1981. The said shri J.N. Dwivedi however requested for deferment cancellation of his transfer of extreme compassionate grounds vide his representations dated 12.11.1981. But the said representation was rejected and he was instructed to report to Ramgarh without any delay vide Admn. Branch letter No. 3/A-2/ PN-1541/ 1565 dated 19.03.1982.

That the said shri J.N. Dwivedi instead of reporting at his new station of posting remained unauthorisedly absent w.e.f. 15.03.1982. therefore, he was directed to explain for his unauthorised absence and also intimating him that absence is being treated as unauthorised vide

70 (A3/11)
A/B
.5.

Lucknow Depot's Registered letter No. LUD/MGPF/dated 21.04.1982 . But the said shri J.N. Dwivedi neither acknowledge the said letter nor submitted explanation and continued to remain absent unauthorisedly.

Thus said shri J.N. Dwivedi , despite ample opportunities given to him remained unauthorisedly absent from duty w.e.f 15.3.1982 till date , thereby committing an act unbecoming of a government servant.

ANNEXURE-III

List of documents by WHICH THE ARTICLES OF CHARGE FRAMED AGAINST PN *22* SHRI JAGDISH NARAIN DWIVEDI UDC CSD DEPOT RAMGARH ARE PROPOSED TO BE SUSTAINED.

- 1) Transfer order No. 155/81 dated 19.10.1981
- 2) Representation dated 12.11.1981 of shri J.N. Dwivedi
- 3) Admn. Branch letter No. 3/A-2/PN-1541/ 1565 dated 12.03.1982.
- 4) Representation dated 10.04.1982 of shri j.n.Dwivedi.
- 5) Letter No. LUD/ HGPH/878 dated 21.4.1982 of Manager, Lucknow depot.
- 6) Movement order No. LUD/EST/PN-1541/465 dated 21.4.1982.
- 7) Representation dated 26.8.1982 shri J.N.Dwivedi.
- 8) Board of Control's letter No. BOCCS/00230/Q/CAN dated 15.05.1982.
- 9) Admn. Branch letter No. 3/A-2/PN-1541/ 6984 dated 29.11.82.
- 10) Representation dated 22.02.1983 of shri J.N.Dwivedi
- 11) Confirmatory copy of telegram bearing reference No. 3/A-2/PN-1541/ 857 dated 14-02.1983
12. Confirmatory copy of telegram bearing reference No.

71 (A3/72)
A/94

.6.

3/A-2/PN-1541/1775 dated 21.03.1983.

ANNEXURE-IV.

Files
LIST OF WITNESSES. BY WHOM THE ARTICLES OF CHARGE FRAMED
AGAINST PN-1541 SHRI JAGDISH N DWIVEDI, UDC, CSD DEPOT
RAMGARH ARE PROPOSED TO BK SUSTAINED.

1. The Manager CSD Depot, Lucknow.

Signature

72 (A3/73)
A/95

GOVERNMENT OF INDIA, MINISTRY OF DEFENCE
canteen stores department

' adelphi ' 119 M.E Road
Bombay - 4000020

Ref; 3/A-2/1209/ 19 Oct. 81

TRANSFER ORDER NO. 155/81

Sr. No.	NP No.	Name	Desig.	From	to	Remarks
---------	--------	------	--------	------	----	---------

- | | | | | | | |
|----|------|-------------------|-----|---------|---------|-------------------------|
| 1. | 3209 | Shri Maya shanker | LDC | Ramgarh | Lucknow | Tenure completion basis |
| 2. | 1541 | "N JN Dwivedi | LDC | Lucknow | Ramgarh | Longest stayee basis |

2. Boath the above transferees are eligible for all transfer benefits admissibile as per rules.
3. Shri JN Dwivedi may be relieved latest by 12.12.81 and Shri Maya Shankar on relief only.

Sd. Asstt. Gen. Manager
Administration
C.G. Manerikar

DISTRIBUTION

1. D.G.M (P & A)
2. The Manager CSD Depot, Ramgarh
3. The Manager, CSD Depot Lucknow. You may engage a daily rated LDC after relieving Shri JN Dwivedi for Ramgarh, if necessary till reporting of Shri Maya shanker
4. Shri Maya Shanker) (through the concerned depot
5. Shri JN Dwivedi) Manager)
6. Sub-Groups 3/A-1/A-7/B-6/B-7

True copy

A.T.C

[Signature]

73

A3
74

A
96

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Annexure- 14

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi ... Petitioner

Versus

Union of India and others ... Opp. Parties.

....

To

Major General B.N. Dhar,
General Manager
Canteen Stores Department
Bombay- 20

Respected Sir,

Sub: MEMORANDUM

Ref. Your letter No. 3/A-/PN-1541/(603)/534
at. 28.5.83

In the regard of your Annexures -II, III & IV
and Article 1 & II, most humbly and respectfully
I beg to state that the charges which are framed
against me are incorrect.

Hon. Sir, If you go through my all representations/
applications etc. You will see, I never denied nor
said that I will not join/ report to Ramgarh cantt.
except appealing to you for considering.

Sir, your transfer order No. 3/A-2/PN-1541/1565
dated 19 March 82 had come to Lucknow Depot after

74 (13/15) A/97

the said date, whereas at that time I was on leave from 15.3.82 the applications for sickness were sent to Lucknow Depot from 15.3.82 to 15.4.82. It is also stated Lucknow Depot Manager in para 2 of letter No. LUD/MGMP /878 dated 21.4.82.

Sir, when I was confined on bed due to sickness the relieving letter was despatched to me on my home address. That time my condition was so critical due to low blood pressure and no attention was paid regarding my illness. Even no way was made to provide me TA/DA for next court of action and was thrown me on the road. Then the only alternative was left to me to request you, Hon.Sir so I have had submitted medical certificate from 4.4.82 to 15.9.82 alongwith the application dated 15.10.82 and from 16.9.82 to 22.2.83 alongwith the application dated 22.2.83 and it were acknowledged by you also.

On my application dated 22.2.83 I have also stated in vide para 8 that after recovery I will join/report to Ramgarh Cantt. immediately but ill lack of mine due to non-availability of any financial assistance from any side I could not take proper care. The impact of it I again suffered and become a low blood pressure and mental depression patient. so please find Medical certificate regarding my sickness from 23.2.83 to 3.6.83 for my absence and I am still under the treatment of Doctor.

As regards to take local Military Hospital Lucknow treatment, as far best of my knowledge there is no boundation for C.S.D.employees. Apart from it is

75 (13/16) 98

also stated that M.H. Lucknow is 11 or 12 Kms. away from my house and to and fro charges of riksha are Rs. 16/- approximately. You can well realise that without any financial assistance/ salaries how a poor employee can bear such burden along with family.

Hon' Sir, you can well understand without Medical fitness certificate how I can resume my duties or Ram Garh Manager will allow me to join the duties without the Medical Certificate of fitness. On the crucial period Dr. advised me not to think about such predicament circumstances and take essential care of health. I feel agony where I have served about 16 years of my life, no body was bothered to look me whether I am living in the world or not except only direction to join Ramgarh cantt. over looking whether I am sick or not, I am fit or not, Sir, is it possible without medical fitness I can report or resume my & office duties whereas I always assured that after recovery I will joint duties as per your orders. Therefore, the charge framed against me that I have disobeyed the order of my superiors is in correct.

Indu

Regarding your Memorandum Sl. No. 5, I have to say that due to mental depression and ill health and such happenings myself and my whole family was perturbed and frustrated and it was advised that Defence Secretary is in Head of

76 (A3/77) 8/99

Defence and your department comes under the Ministry of Defence, then there will be no outside influence. Therefore, I and my wife request you directly and a copy was endorsed to Defence Secretary on the whole pitiable condition if you feel on any part of the act is wrong I even my whole family is extremely sorry for that and assure you this thing will not be repeated in future.

Hon. Sir, I have worked under you about 16 years with great loyalty not even single complaint was made against was made against me by any officer. Sir, you have given me bread to live in the world that how I make courage to defy the order. The act of not joining Ramgarh cantt. is only due to ill health and it was informed time to time.

Hon. Sir, if you go through my previous history of service you will acknowledge that my ill father expired during my office works and my son also expired during my office works. Bearing such tragedy I worked in office with sincerity and great devotion. The Ex- Manager of Lucknow depot. Mr. Dhingra Sahab, Shri Daya Shakarji, Shri K.L. Chawalaji and Shri N.B. Singh praised my sincerity and devotion towards the office work. Even Shri N.B. Singh, had recommended my representation dated 12.11.81 to treat it as a special case. Though more not joining Ramgarh Cantt. you resuming that I'm

Indulges

am disobeying orders of my superiors and not paying devotion towards duties. Sir, you are a guardian, you do not acknowledge it. I again assure you after recovering from ill health I will join Ramgarh Cantt. or as advised by you with great loyalty without health and wealth man losses every thing. Seeing my pitiable condition, please do not take any action.

Being poor employees I once again request your Honour with folded hands to look into the matter and excuse me if you feel any thing is wrong but do not take the service. I low paid employee who is not getting salaries or any financial assistance from any corner you can well realise that how I am living in the world Sir, even though of you feel that I am mistakes for that I am extremely sorry and I am ready to touch your feet.

All the things are in your hand. Please mercy on me. Even though you feel my presence is necessary then you can order me for compliance.

Thanking you,

Yours faithfully,

Sd. Jagdish Narain Dwivedi

Pili Kothi Saadatganj
Bara Chauraha, Lucknow.

En. Medical certificate
in original-1
dt. 5.6.83.

True copy

78

A3
A

A
101

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Annexure- 15

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others Opp. parties.

....

To,

Major General Shri B.N. Dhar,
General Manager, Canteen stores Deptt.
Bombay - 20

Respected Sir,

Subject: order- Inquiry Shri Jagdish Narain
Dwivedi, U.D.C. C.S.D Depot Lucknow.

Ref: Your letter No. 3/A-3/PN-1541/841 dt. 9
Aug. 83 and Jallandhar Depot, letter No.
JUD/M/PN/1541/3497 dt. 2.9.83.

MERCY

MERCY

MERCY on me.

1. Hon'ble Sir, I am in pain to know that
on enquiry will be held against such a low paid
employee merely non-joining the duty at Ramgarh
Cantt.

2. Hon'ble Sir, I myself keep mum and do not
say anything regarding my pitiable conditions, sincerity
and devotion towards the official works.

J. Narain

79. A3
88
A
152

-2

3. Hon'ble Sir, you are the helper of down -Trodden and it is neverx expected that having • High dignity of the nation you will order for enquiry against a pitiable person ingonring all the facts and circumstances.

4. Hon'ble Sir, I touch your feet and earnestly request you to cancel the enquiry which is postponed and now will be held near future. Please adjust me at Bareilly/ Agra/Meerut/Jhansi or nearby station having mercy on me.

5. Hon'ble sir, I have recovered the health and fit for resumption of duties with the advice to travel upto 500 km (Medical certificate with fitness from 4.6.83 to 14.9.83) is enclosed herewith).

6. Hon'ble Sir, now I am ready to compliance your order. Please advice Lucknow depot. to allow me to draw TA/DA for joining my duties as per your advice.

It is requested with folded hand and tear in the eyes.

Thanking you.

Yours faithfully,

Sd. Jagdish N. Dwivedi
Pili kothi Saadatganj
Bara chauraha Lucknow.

Encl: 1 (Medical Certificate
with fitness in Original)
Dated Lucknow 14 Sept. 1983

CC. The Manager, C.S.D. Depot Jalandhar Cantt.

CC. The manager C.S.D. Depot Ramgarh Cantt.

CC. The manager C.S.D. Depot Lucknow.

True copy

80 (A2/81) A/103
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Annexure- 16

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi ... Petitioner

Versus

Union of India and others ... Opp. Parties.

....

GOVERNMENT OF INDIA

Canteen stores Department

Fortwilliam Calcutta - 31

ASSESSMENT OF THE CASE

Article - I

That the said Shri J.N. Dwivedi, while functioning as LDC at CDS Depot, Lucknow disobeyed the lawful orders of his superior officers in that he failed to report at CSD Depot Ramgarh on transfer as ordered.

That the said Shri J.N. Dwivedi, by his above act failed to maintain devotion to duty which exhibited conduct unbecoming of a Government servant thereby violating rule 2 ccs (conduct) Rules 1964.

Having gone through the proceeding and the documents it is observed as under:-

- (1) Shri J.N. Dwivedi reported for duty at Ramgarh Depot. on 18th October. 1983.

ARTICLE-II

That the said Shri J.N. Dwivedi, while functioning

as an LDC at CSD Depot, lucknow has remained unauthorisedly absent from duty w.e.f. 15.3.82 onwards.

That the said Shri J.N. Dwivedi, by his above act did not maintain devotion to duty which exhibited conduct unbecoming of a Government servant thereby violating rule 2 of CCS (conduct) Rules, 1964.

Having gone through the proceedings and the documents it is observed as under:-

(1) Shri J.M. Dwivedi, absented W.E.F.

15th March 82 to 17th December 83..

He has produced Medical certificates for his absence.

FINDINGS:

The findings of the inquiry are as under:

1. Articles of charge I could not be proved as Shri J.N. Dwivedi reported at Ramgarh depot on 18.10.83.
2. Articles of charge II though has been proved beyond doubt and shri J.N. Dwivedi has absented w.e.f. 15.3.82 to 17.10.83 but for the reasons beyond his control. His absence has ben supported by the Medical certificate sent to H.O from time to time.

Sd. 13.4.84

S.C. Kapur
Inquiry Officer.

True copy

82 (A3/83) 105

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Annexure- 17

In

Writ petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others Opp. Parties.

...

GOVERNMENT OF INDIA

MINISTRY OF DEFENCE

CANTEEN STORES DEPARTMENT

'ADELPHI' 119 M.K. Road

Bombay . 400 020

Ref. No. LBO/ AM/ Inq. P.No.1541/ 14th March 84

To

Shri S.C.Kapur

(Enquiry officer)

Manager, C.S.D Depot

Calcutta

Sub- Brief.

In accordance with order No. 3/A-3/PN 1541/840 dated 8th both dated 09 on enquiry under rule 14 of the CCS (CCA) Rules 1965 was ordered in respect of PN-1541 Shri J.N. Dwivedi, U.D.C. CSD Depot, Ramgarh, The articles of charges are as under:
STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST PN-1541
Shri JAGDISH DWIVEDI U.D.C. CSD DEPOT RAMGARH.

ARTICLE -I

That the said Shri J.N. Dwivedi, while functioning

Indul

83

A2
84A
106

-2-

as an LDC at CSD Depot. Lucknow disobeyed the lawful orders of his superior officers in that he failed to report at CSD Depot. Ramgarh on transfer as ordered.

That the said Shri J.N. Dwivedi, by his above act failed to maintain devotion to duty which exhibited conduct unbecoming of a Government servant thereby violating rule 2 of CCS(Conduct) Rules, 1966.

ARTICLES II

That the said Shri J.M. Dwivedi, while functioning as an LDC at CSD Depot Lucknow has remained unauthorisedly absent from duty w.e.f. 15.3.82 onwards.

That the said Shri J.N. Dwivedi, by his above act did not maintain devotion to duty which exhibited conduct unbecoming of Govt. servant thereby violating rules 2 of CCS(Conduct) Rules, 1964.

STATEMENT OF IMPUTATIONS OF MISCONDUCT IN
SUPPORT OF THE Articles of charge framed against
1541 Shri Jagdish N. Dwivedi UDC CSD Depot Ramgarh.

ARTICLE- 1

That the said Shri J.N. Dwivedi, while functioning as an LDC at CSD Depot, Lucknow was transferred to Ramgarh on longest stay basis vide transfer order No. 155/ 81 dated 19.10.81. He was relieved of his duties on 21.4.82 (An) vide movement order No. LUD/Est./PN- 1541/865 dated 21.4.82 and advised

to report to Ramgarh on 4.5.82 after availing permissible joining time.

That the said Shri J.N. Dwivedi, had submitted the following representations for deferment / cancellation of the above transfer order.

- (a) Representation dt. 12.11.81 requesting for the cancellation of transfer order on compenxionate grounds.
- (b) Representation dt. 10.4.82 addressed directly to General Manager and copy to BOCCS for promotion at Lucknow only or absorbing at RM(C)'s office as LDC.
- (c) Mercy appeal dt. 26.8.82 to General Manager by name and copy to Board of Control regarding financial grievances.
- (d) Representation dt. 22.2.83 acknowledging the HO Adm telegram dt. 14.2.83 and requesting again for attachment at RM(C)'s office or posting at Agra.

That all the above mentioned representations were duly examined by the competent authorities and rejected. Further he was directed to report to Ramgarh without any delay and also advised that failure to do so will attract disciplinary proceedings against him. This position was conveyed to him from time to time through the following communications:

- 85 (A3/88) A/108
- (a) HO Admn Branch letter No. 3/A-2/PN 1541 1565 dt. 19.2.82.
 - (b) letter No. BOCCS/00230/0/CAM dt. 15.9.82 directing the said Shri JN Dwivedi to obey the orders of superiors and report to Ramgarh or face the disciplinary action.
 - (c) Admn. Branch letter No. 3/A-2/1541/5984 dt. 29.11.82.
 - (d) confirmatory copy of telegram dt. 14.2.83 being reference No. 3/A-2/PN-1541/857 dt. 14.2.83.
 - (e) Confirmatory copy of telegram bearing reference No. 3/A-2/PN-1541/1775 dt. 21.3.83 from HO Admn. Branch.

That inspite of the instructions given vide above mentioned communications the said Shri JN Dwivedi did not report to Ramgarh till date.

Thus the said Shri JN Dwivedi did not comply with the orders of his superiors in that he failed to report at his new station of posting thereby committing an act unbecoming of a Govt. servant.

ARTICLE-II

That the said Shri JN Dwivedi while functioning as an LDC at CSD Depot. Lucknow was transferred to Ramgarh vide transfer order No. 155/81 dt. 19.10.81. The said Shri JN Dwivedi however requested for deformat/cancellations of the transfer on extreme compassionate grounds vide his representation dt. 12.11.81. But

Lucknow

86

(A3/81)

8/109

-5-

the said representation was rejected and he was instructed to report to Ramgarh without any delay vide Admn. Branch letter No. 3/A-2/PN.5141/1565 dt.19.3.82.

That the said Shri JN Dwivedi instead of reporting at his new station of posting remained unauthorisdely absent w.e.f. 15.3.82. Thereafter he was directed to explain for his unauthorised absence and also intimating him that his absence is being treated as unauthorised vide Lucknow Depot's registered letter No.LUD/ MOPH /878 dt. 21.4.82,. But the said Shri JN Dwivedi neither acknowledged the said letter nor submitted explanation and continued to remain absent unauthorisedly.

Thus the said Shri JN Dwivedi, despite ample opportunities given to him, remained unauthorisedly absent from duty w.e.f. 15.3.82 till date, thereby committing an act unbecoming of govt. servant.

The court of inquiry commenced on 24. Feb. 84 in CSD Depot. Lucknow. The Enquiry officer asked Shri JN Dwivedi Delingwent employees whether. he wants the assistance of a Defence Assistance to defend his case for which he stated he does not require any.

The articles of charges were read over to Delinquent Employees by Inquiry officer and he stated that he did not plead guilty.

Handwritten signature

The list of documents by which the articles of

charges framed against Shri JN Dwivedi are proposed to be sustained are as under:

1. Transfer order No. 155/81 dt. 19.10.81.
2. Representation dt. 12.11.81 of Shri JN Dwivedi.
3. Admn. Branch letter No. 3/A-2/PN-1541/1565 dt. 19.3.82.
4. Representation dt. 1.4.82 of Shri JN Dwivedi.
5. Letter No. LUD/MGP/878 dt. 21.4.82 of Manager Lucknow Branch
6. Movement order No. LUD/Est./PN-1541/865 dt. 21.4.82.
7. Representation dt. 26.8.82 of Shri JN Dwivedi.
8. Board of Control's letter No. ZOCCE/00230/O/CAN dt. 15.9.82.
9. Admn. Branch lett. No. 3/A-2/PN-1541/5984 dt. 29.11.82.
10. Representation dt. 22.2.83 of Shri JN Dwivedi.
11. Confirmatory copy of telegram being reference No. 3/A-2/PN-1541/857 dt. 14.2.83.
12. Confirmatory copy of telegram bearing reference No. 3/A-2/ PN-1541/ 1775 dt. 21.3.83.

Shri JN Dwivedi Delinquent Employee was satisfied with the above copies of letters and did not want to inspect any of them.

From the material evidence presented above, it speaks Shri JN Dwivedi was transferred to Ramgarh Depot vide Transfer order No. 155/81 dt. 19.10.81 and

he was relieved of his duties w.e.f. 21 April 82 with instruction to report to Ramgarh Depot on 4.5.82 after availing 12 days joining time vide movement order No. LUD/Est. 4/PN-1541/665 dt. 21.4.82.

Shri JN Dwivedi having represented to the department for deformat/cancellation of above transfer vide his representations dt. 12.11.81, 10.4.82, 26.8.82, and 22.2.83 did not proceed to Ramgarh depot. The Head office having examined the representations and were rejected and instructed to him to report Ramgarh depot vide x following letters :-

- (a) Admn. Branch letter No. 3/A-2/PN-1541/1566
Dt. 19.3.82.
- (b) Board of Control's letter No. BOCCS/00230/CAN/
15.9.82.
- (c) confirmatory copy of telegram bearing
reference No. 3/A-2/PN-1541/1775 dt. 21.3.83.
- (c) Admn. Branch letter No. 3/A-2/PN-1541/5984
dt. 29.11.82.
- (e) confirmatory copy of telegram bearing
reference No. 3/A-2/PN-1541/1775 dt. 21.3.83.

Shri JN Dwivedi has not joined to Ramgarh depot and continue to be absent w.e.f. 15.3.82 in spite of the above letters/orders.

Shri JN Dwivedi instead of reporting to new station Ramgarh depot which is his station of

posting, remained unauthorisedly absent from 15.3.82 and he was instructed to explain for his unauthorised absence and intimating him that his absence from that date is being treated unauthorised vide Lucknow depot letter No.LUD/MGPF/ 878 dt. 21.4.82 for which Shri Dwivedi has neither acknowledged in and not he submitted his explanation and continued to remain absent unauthorisedly from duty from 15.3.82 inspite of ample opportunity given to him.

It is evident from the statement of Sri JN Dwivedi Delinquent Employee recorded on page 2 of the proceedings dt. 24.2.84, he has admitted that he had absented from duty from 15.3.82.

Delinquent employee having put 18 years of service in the department stated that he is fully aware that prior permission is required to be obtained before proceeding on leave (Anser-2).

Delinquent Employee has admitted that he did not reply Lucknow Depot. letter No.LUD/MGPF/ 878 dt. 21.4.83. It is explicitly clear that he has knowingly absented himself and did not care to reply/ acknowledged the letter (Anser-4).

Delinquent employee also stated that he did not inform Ramgarh Depot about his inability to joint duty at Ramgarh (Answer -7).

In view of the above and documentary

proof, the article of charges against ^Shri JN Dwivedi, delinquent, that he did not comply with orders of his superiors in that he failed to report his station of posting and despite of ample opportunities given to him, he remained unauthorisedly absent from duty w.e.f. 15.3.82 to 18.10.83 stands conclusively established.

sd. K.G.BHAT

Presenting officer
Asstt. Manager
CSD Depot Lucknow.

CC: Admn Branch (P) together with following
books received orders under reference;

- i) Vigilance Hand book.
- ii) Head Book for presenting officer.

Encl: 2.

A.T.C.
True copy

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Annexure- 18

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others... .. Opp. Parties.

...

To,

The Area Manager/Enquiry Officer

Canteen Stores Department

Calcutta

Respected Sir,

Subject: Inquiry.

Ref. Your letter No. CTD/Est. & Pn-1541 /2595

dt. 4th Sept. 84.

In the regard of your article I and Article 2 most humbly and respectfully I beg to state that the charges which are framed against me are incorrect.

Hon'ble Sir, If you go through my all the representatbn/ applications etc. you will realise, I never denied nor said that I will not joint/ report to Ramgarh Cantt. except appealing to M.O Bombay for consideration.

Sir, the transfer order No. 3/A-2/PN . 1541/ 1565 dt. 19th March 1982 had reached to Lucknow depot after the said date whereas at that time

-2-

I was on leave from 15.3.82 the applications were sent to Lucknow Depot. from 15.3.82 to 30.3.82 and from 1st April to 3rd April 1982 and it was also intimated to Lucknow depot Manager Sri N.B. Singh on the telephonic conversation that I am not feeling well. The medical certificate were also submitted to him. Therefore it is wrong and denied that I have not intimated nor informed or remained absent from duty for the above Sir, Hon. If you go through the letter LUD/MGPF/878 dt. 21.4.82, in which I was directed to explain Manager C.S.D. Ramgarh only as well as I was struck off from the strength from Lucknow Depot. w.e.f 21.4.82 and no any thing was left to me to me to explain all the things and to say that I am not guilty, When I resumed duty at Ramgarh on 18th. October 1983 I enquired about the said letter but it was told L.P.C. had not reached to Ramgarh hence no body has had remined me for explanation however I have already explained to H.O Bombay vide my application replying dt. 5.6.83 against the memorandum dt. 28.5.83.

Hon. Sir You also understand when I was confined on bed due to sickness the relieving letter was displatched to me on my home address. That time my condition was no critical due to low blood pressure and no any attention was paid regarding my illness even no ways were provided me to join Ramgarh and mercelessly was throuwn on the Road then the only alternative

[Handwritten signature]

94

(13/98)
A
117

-4-

I had drawn T.A. and D.A. on 4.10.83 and moved Ramgarh Cantt. on 16.10.83 and joined there on 18th Oct. 1983.

On the whole, Sir, you can well understand without medical fitness certificate how I can resume duty.

Sir, I felt agony where I have served about 18 years of my life with great loyalty and no body was bother to look me whether I am alive or not in the work except only direction to join Ramgarh Cantt. over looking all the facts and Predicaments circumstances. Therefore, the charges framed against me that I have disobeyed the order of my superior and remained absent from 15.3.82 onward without information is totally incorrect.

It is further stated that I have served the department about 18 years with great loyalty not even single complaint was made by any officers. The act of remaining absent from 15.3.82 onwards was only on account of ill health and it was informed time to time by applications along with the medical certificate.

Enclosed

Being poor employee, I once again request you Hon'ble with folded hand to see the whole the matters and you will find that the charges framed against me are incorrect.

Thanking you.

Yours faithfully,
Lucknow. 24.9.84 J.N.Dwivedi PN1541UDC Lucknow

True copy *ATE*

95

15/96

118

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Annexure- 19

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi ... Petitioner

Versus

Union of India and others... Opp. Parties.

...

GOVERNMENT OF INDIA

CANTEEN STORES DEPARTMENT

FOR WILLIAM CALCUTTA 31 No.2

Enquiry 'G' Qrs

(1)

ASSESSMENT OF THE EVIDENCE.

Having gone through the evidence recorded no new evidence has been produced except the medical certificate. Exhibits 'A' to 'K'. These Certificates had been submitted by the delinquent to the CSD Head Office at Bombay in support of his illness. The individual had never been asked to report for Medical examination at the H.H. Lucknow or to the authorised Medical Attendant under the AMR Rules. The Medical certificate produced had never been challenged by the Department or by the Dept. at any stage.

sd. Suphash C. Kapur
Inquiry officer

23.3.85

True copy

[Signature]

[Handwritten signature]

96 (A3/97) A/119
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Annexure- 20

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Ver.

Union of India and others. Opp. parties.

GOVERNMENT OF INDIA

~~MINISTRY~~ CANTEEN STORES DEPARTMENT

For William Calcutta -31

FINDINGS

The delinquent has submitted the Medical certificates in support of his absence from duty w.e.f. 15.02.82 to 14.9.83 which is reasonably a long period.

2. The delinquent has not been medically examined by the M.H. Authorities or the authorised Medical attendant under the AM Rules.

3. The certificates produced are from a registered medical practitioner Dr. H.C. Rastogi B.sc. M.B.B.S. Saadatganj, Lucknow.

Sd.

(Subhash C Kapur)
Inquiry Officer
23.3.85

Indresh
A.T.C.
Q
TRUE Copy

97 (A3/98)
120

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Annexure-21

In

Writ petition No. of 1987

Jagdish Narain Dwivedi ... Petitioner

Versus

Union of India and others.... Opp. Parties

Government Of India

Canteen Stores Department

For William, Calcutta-31

OPINION OF THE INQUIRY OFFICER

The charges of absence though proved are supported by the Medical certificates.

Sd.

(Subhash C Kapur)

A.T. Inquiry Officer
23.3.85

True copy

[Signature]

98 (A3/99)
A
121

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Annexure- 22

Writ Petition No. _____ Of 1987
Jagdish Narain Dwivedi Petitioner

Versus

Union Of India and others..... Opp. Parties.

Seal Illegible CONFIDENTIAL

Ref. No. 3/ A-3/ PN-1541/283 dated 1.6.1985

ORDER

Whereas disciplinary proceedings under Rules 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965, were initiated against PN.1541 Shri Jagdish Narain Dwivedi, U.D.C. , C.S.D. Depot Ram garh vide Memorandum No. 3/ A-3 /PN-1541 /(603)/ 534 dated 28th May, 1983 for followings

ARTICLE -I

" That the said shri J.N. Dwivedi while functioning as an L.D.C. at CSD Depot, Lucknow disobeyed the lawful orders of his superior officers in that he failed to report at CSD Depot. Ram garh on transfer as ordered

ARTICLE -II

That the said Shri J.N. Dwivedi, while functioning as an LDC at CSD Depot , Lucknow has remained unauthorisedly absent from duty w.e.f. 15.03.82

Jagdish

99 (A3/100)
A
122

.2.

onwards. "

2. AND, WHEREAS, the Inquiry officer after conducting an inquiry has submitted his reports dated 13.4.1984 and dated 23.03 1985 (Copies enclosed) held that Article-I of the charge is not proved and Article -II of the charge is proved.

3. AND WHEREAS, the undersigned after careful consideration of both the inquiry report has not accepted the findings against Article.II for following reasons:

" Shri Dwivedi was relieved from his duties from Lucknow on 21.4.82 (AN) with instructions to report at Ramgarh after awaiting admissible joining time of 12 days vide reference No.LUD/Est/PN-1541/865 dt. 21.4.82, whereas he reported at Ramgarh on 18.10.83 only. He therefore cannot be said to have obeyed the law ful orders of his superiors. "

4. AND, WHEREAS, the undersigned has accepted the findings of the Inquiry officer in respect of Article -II and after going through the evidence on record has come to the conclusion that both the articles of charges are proved beyond doubt and the said Shri J.N. Dwivedi is not a fit person to be retained in service.

5. NOW, THEREFORE, the undersigned in exercise of the powers conferred by Rule 15(4) of the aforesaid rules as amended and other enabling provisions imposes on the said Shri JN Dwivedi the following

penalty:

" DISMISSAL FROM SERVICE WITH IMMEDIATE EFFECT".

6. It is further ordered that the entire period of his unauthorised absence w.e.f 15.3.82 on wards be treated as leave due and admissible.

7. Receipt of this order is to be acknowledged.

Encl Two Enquiry reports.

Sd. SURINDUR KUMAR
MAJOR GENERAL
General Manager & Chairman
Canteen stores Deptt.
(Disciplinary Authority)

Registered.A.D.

to
Sri Jagdish N. Dwivedi
Pili Kothi Sadar Ganj
Bara Chauraha
Lucknow.

True copy

101
113/102
A
124

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Annexure- No. 23

In

Writ Petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others Opp. Parties.

...

BEFORE THE BOARD OF CONTROL CANTEEN SERVICES

Govt. of India, Ministry of Defence

I-II Block Room No. 35, Church Road

New Delhi 110 001

Jagdish Narain Dwivedi, aged about years, son
of R/of Pili Kothi, Saadatganj, bara Chauraha
Lucknow.

.... Appellant.

APPEAL UNDER SECTION 22/23 OF THE CENTRAL
SERVICE (C.C.A) RULES 1965 AGAINST THE
ORDER OF DISMISSAL FROM SERVICE DATED
1.6.86 PASSED BY MAJOR GEN. SURINDER KUMAR?
GENERAL MANAGER AND CHAIRMAN, CANTEEN STORES
DEPARTMENT (DISCIPLINARY AUTHORITY)
BOMBAY DISMISSING THE APPELLANT FROM
SERVICE AS U.D.A. IN THE C.S.D. WITH
IMMEDIATE EFFECT.

BRIEF FACTS

Deve

BRIEF FACTS

1. That the petitioner was appointed as LDC in the CSD Lucknow on 17th. October 1966 and was subsequently promoted as U.D.A. During the whole of his 19 years' service in the depatt, the appellant although maintained an unblemished and meritorious record of service, so much so that not a single complaint arose against him and not a single adverse entry was ever communicated to him at any time, and his work and conduct were although found to be to the entire satisfaction of his superiors.
2. That vide order dt. 19.10.81 passed by the A.G.M. (Administration) C.S.D. Bombay, the petitioner was ordered to be transferred to Ramgarh CSD Depot against which he represented to the Board of Administration, CSD Bombay on 12.11.81 on the basis of his personal difficulties and requested the Board to consider his request on compassionate grounds.
3. That no reply was received from Head office even after several reminders and representation. To the misfortune of the appellant, he was taken sick and had to proceed on leave on medical grounds from 15.3.82.
4. That vide order dt. 19.3.82 issued by the Adm. Dr. the appellant's representation was rejected. The petitioner again represented on

account of his deteriorating health and family conditions on 10.4.82 requesting Head office to consider my pitiable condition and let me stay at Lucknow.

5. That vide Movement order dt. 21.4.82 the appellant was relieved from his post for joining at Ramgarh.

6. That the petitioner developed hypertension and remained confined to bed on account of acute illness so much so that the doctors did not advise him to move even from bed, what to say of going to Ramgarh. Numerous representations along with leave applications supported by medical certificate from registered medical practitioners were submitted, but to no avail.

7. That the petitioner, however, again represented on 26.8.82 to the Board with all humble submissions and begging for mercy on me and family, but this could not bring any results. All leave was taken by me was supported by regular medical certificates.

8. That the Board of Administration continued rejecting my representations and mercy appeals and began to threaten the petitioner of disciplinary action in case the appellant did not join at Ramgarh.

9. That the appellant repeatedly made it clear to the Board Authorities and officers that

103

A3
104

A
126

Lucknow

10/1 (A3/105) 4/127
he had all respects for the transfer passed by superior authorities and he did want to go to Ramgarh, but for his failing health and complete inability to undertake any journey. I could not afford to take risk of my life against the advice of the doctors.

10. That it may be mentioned that on my sending leave applications supported by medical certificates of a private registered practitioner, the Deptt. never referred my case to my authorised medical attendant or a Govt. Hospital. It is respectfully pointed out that it was obligatory on the deptt. to refer the case of any long x ailing govt. servant for medical examination and report to an authorised Govt. physician, if the Deptt. was not satisfied with the medical certificates produced from a private medical practitioner under whose treatment the patient was.

11. That instead of referring the case of the petitioner to authorised medical attendant, the Deptt. chose to threaten the petitioner with disciplinary action and remained adamant with its insistence for joining at Ramgarh, irrespective whether the petitioner dies there if he goes against the advice of the doctor.

12. That, however, it was with great difficulty and continued treatment that the petitioner could somehow recover from illness and soon after the advice of the doctor, he

Dr. J. K. Chell

105-
A3
100
A
128

-4-

proceeded to Ramgarh against all odds and joined duties there on 18.10.83, and thus complied with the orders passed by superior authorities.

13. That the apathy of the Deptt. towards the petitioner is further revealed from the fact that the Deptt. did not give financial advance to the petitioner to perform the transfer journey even after repeated requests and it was at a later stage that advance was sanctioned.

14. That during the period of absence of the petitioner on leave on medical grounds, the petitioner suffered heavily on account of his poor health condition, acute financial stringencies and other family circumstances.

15. That the Deptt. did not consider that I was a poor employee with a family of small schooling children settled at Lucknow and it was tremendous calamity on the petitioner's family if he was sent too far away and subjected to make double establishment during these hard days of poverty and acute dearth conditions.

16. That, however, the petitioner obeyed the orders of the deptt. though not immediately, on account of health reasons.

17. That to the utter surprise and shock of the petitioner, the petitioner was subjected to disciplinary enquiry having been instituted

Richard

106

A3
101

129

-6-

against him by the Board of Administration on the alleged charge of disobedience of the orders and alleged unauthorised absence from duty.

18. That it is further shockingly surprising that even after the Inquiry officer did not find the petitioner guilty of any offence or irregularity. Yet enquiry was again ordered twice and even thrice by the same Inquiring officer who every time reported in favour of the petitioner.

19. That in the last the enquiry officer has found that the medical certificate has been submitted by the appellant to the CSD Head office at Bombay in support of his illness. The appellant had never been asked to report for medical examination at N.N. Lucknow or to the authorised medical attendant under the AMA Rules. The medical certificates produced by the appellant had never been challenged by the deptt. or by the depot at any stage, as such it should be assumed sufficient evidence on behalf of the appellant.

20. That the enquiry officer did not find the appellant guilty as the Article of charge I could not be proved as he reported at Ramgarh Depot on 18.10.83 and the Article of charge II has also not been proved that the appellant has absented with effect from 15.2.82 to 17.10.83, but for the reasons beyond his control, the

Indee

107 (A3/100)
A-130

-2-

Absence of the appellant has been supported by the medical certificate sent to the H.O from time to time.

21. That in view of the charge levelled against the appellant, none of the charge could be proved, but the controlling authority although agreeing the findings of the enquiry officer, passed an order of dismissal of the appellant from the service with immediate effect.

22. That feeling aggrieved with the above dismissal order dt. 1.6.85 which has been received by the appellant on 19.6.85. The appellant prefers this appeal on the following amongst other grounds:-

GROUNDS OF APPEAL

1. Because the order passed by the disciplinary Authority dt. 1.6.85 is contrary to the facts and circumstances of the case.
2. Because the enquiry officer has found the absence fully explained and he was satisfied that the appellant was not on unauthorised leave and as such no disciplinary action could be taken.
3. Because the charge No.2 could not be proved against the appellant.
4. Because the medical certificate submitted

Index

108 (A3/109) A/131

-8-

by the appellant was not challenged by the deptt. and as such this charge did not stand proved against the appellant.

5. Because the enquiry officer has himself treated the period of leave admissible to the appellant and as such the order of punishment is not based on facts and law of the case.

Wherefore it is most humbly prayed that the appeal be allowed and the order of punishment dt. 1.6.85 be set aside.

Such further orders which may be deemed just and proper in the circumstances of the case may also be passed.

A.T.C. Appellant.

True copy

109 (A3/10)
A
132

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Annexure- 24

In

Writ petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others.. ... Opp. Parties.

...

GOVET OF INDIA

CANTEEN STORES DEPARTMENT

ADELPHI * 118 M.K.Road
Bombay

Ref. No. 3/A-2/PN-1541/493 dt. 3 July 87

Sri Jagdish Narain Dwivedi Reg.d A.D.

Pili Kothi Sadat Ganj

Bara Chauraha

Lucknow. U.P.

APPEAL - REINSTATEMENT INTO SERVICE

Reference your appeal dt. 10.7.85 to
Executive committee of the Board of control,
Canteen Services.

2. The original order bearing reference No. BOCCS/
01217/ DDGCS dt. 27.5.87 from the Executive
Committee of the Board of control, Canteen
Services is forwarded herewith for your
information and compliance please.

Lucknow

3. Taking into consideration the decision of appellate authority, you are reinstated into service as LDC(0) at CSD Depot Ramgarh. You are therefore instructed to report at CSD Depot Ramgarh forthwith.

Encl. One.

Sd. N. PUNNIAKOTTI
ASSTT. GENERAL MANAGER (P)
FOR GENERAL MANAGER.

CC: The Manager CSD Depot Ramgarh. alongwith a copy of the above referred order. I please inform telegraphically the dt. of his resumption of duty encl. One.

CC: DGM(F&A) HO Bombay

C : HO Admn group B-6/B-7

CC: A CR ACR dossier of the individual is returned herewith.

CC: PF 1541

with a copy of above referred order for necessary action and make entry in the service record of the individual. encl a/A

....

-CONFIDENTIAL-

Regd. A.D.

Secretariat
Board of control
Canteen Services
Block L-I, Room No.19
New Delhi 11001

NO. BOOCS/01217/DGGCS

27 May 87

ORDER

1. WHEREAS, the penalty of " Dismissal from service with immediate effect " was imposed upon PN-1541 Shri JN Dwivedi IDC, Canteen stores Deptt. Depot, Lucknow by the General Manager, Canteen Stores Department Head office vide his order No. 3/A-3/PN-1541/283 dt. 1 July 1985 as a sequel to the disciplinary proceedings instated against him by the CSD Head office, Bombay vide their memorandum No. 3/A-3/PN-1541/ (603)/534 dt. 28 May 83.

2. WHEREAS Shri JN Dwivedi submitted his appeal dt. 10 July 85 to the Executive committee Board of Control, Canteen services against the penalty of " Dismissal from service with immediate effect " imposed upon him by the General Manager, Canteen Stores Deptt.

3. WHEREAS, the case was considered by the Executive committee Board of control, canteen services and after taking into consideration the factual position and circumstantial evidence in the case adduced during the enquiry, the Executive committee has decided that the bene

112
A3
113
17
135

-4-

of doubt be accorded to the delinquent employee Shri JN Dwivedi and allowed the appeal to the extent shown as under:-

- (a) The penalty of " Dismissal from service with immediate effect " be reduced to reversion to the rank of lower Div. clerk.
- (b) The period from 15 Mar. 82 to 17 Oct. 83 for which the above named individual remained on medical leave may be adjusted by the Canteen Stores Deptt. against his earned and commuted leave and the balance period may be treated as extra ordinary leave without pay and allowances.
- (c) The period from the dt. of dismissal to the date of rejoining his duties on reinstatement of his service as lower div. clerk in the canteen stores deptt. will be treated as " on duty " for all purposes without pay and allowances.

For and on behalf of the Executive
Committee of the Board of control
Canteen services.

Sd. Dinesh chandra
Brig.
Secretary Board of control
Canteen service.

Sri JN Dwivedi
Pilli Kothi Saddatganj
Bara chauraha
Lucknow .3. UP

A.T.C.
Q

True copy

113

113
A
136

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Annexure -25

In

Writ petition No. of 1987

Jagdish Narain Dwivedi Petitioner

Versus

Union of India and others.. .. Opp. parties.

...

GOVT. OF INDIA , CANTEEN STORES DEPTT.

39 Havelock Lines

Lialbahadur Shastri Marg

P.B. No. 1002 Lucknow.

Registered.

Ref. LUD/EST/ PNH 1541 / 1422

25 Aug. 87

To,

Shri J.N. Dwivedi

Pili Kothi, Sadatganj

Bara Chauraha

Lucknow -3 UP

Sub: WRIT PETITION OF 1985 in the
matter of PN 1541 Sri JN Dwivedi Vs.

Union of India.

You have been reinstated into service

by the Appellate authority vide order No. BOCGS/
01217/BOGS dt. 27.5.87 (attached in original)
by reducing penalty or dismissed from service to
reduction to the rank of LDC.

2. In view of the order passed by the
appellate authority, you are advised to withdraw
the petition and confirmation to this effect
or otherwise by to 15th Sept. 1987.

Sd. Area Manager
V. S. Bahat

Encl: A/A

CC: A.C.M.(P)

HO Bombay. Reference your letter No. 3/A-3/

PM-1541/573 dt. 11.8.87.

True copy

Regd.

137



114

AG
116

139

Filed today
C-1
26/8

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH : ALLAHABAD.

.....

CIVIL MISC. APPLICATION NO. _____ OF 1988

ON BEHALF OF

UNION OF INDIA & OTHERS. .APPLICANTS|RESPONDENTS.

IN

REGISTRATION NO. 847 OF 1987

Jagdish Narain Dwivedi. .Applicant

Versus

Union of India & others. .Respondents.

To

The Hon'ble The Vice Chairman and His
Companion Members of the aforesaid Tribunal.

The humble applicant Most Respectfully States :

1- That full facts have been given in the
accompanying Counter Affidavit.

2- That it is therefore, in the interest
of justice that the interim prayer made by the
petitioner is liable to be rejected.

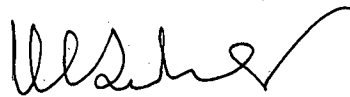
[Signature]

AC
177
A
140

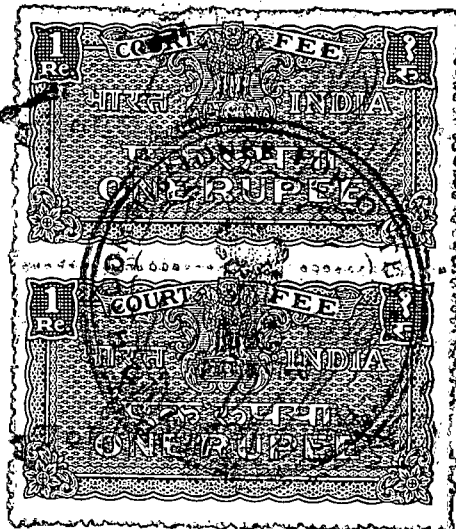
P _ R _ A _ Y _ E _ R .

It is therefore Most Respectfully
prayed that this Hon'ble May be pleased to
reject the interim prayer made by the
petitioner, otherwise respondents would suffer
irreparable loss.

Dt/-



(K.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVERNMENT
COUNSEL FOR THE RESPONDENTS.



Ay
118

A
141

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH : ALLAHABAD.

.....

COUNTER AFFIDAVIT

ON BEHALF OF

UNION OF INDIA & OTHERS.

.Respondents.

IN

REGISTRATION NO. 847 of 1987

Jagdish Narain Dwivedi.

.Applicant

Versus

Union of India & others.

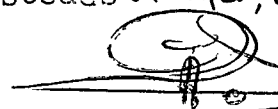
.Respondents.



Affidavit of ✓ SHRI A.P.S. PILLAI ✓

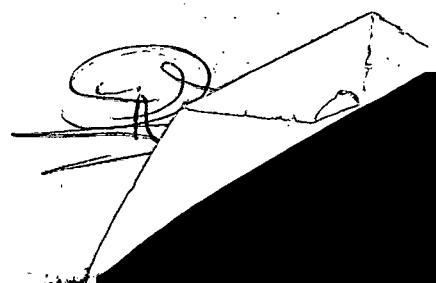
aged about ✓ 51 ✓ years, ✓ late Shri ✓

at present posted as ✓ PARAMESWARA KURBOPH
✓ Manager, C.S.D. Depot Lucknow ✓


(Deponent).

I, the deponent abovenamed do hereby
solemnly affirm and state on oath as Under :

- 1- That the deponent is ² manages
C.S.D. Depot Lucknow ² and has been deputed
to file this counter affidavit on behalf of the
respondents and is well conversant with the facts
deposed to below.



A/142 ✓

4-- That the contents of paragraph 3 of the petition are not admitted as stated. In paragraph under reply the petitioner has to mention only the order against which the petition is made whereas he made prayers, which are not correct and as such are denied.



6. That the contents of paragraphs 6(1) and 6(2) of the petition need no comments.

AY
12/8

A
14/3

3.

8- That ² ~~the~~ ² in reply to the contents of paragraph 6(4) of the petition, it is submitted that the transfer order was ordered on the basis of petitioner being a longest stayee at Lucknow and an employee who had completed his tenure at Ramgarh Depot had to be accommodated at Lucknow.

9- That the [✓] ~~deponent~~ ² of paragraph 6(5) of the petition need no comments.

10- That in reply to the contents of paragraph 6(6) of the petition, it is submitted that the representations of the petitioner were duly examined and rejected [✓] /replied.

11- That the contents of paragraph 6(7) and 6(8) of the petition need no comments.

12- That in reply to the contents of paragraph 6(9) of the petition, it is submitted that the petitioner's attention was drawn to the Service Regulations. He however was cautioned about the consequences of unauthorised absence.

13- That the contents of paragraph 6(10) of the petition need no comments.

14- That the contents of paragraph 6(11) of the petition are not correct and as such are denied.

It is not correct to say that the petitioner was not



A
143A4
121

provided any financial assistance to proceed to Ramgarh. While intimating about his transfer to Ramgarh by the Manager, Lucknow Depot, the petitioner has been instructed that he is eligible for transfer benefits as per rules. Therefore, the petitioner should have approached the Manager, if he was held up financially. This position ~~has been~~ is clear from the Annexure 6 of the petition.



15- That in reply to the contents of paragraph 6(12) of the petition, it is submitted that the petitioner has been instructed by the Manager Lucknow Depot that he is eligible for transfer benefits and had he approached the Manager, he would have paid the same in April 1985 itself. Even after issue of the chargesheet, the petitioner was instructed by a registered AD letter to approach Lucknow Depot for TA/DA, but he has preferred not to avail that chance also. Since he was not inclined to move, he did not avail any opportunity, though provided several times.

16- That in reply to the contents of paragraph 6(13) of the petition, it is submitted that the petitioner was asked to go to Military Hospital, Lucknow by the Depot Manager. In fact, the individual

should have gone to Military Hospital, Lucknow of his own as he would have received free medical treatment. It is not understood how he could afford to have treatment against cash payment when free medical facilities were available for him and that too when he was financially hard up.



17- That in reply to the contents of paragraphs 6(14), 6(15) and 6(16) of the petition, it is submitted that the petitioner was transferred to Ramgarh in order to accommodate tenure completion employee quite early to the occasion when choice stations were called from the empaneled candidates. As per the practice the petitioner was also to give his choice, that does not mean the administration had made any commitment.

18- That the contents of paragraph 6(17) of the petition are not correct and as such are denied.

19- That the contents of paragraphs 6(18) and 6(19) of the petition have already been replied earlier in foregoing paragraphs, hence the same are not to be repeated here again.

20- That the contents of paragraphs 6(20) and 6(21) of the petition need no comments.

21- That the contents of paragraphs 6(22) and 6(23) of the application are not admitted as stated. It is further submitted that the petitioner, for his unauthorised absence, submitted his leave application supported with medical certificates obtained from Civil Doctor and his leave applications were examined keeping in view the medical certificates by the Competent Authority and these were rejected and asked the petitioner to report for duty immediately which the petitioner failed to comply with. All his leave applications were rejected after due consideration, therefore, this tantamounts to rejection of medical certificate also. So it is not necessary to clarify separately. Therefore, the petitioner was asked to report for duty immediately. Despite of asking the individual to report for duty, the petitioner remained absent which the Department considered as unauthorised absence and disobedience of lawful orders of the Superior Authority and as such disciplinary action has been initiated against the petitioner.

22- That the contents of paragraph 24 of the petition need no comments being matters of record.

23- That the contents of paragraph 25 of the petition are not admitted as stated. True facts



7.

have already been given in foregoing paragraph, hence need not be repeated here again.

24- That in reply to the contents of paragraph 6(26) of the petition, it is submitted that since the petitioner denied the charges, appointment of ~~Inquiry Officer~~ Inquiry Officer and Presenting Officer became obligatory.

25- That the contents of paragraphs 6(27) and 6(28) of the petition are not admitted as stated. It is submitted that petitioner's joining ~~the~~ duty as on 18th October, 1983 at Ramgarh cannot be said to be in compliance to the Transfer Order issued in October, 1981. In fact, he joined at Ramgarh only after the issue of charge sheet and as such the disciplinary action taken against the petitioner is justified.

26- That in reply to the contents of paragraphs 6(29), 6(30), 6(31), 6(32), 6(33), 6(34) and 6(35) of the petition, it is submitted that since the inquiry was not conducted/followed as per procedure laid down in the Rules, by the Inquiry Officer, the Disciplinary Authority found some procedural errors in the report and it was decided to remit the inquiry report to the Inquiry Officer for further enquiry. It



A3
10

8.

A
148

is further submitted that it is not obligatory on the part of the Disciplinary Authority to accept the findings of the Inquiry Officer.

27- That in reply to the contents of paragraph 6(36) of the petition, it is submitted that the Inquiry Officer has exclusively relied on the deposition of the delinquent whose only defence for charge of disobedience and unauthorised absence was his alleged sickness, although this plea was not supported by any evidence and the Inquiry Officer seems to have accepted whatever was said by the delinquent without caring to verify this fact. Therefore there was no malafide intention of the Disciplinary Authority in remit the inquiry proceedings to Inquiry Officer for further inquiry.



28- That the contents of paragraphs 6(37), 6(38) and 6(39) of the petition being matters of record, need no comments.

29- That in reply to the contents of paragraph 6(40) of the petition, it is submitted that the Inquiry Officer submitted his findings during March 1985 and subsequently the penalty order was issued on 1st June 1985, i.e. only after three months and not nine months, as stated by the petitioner in para

under reply.

(A3/11)

A/149

9.

30- That in reply to the contents of paragraphs 6(42)² and 6(43)² 6(41) of the application, it is submitted that since the Disciplinary Authority, while recording his own assessment, has not accepted the findings of the Inquiry Officer in respect of Article I and concurred with his findings in respect of Article II, it is stated that there is a typographical error in the penalty order dated 1st October, 1985 at para 2 (last line), instead of Article II, it should be read as Article No. I.



31- That the contents of paragraph 6(44) of the petition need no comments being matters of record.

32- That in reply to the contents of paragraph 6(45) of the petition, it is submitted that the petitioner joined only after initiating disciplinary action against him.

33- That in reply to the contents of paragraph 6(46) of the petition, it is submitted that charge against the petitioner has been established by the Disciplinary Authority beyond reasonable doubt and accordingly the commensurate penalty was imposed against the petitioner. The entire process has been carried out as per the services regulations and in an impartial manner.

13
12

8
150

10

34- That the contents of paragraph 6(47) of the petition are not correct, as stated. It is within the competency and jurisdiction of the Disciplinary Authority either to accept or reject the findings of the Inquiry Officer. These, however, depends upon the nature and circumstances of the case. In this case the disciplinary authority did not agree with the findings of the Inquiry Officer in respect of Article of Charge I and recorded his own findings whereby proved the same against the petitioner. The action taken by the Disciplinary Authority is within his jurisdiction and powers.



35-That in reply to the contents of paragraph 6(48) of the petition, it is submitted that the inquiry was re-ordered on account of some technical flaws. It may be stated that the Inquiry Officer in his findings, has held the petitioner guilty of charge in respect of Article No. II.

36- That in reply to the contents of paragraph 6(49) of the petition, it is submitted that the penalty was imposed on the petitioner on the basis of ~~xxxxx~~ entire inquiry proceedings and the ~~xxxxx~~ outcome of the case. The penalty was imposed on the petitioner ~~xxxxx~~ after due consideration of the entire case with a free and fair mind.

A large, stylized handwritten signature at the bottom of the page.

AS
13

A
157

11.

37- That the contents of paragraph 6(50) of the petition are not correct and as such are denied. True facts have already been narrated in foregoing paras, hence need not be repeated hereagain.

38- That in reply to the contents of paragraph 6(51) of the petition, it is submitted that the petitioner was transferred to Ramgarh on 19th October, 1981 and he reported there on 18th October, 1983. Joining the duty by the petitioner at his own free will, cannot be construed that he obeyed lawful orders. In spite of knowing the consequences of remaining absent unauthorisedly, he remained absent.

39- That the contents of paragraph 6(52) of the petition are not correct, as stated. It is further submitted that the petitioner had been given reasonable opportunities at all the stages. It is also submitted that the inquiry was conducted at Lucknow, where the petitioner was residing. Due consideration was given to his every request by way of representation and thereafter the decision was taken.

40- That in reply to the contents of paragraph 6(53) of the petition, it is submitted that it is



(A3/14)

A/152

not obligatory on the part of the disciplinary authority to accept or reject the findings of the Inquiry Officer. It is within his competency to uphold the findings of the Inquiry Officer. In this case also the disciplinary authority has not accorded with the findings of the Inquiry Officer in respect of Article of Charge II.



41- That in reply to the contents of paragraph 6(54) of the petition, it is submitted that the appeal preferred to the Secretary, Board of Control, Canteen Services, New Delhi is pending for their decision.

42- That the contents of paragraphs 55x 6(55), 6(56) and 6(57) of the petition need no comments.

43- That the contents of paragraph 6(58) of the petition are not correct and as such are denied. While conducting the inquiry, the delinquent employee, i.e. the petitioner has got ample opportunity to defend his case in person and through his authorised defence assistant. In Departmental inquiries, there is no need of giving any opportunity to the petitioner to defend his case in appeal as per rules. Therefore, the decision of the appellate committee does not violate the principles of Natural Justice. On the

A handwritten signature, possibly 'R. K. Singh', written in ink at the bottom of the page.

A3
153

13.

contrary, they have reinstated the petitioner by reducing the penalty of removal from service.

44- That ~~in xxxxxxxx~~ the contents of paragraphs 6(59) of the petition are not correct and as such are denied. It is further submitted that the Disciplinary Authority had ordered the petitioner for removal from service after conducting proper inquiry, but the appellate authority has exercised their discretionary power and reduced the penalty and reinstated the petitioner in service. In this act of benevolency nothing is in violation of article 14 and 16 or any other articles of the Constitution of India.

45- That the contents of paragraph 6(60) of the petition are not correct and as such are denied. It is further submitted that the orders passed by the Appellate Authority are self-explanatory and nothing more ~~xx~~ is required to be given in favour of the petitioner.

46- That the contents of paragraph 6(61) of the petition need no comments.

47- That the contents of paragraph 6(62) of the petition are not correct and as such are denied. It is further submitted that charges were framed against



A3
16

A
154

14-

the petitioner and after duly completion of the required formalities as per Central Civil Services (Classification, Control & Appeal) Rules, 1965, the penalty was imposed.

48- That in reply to the contents of paragraph 6(63) of the petition, it is submitted that the petitioner has suffered on account of his own misbehaviour and as such he should ~~abuse~~ himself.

49- That the contents of paragraph 6(64) of the petition need no comments.

50- That in reply to the contents of paragraph 6(65) of the petition, it is submitted that the appellate authority has already reduced the penalty imposed by the Disciplinary Authority.

51- That in reply to the contents of paragraph 6(66) and ~~the~~ 6(67) of the petition, it is submitted that since the petitioner has been reinstated on account of order passed by the Appellate Authority, the petitioner was advised to withdraw the petition as having become infructuous.

52- That the contents of paragraph 6(68) of the petition, it is submitted that since the petitioner has failed to make out any case for interference by



[Handwritten signature]



W

✓ 2

56- That the contents of paragraphs 9, 10, 11, 12 and 13 of the petition need no comment.

1, 2 and 3 —

4 to 20, 22 to 30, 32 to 55 are

based on perusal of record and those of Paras ^h 21, 31

are based on legal

advice, which all I believe to be true. No part of it is false and nothing material has been cancelled in it.

So Help me GOD

Solemnly affirmed and signed before me this

on.....11 AM by Sri A. P. S. Pillai

the deponent, who, is identified by Sri C. S. Mansoor

Advocate, High Court,

Lucknow, I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read out to him and explained by me. I declare that the person making this affidavit and alleging himself to be the deponent is known to me personally.

Identified.

Solemnly affirmed before me on this ^{19th} day

of March 1988 at ^h 11.00 ^h am/PM by deponent, who is identified by aforesaid.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which has been read over and explained to him



Budhir Kumar
BUDHIR KUMAR, Advocate
Oath Commissioner
High Court, Allahabad
OATH COMMISSIONER
Lucknow, Bench
No. 7/12-32 Date 18/3/88

AS
157

Before the Central Administrative Tribunal

Additional Bench Lucknow

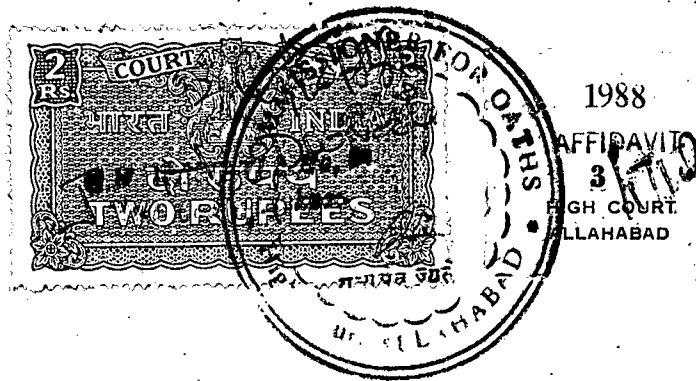
Rejoinder Affidavit

On behalf of

Petitioner

In

Registration No.847 of 1987

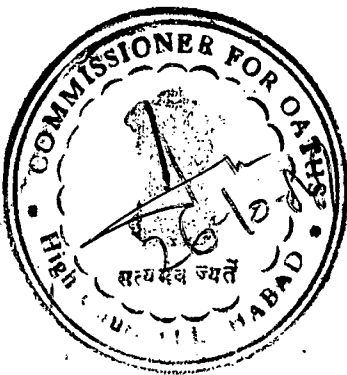


Jagdish Narain Dwivedi Applicant

Versus

Union of India and others Respondents.

REJOINDER AFFIDAVIT



I, Jagdish Narain Dwivedi aged about 48 years,
Son of late Sri Bhagwat Prasad Vaidya, resident of peeli
Kothi , Saadatganj, Lucknow, do hereby solemnly affirm and
state on oath as under:

1. That the deponent is the petitioner in the above noted

...2.

Jagdish Narain Dwivedi

case and as such he is fully conversant with the facts
deposed here-in-after.

2. That the contents of para 1 to 3 of the Counter Affidavit
needs no comment.
3. That the contents of para 4 of the Counter Affidavit
are denied and in reply the contents of para 3 of the
writ petition are reiterated as correct.
4. That the contents of para 5 of the Counter Affidavit
needs no reply.
5. That the contents of para 6 of the Counter Affidavit
needs no reply.
6. That the contents of para 7 of the Counter Affidavit
are denied and in reply the contents of para 6(3) of the
writ petition are reiterated as correct.
7. That the contents of para 8 of the Counter Affidavit
are denied and in reply the contents of para 6(4) of
the writ petition are reiterated as correct.
8. That the contents of para 9 of the Counter Affidavit

...3.



English version Denial

A
159

AS
3

(3)

~~and~~ needs no reply as the respondents have accepted the averments made in para 6(5) of the petition.

9. That the contents of para 10 of the Counter Affidavit are denied as it is mis-conceived, and in reply the contents of para 6(6) of the petition are reiterated as correct. It is further submitted that the deponent's leave applications were never rejected by the respondents.
10. That in reply to the contents of para 11 of the Counter Affidavit the contents of para 6(7) and 6(8) of the petition are reiterated as correct.
11. That the contents of para 12 of the Counter Affidavit are denied and in reply the contents of para 6(9) of the petition are reiterated as correct. Since all the leave applications were supported with medical certificates and no communication regarding the rejection of the Medical Certificates, the petitioner was not absent from duty. All the leave applications were duly acknowledged by the Manager C.S.D., Lucknow and H.O. Bombay.
12. That the contents of para 13 of the Counter Affidavit needs no comment.
13. That the contents of para 14 of the Counter Affidavit are denied and in reply the contents of para 6(11) of the petition are reiterated as correct.



English Version Revised

A5
4

A
160

(4)

14. That in reply to the contents of para 15 of the counter Affidavit it is submitted that the petitioner was given T.A. and D.A. on 4-10-1983 and thereafter he joined at Rangarh on 18-10-1983.

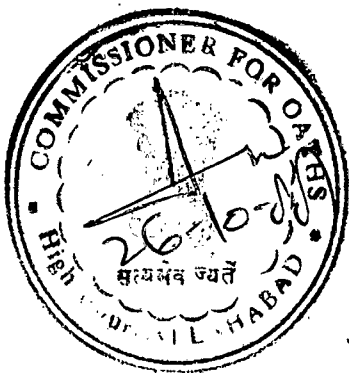
15. That the contents of para 16 of the Counter Affidavit are denied and in reply the contents of para 6(13) of the petition are reiterated as correct. It is further submitted that the contention of the respondents that the petitioner was asked to go to Military Hospital is absolutely false and incorrect. In fact the petitioner was never asked to go to the Military Hospital, or in support of their contention they have not produced any evidence with the Counter Affidavit.

16. That the contents of para 17 of the Counter Affidavit are denied and in reply the contents of para 6(14) , 6(15) and 6(16) of the petition are reiterated as correct.

17. That the contents of para 18 of the Counter Affidavit are denied and in reply the contents of para 6(17) of the petition are reiterated as correct.

18. That the contents of para 19 of the Counter Affidavit are denied and in reply the contents of para 6(18) and 6(19) of the petition are reiterated as correct.

...5.



English Words Document

AS
S

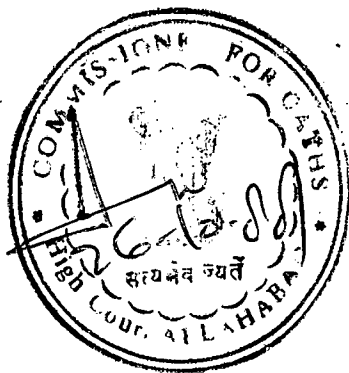
A
161

(5)

19. That the contents of para 20 of the Counter Affidavit needs no comments.

20. That the contents of para 21 of the Counter Affidavit are denied and in reply the contents of para 6(22) and 6(23) of the petition are reiterated as correct. It is further submitted that the respondents never rejected the leave applications or Medical certificates submitted by the petitioner. The respondents failed to attach any documents showing the rejection of the leave application or Medical certificates submitted by the petitioner with their Counter Affidavit.

It is further submitted that Sub Section (2) of Section 7 of the Central Civil Services Leave Rules provides that when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it. From the above, it is very clear that the authority competent to grant the leave was duty bound to intimate the petitioner specifically the decision taken on the medical certificates of the petitioner.



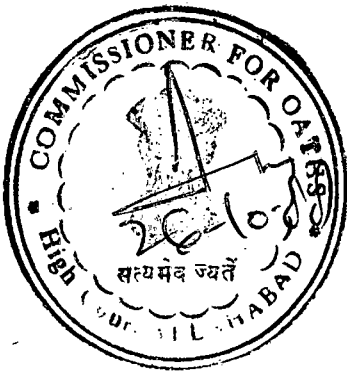
21. That in reply to the contents of para 22 of the Counter Affidavit, the contents of para 6(24) of the petition are reiterated as correct.

22. That in reply to the contents of para 23 of the Counter Affidavit the contents of para 6(25) of the petition are reiterated as correct.

Jagdish Narain Durrani

AS/6
162

23. That ~~the~~ in reply to the contents of para 24 of the Counter Affidavit the contents of para 6(26) of the petition are reiterated as correct.
24. That the contents of para 25 of the Counter Affidavit are denied and in reply the contents of para 6(27)&6(28) of the petition are reiterated as correct.
25. That the contents of para 26 of the Counter Affidavit are denied, and in reply the contents of paragraphs 6(29), 6(30), 6(31), 6(32), 6(33), 6(34) and 6(35) of the petition are reiterated as correct. However, it is further submitted that order dated 10th May, 1984 indicates that sub rule 19 of the rule 14 of C.C.S. Rules 1965 were not substantially followed. In fact sub rule 19 of rule 14 is not applicable in this case as it has already been complied with and after that submitted the final report by the enquiry officer before the respondent no.3. From the above, it is very clear that the respondent no.3 has not applied his mind or and passed an order for fresh enquiry which is against the provisions of rule 15 of the C.C.A. Rules. A photostat copy of the order dated 10th May 1984 is being annexed herewith as Annexure No.R-1 to this Affidavit. This order itself is against the principles of natural justice. Once a public servant has been enquired against, he should not be vexed and harrassed again on the same charges which amounts to ~~jea~~ double jeopardy.



Jagdish Narain Datta

26. That the contents of para 27 of the Counter Affidavit are denied and in reply the contents of para 6(36) of the ~~can~~ petition are reiterated as correct. It is further submitted that the disciplinary authority with mala fide intention remit the case for further enquiry as the provisions of sub rule 19 of rule 14 have already been followed and presiding officer submitted written brief before the enquiry officer and the enquiry officer submitted the final reports on the basis of the afore-said written brief. Therefore, the question of second enquiry on the same charges does not arise.

27. That in reply the contents of para 28 of the Counter Affidavit, the contents of para 6(37), 6(38) and 6(39) of the petition are reiterated as correct.

28. That the contents of para 29 of the Counter Affidavit are denied and in reply the contents of para 6(40) of the petition are reiterated as correct.

29. That the contents of para 30 of the Counter Affidavit are denied and in reply the contents of para 6(41) and 6(42) of the petition are reiterated as correct. It is further submitted that even in the second enquiry the enquiry officer found that the petitioner is innocent and he exonerated the petitioner from both the charges. Thereafter the appointing authority did not apply

...8.



Jaykish Kumar Dandekar

(8)

his mind and had not acted as per the provisions of rule 15 of the C.C.S. Rules as he had not recorded any reasons as to why he disagree with the report of the enquiry officer, though he had conducted a second enquiry afresh. Therefore, the impugned order passed is against the legal requirements. In fact he has to pass a self contained speaking and reasoned order conforming to the legal requirements. In not doing so the respondent no.3 committed legal error. Further on a perusal of the impugned orders states that the unauthorised absence with effect from 15-3-1982 onwards be treated as leave due and admissible. Thus, it is very clear that the impugned order itself is evasive in nature and the appointing authority passed an order without applying his judicial mind in conformity with the legal requirements. Once again it is stated that the appointing authority has not stated the reasons as to why he has not agreed with the second enquiry report, thus it is very clear that the impugned order is passed by way of biased reasons only known to him.



30. That in reply the contents of para 31 of the Counter Affidavit the contents of para 6(44) of the petition are reiterated as correct. However, it is again submitted that the charges could not be proved against the petitioner.

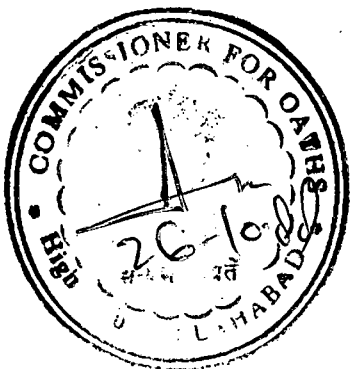
Jagdish Narain Durrani

31. That the contents of para 32 of the Counter Affidavit are denied and in reply the contents of para 6(45) of

....9.

the petition are reiterated as correct. As a matter of fact the petitioner was bed-ridden and as such he could not move even out-side his house without recovering from his illness . It is further submitted that the petitioner being a patient of low blood pressure and depression, was transferred to hard station, he was unable to join without the advise of the Doctor. The doctor found the petitioner fit on 14-9-1983 after that he proceeded to Ramgarh and joined thereon 18-10-83.

32. That the contents of para 33 of the Counter Affidavit are denied and in reply the contents of para 6(46) of the petition are reiterated as correct. It is further submitted that the charges made against the petitioner were not proved and yet the Disciplinary Authority imposed the penalty of dismissal against the provisions of C.C.S. Rules. Thus , it is a non-speaking order and has been passed without following the legal requirements.



33. That the contents of para 34 of the Counter Affidavit are denied and in reply the contents of para 6(47) of the petition are reiterated as correct. It is further submitted that the disciplinary authority can accept or reject the findings of the enquiry officer . In this case the disciplinary authority once dis-agreed with the findings of the enquiry officer, he ordered a 2nd enquiry. The disciplinary Authority

English name: Darsheel

was not even satisfied with the findings of the second enquiry by the enquiry officer and passed the impugned order dismissing the petitioner from service. Thus the action taken by the disciplinary authority is not in conformity with the legal requirements and passed an order to suit the whims and prejudices of the disciplinary authority and violated the provisions of rule 15 of the C.C.S. Rules.

34. That the contents of para 35 of the Counter Affidavit are denied and in reply the contents of para 6(48) of the petition are reiterated as correct. It is further submitted that the petitioner was never found guilty of charges framed against him by the enquiry officer. The ~~Enquiry Officer's~~ reports of the Enquiry officer are contained in Annexure No. 19, 20 and 21 which may kindly be perused. It is wrong to say that the enquiry was re-ordered on account of some technical flaws. The order dated 10-5-1984 says that there is error in the proceedings as sub rule 19 of rule 14 had violated. Sub rule 19 of rule 14 provides that the enquiry officer has the power to ask the presenting officer to file written brief or to hear him in respect of the concerned case. It is very interesting that how the disciplinary authority can say that there was a violation of sub rule 19 of rule 14 when the presenting officer had already submitted his written arguments. Thus, it is clear that the disciplinary authority has not gone through the file and his personal enmity passed an

...11.



English Name Dura

order on 10th May 1984 to re-enquire the case. Thus the order is absolutely illegal and against the provisions of C.C.A.Rules. Therefore, all the subsequent proceedings conducted in this case are illegal, arbitrary malafide and biased.

35. That the contents of para 36 of the Counter Affidavit are denied and in reply to the contents of para 6(49) of the petition are reiterated as correct. It is incorrect to say that the penalty imposed on the petitioner is on the basis of the entire enquiry proceedings and the penalty imposed was after due consideration of the entire case. In fact the disciplinary authority passed the order without considering the entire matter as it is evident from the order dated 10-5-1984. Thus, the order has been passed by the disciplinary authority without applying his own mind or after considering the outcome of the enquiry proceedings. It is further submitted that the impugned order is an out-come of sheer malice and prejudice action against the petitioner.



36. That the contents of para 37 of the Counter Affidavit are denied and in reply the contents of para 6(50) of the petition are reiterated as correct.

37. That the contents of para 38 of the Counter Affidavit are denied and in reply to the contents of para 6(51) of the petition are reiterated as correct. It is further

submitted that he joined at Ramgarh on 18-10-1983 after obtaining the fitness certificate from the doctor who was attending him therefore the contention of the respondent that the petitioner joined at Ramgarh at his own free will and disobeyed the order has no force at all. It is again submitted that it is a question, which ~~has~~ has already been examined by the enquiry officer and submitted his findings which may kindly be perused.

38. That the contents of para 39 of the Counter Affidavit are denied and in reply to the contents of para 6(52) of the petition are reiterated as correct.

39. That the contents of para 40 of the Counter Affidavit are denied and in reply the contents of para 6(53) of the petition are reiterated as correct. It is further submitted that if the disciplinary authority is not in a position to agree with the findings of the enquiry officer then he is duty-bound to record its reasons. In fact the disciplinary authority has not acted as per the provisions of rule 15 of the C.C.S. Rules.



40. That the contents of para 41 of the Counter Affidavit are denied and in reply the contents of para 6(54) of the petition are reiterated as correct.

41. That the contents of para 42 of the Counter Affidavit needs no comments.

On a perusal of the order it is clear that the appellate authority has not considered the above 3 points or all the points raised in the appeal of the petitioner instead passed a non-speaking order reverting the petitioner from U.D.C. to L.D.C. against the provisions of sub rule 2 of rule 27 of the C.C.A. Rules. Further appellate authority said that the enquiry committee has decided the benefit of doubt be accorded to the delinquent employee. When benefit of doubt has been given, the question of punishment does not arise. Thus the impugned order of reversion is an out-come of non-application of the mind of the appellate authority. Further the Disciplinary Authority being the Chairman of the Department he is also one of the members of the Board of Control Executive committee and the impugned order is an out come of his influence and the order has been passed by an officer below in rank than the appointing authority.

43. That the contents of para 44 of the Counter Affidavit are denied and in reply the contents of para 6(59) of the petition are reiterated as correct.

44. That the contents of para 45 of the Counter Affidavit are denied and in reply the contents of para 6(60) of the petition are reiterated as correct.

45. That the contents of para 46 of the Counter Affidavit needs no comments.

46. That the contents of para 47 of the Counter Affidavit are denied and in reply the contents of para 6(62) of the petition are reiterated as correct. It is further



English Name Devrinder

submitted that the impugned order has been passed without following the provisions of C.C.S.Rules.

47. That the contents of para 48 of the Counter Affidavit are denied and in reply the contents of para 63 of the petition are reiterated as correct. It is further submitted that the petitioner is entitled to get the benefits of salary between 15-3-1982 to 17-10-1983.
48. That the contents of para 49 of the Counter Affidavit are denied and in reply the contents of para 6(64) of the petition are reiterated as correct.
49. That the contents of para 50 of the Counter Affidavit are denied and in reply the contents of para 6(65) of the petition are reiterated as correct.
50. That the contents of para 51 of the Counter Affidavit are denied and in reply the contents of para 6(66) and 6(67) of the petition are reiterated as correct.
51. That the contents of para 52 of the Counter Affidavit are denied and in reply the contents of para 6(68) of the petition are reiterated as correct.
52. That the contents of para 53 of the Counter Affidavit are denied and in reply the contents of para 6(69) of



Forgeth Was Divale

A
172

AS
16

alongwith the grounds
the petition/are reiterated as correct . The petitioner
is entitled to get all the reliefs claimed by him and
the petition be allowed with costs.

53. That the contents of para 54 of the Counter Affidavit
are denied and in reply the contents of para 7 of the
petition are reiterated as correct.

54. That the contents of para 55 of the Counter Affidavit
are denied and in reply the contents of para 8 of the
petition are reiterated as correct.

55. That the contents of para 56 of the Counter Affidavit
needs no comments.

Lucknow:

Dated: 26-10-1988.

L.T. F. at



Jagdish Narain Dwivedi

Deponent

Verification

I, the deponent above named do hereby verify
that the contents of paragraphs 1 to 55 of this Rejoinder
Affidavit are true to my own knowledge. No part of it is
false and nothing material has been concealed.

So help me God.

Lucknow:

Dated: 26-10-1988.

L.T. F. at



Jagdish Narain Dwivedi

Deponent

I identify the deponent who has
signed before me.

Jagdish Narain Dwivedi
Advocate



(17)

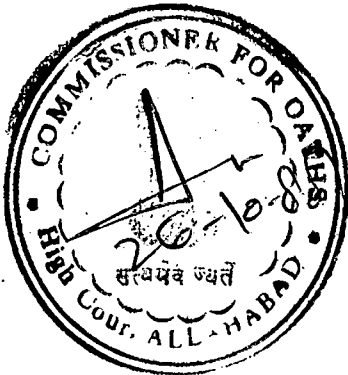
Solemnly affirmed before me on 26-10-88
at 11-30 a.m./p.m. by ~~Sri~~ Jagdish Narain Dwivedi

the deponent who has identified

by Sri SURENDRAN. P.

Advocate, High Court, Lucknow Bench,

Lucknow.



I have satisfied myself by examining
the deponent that he understands the
contents of the Rejoinder Affidavit which
have been read-over and explained by me
to him.

A. N. Khanam
A. N. KHANAM
OATH COMMISSIONER
High Court Allahabad
Lucknow Bench Lucknow
No..... 3/1718...
Date..... 26-10-88

GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
CANTEEN STORES DEPARTMENT
"ADELPHI" 119, M. K. ROAD,
BOMBAY-400 020.

Annexure - R1

Am 18

AS 18

CONFIDENTIAL

A-5-151

A 174

/ CONFIDENTIAL /

Ref.No. 3/A-3/PN-1541/442

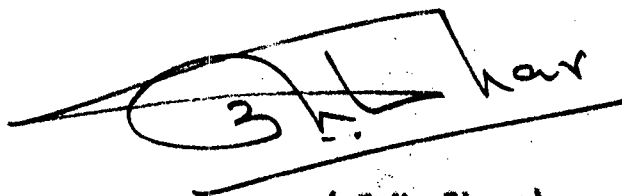
Dt: 10 MAY, 1984

O R D E R

WHEREAS Shri S-C. Kapur, Manager, CSD Depot, Calcutta was appointed as Inquiry Officer to enquire into the charge framed against PN-1541 Shri J.N. Dwivedi, UDC, CSD Depot, Ramgarh vide Order No. 3/A-3/PN-1541/848 dated 09th August, 1983.

AND WHEREAS on perusal of the inquiry report dated 13.04.84 submitted by the said Inquiry Officer, the undersigned considers that the case requires further enquiry on account of procedural errors/lapses, in that the provisions under sub rule 19 of Rule 14 of CCS (CCA) Rules, 1965 were not substantially followed.

NOW, THEREFORE, the undersigned in exercise of powers conferred by sub rule 1 of Rule 15 of the said Rules, hereby remits the case to the Inquiry Officer for further enquiry and reports



(H.N. Dhar)
Major General (Retd.)
General Manager
Canteen Stores Department

TO:

SHRI S.C. KAPUR (Inquiry Officer): The case file alongwith Vigilance Hand Book and Hand Book for Inquiry Officer is sent herewith and these may be returned alongwith the inquiry report. You will report to your duty post immediately after the conclusion of the inquiry proceedings. Encl : a/e

cc: Shri K.G. Bhat (Presenting Officer) THROUGH PROPER CHANNEL /
Assistant Manager
C S D Depot
LUCKNOW
: Vigilance Hand Book and Hand Book for Presenting Officer is sent herewith and the same may be returned after completion of the inquiry. Encl : a/e

cc: Shri J.N. Dwivedi
Pili Kothi, Sadat Ganj
BARA CHAURABA, LUCKNOW

/ REGISTERED - AD /

: Instructions regarding the nomination of defense assistant vide Order No.3/A-3/PN-1541/848 dated 09.08.1983 remain same.

cc: D G M (F&A)

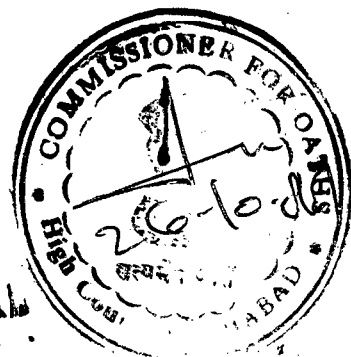
cc: The Manager, CSD Depot, Ramgarh

cc: The Manager, CSD Depot, Lucknow

Jointly Hand Delivered

/ CONFIDENTIAL /

CONFIDENTIAL



SUPREME COURT OF INDIA

Before :—A. N. Ray, C.J., M.M. Beg, J. and Singh, JJ.

Civil Appeal No. 1512 of 1974

Decided on 6-5-1976

Baradakanta Mishra

(Appellant)

Vs.

High Court of Orissa and another

(Respondents)

For the Appellant :—Mr. P. Chatterjee, Senior Advocate (with him Mr. C. S. Rao, Advocate).

For the High Court :—Mr. S. Choudhury, Senior Advocate (with him Mr. Vinoo Vegal).

For the State :—Mr. Govind Das, Senior Advocate (with him B. Parthasarathi).

A. Constitution of India, Article 233—Appointment of District Judges—Subordinate Judge appointed as a District Judge—Is a fresh appointment by promotion to be District Judge.

Article 233 provides that the appointment, posting and promotion of District Judges is by the Governor. The posting of a District Judge is the initial or the first posting as District Judge. The promotion of District Judge is appointment of persons by promotion to District Judges. When a Subordinate Judge is appointed as a District Judge the appointment is by promotion but it is a fresh appointment by promotion to be a District Judge. (Para 17)

B. Constitution of India, Article 235—Control over the Subordinate Courts—Extent of—High Court has no power to take away the conditions of his service and any right of appeal available to him under the law.

Article 235 is relevant for the purpose of present appeal. The article states that control over district Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the Judicial Service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law. (Para 18)

C. Constitution of India, Articles 235 and 311 (2)—Exercise of control over the Subordinate Courts—Extent and nature of—
—High Court can alone make enquiries into disciplinary conduct—Not competent to impose punishments of dismissal or removal.

The control which is vested in the High Court is complete control subject only to the power of Governor in the matter of appointment including initial posting and promotion of District Judge and and dismissal, removal, reduction in rank of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal subject however to the conditions

of service to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such an opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could make enquiries into disciplinary conduct. (Para 19)

D. Constitution of India, Article 311(2)—Dismissal and Removal—Distinction—Dismissal ordinarily disqualifies any future employment and removal ordinarily does not.

Reduction in rank is one of the major punishments mentioned in Article 311. The major punishments are dismissal, removal, or reduction in rank. The words 'dismiss, remove, or reduce in rank' have a stigma, namely, the meaning which they bear as three major punishments in Service Rules. The difference between dismissal and removal is that dismissal ordinarily disqualifies any future employment and removal ordinarily does not. (Para 21)

E. Constitution of India, Article 235—Powers of Governor as well as of High Court—Explained.

The High Court within the power and control vested under Article 235 could hold disciplinary proceedings against the appellant and could recommend the imposition of punishment of reduction in rank on the appellant. The actual power of imposition of one of the major punishment, viz., reduction in rank is exercisable by the Governor who is the appointing authority. The order passed by the High Court on 8 December 1972 reducing the appellant in rank is unconstitutional and is quashed. (Para 23)

F. Constitution of India, Articles 226, 235 and 311(2)—Interpretation of Statutes—Order of initial authority void—An order of the appellate authority cannot make it valid—Order of the Governor using the word 'confirm'—No legal effect of—Order valid can be confirmed and not a void order.

If the order of the initial authority is void an order of the appellate authority cannot make it valid. The order of the Governor used the word 'confirm'. The appellant filed appeals to the Government. The appeals were dismissed. The confirmation by the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void. (Para 24)

Cases referred.

1. Baradakanta Misra v. State of Orissa and another, I. L. R. 1966 Cuttack 503.
2. Registrar of the Orissa High Court v. Baradakanta and anr. I.L.R. 1973 Cuttack 134.
3. Baradakanta Misra v. Registrar, Orissa High Court and another, (1974)2 S.C.R. 282.
4. The State of West Bengal v. Nripendra Nath Bagchi, (1966) 1 S.C.R. 771.
5. The High Court of Calcutta v. Amal Kumar Roy, (1963) 1 S.C.R. 437.
6. High Court of Punjab and Haryana v. State of Haryana, (1975) 3 S.C.R. 365.
7. Parshotam Lal Dhingra v. Union of India, 1958 S. C. R. 828.

8. Debash Chandra Das v. Union of India and others, (1970) 1 S.C.R. 220.
9. Shamsher Singh and another v. State of Punjab, (1975) 1 S.C.R. 814.

JUDGMENT

Ray, C.J.—The appeal arises out of the judgment dated 3 December, 1973 of the High Court of Orissa.

2. The appellant filed a writ petition for quashing the order of the High Court dated 3 December, 1972 reducing the appellant in rank and for quashing orders dated 8 December, 1973 passed by the High Court dismissing the appellant from service.

3. The High Court dismissed the petition of the appellant.

4. The questions for consideration are two. First whether the High Court was competent to reduce the appellant in rank. Second, whether the High Court could pass orders dismissing the appellant from service.

5. The appellant was appointed by the Governor as a Munsif in the State of Orissa in 1947. He was in course of time promoted to the post of a Subordinate Judge. The appellant was appointed by the Governor on 28 March, 1962 as Additional District Magistrate (Judicial).

6. In 1961 a separate cadre of Additional District Magistrate (Judicial) was created by the Government. This new cadre was called 'Superior Judicial Service Junior Branch'. This cadre is not the same as that of District Judges and Additional District Judges who belonged to Superior Judicial Service Senior Branch.

7. The appellant was on 15 January, 1963 reverted from the post of Additional District Magistrate (Judicial) to the rank of Subordinate Judge. The appellant challenged the order of reversion in a writ petition in the High Court of Orissa. The writ petition was dismissed as will appear from the judgment in *Baradakanta Misra v. State of Orissa and another (I)*. The appellant made an application for special leave to appeal to this Court being Special Leave Petition (Civil) No. 53 of 1967. The application was rejected.

8. On 3 February, 1968 the High Court appointed the appellant to the post of Additional District Magistrate (Judicial) by promotion. It is said that under rule 10 of the Orissa Superior Judicial Service Rules, 1963 the High Court is the appointing authority empowered to appoint Additional District Magistrates (Judicial) by promotion from the rank of Subordinate Judge.

9. On 31 July, 1968 the appellant was appointed by the Governor as an Additional District Judge.

10. On 8 December, 1972 the High Court imposed on the appellant the punishment of reduction in rank from the post of Additional District and Sessions Judge to an Additional District Magistrate (Judicial). The order passed by the High Court dated 8 December, 1972 records that in pursuance of the control vested in the High Court under Article 235 of the Constitution in a disciplinary proceeding initiated on charges dated 29 April, 1972 against the appellant an officiating member of the Orissa Superior Judicial Service Senior Branch the appellant is reduced in rank with immediate effect and is released from suspension.

11. On 30 March, 1972 the High Court passed an order in exercise of powers under Article 235 to the effect that the appellant was placed under suspension forthwith because a disciplinary proceeding against the appellant was contemplated.
12. On 29 April, 1972 charges were served on the appellant. He was asked to submit an explanation. He did not do so. He thereafter asked for inspection of certain documents. A date was appointed but he did not inspect any document. With regard to the enquiry pursuant to the charges delivered to the appellant on 29 April, 1972 the learned Judge of the High Court who was the Enquiring Judge came to the conclusion that one of the charges was established that the appellant after pronouncing judgment on 22 June, 1971 penned through his signatures on the judgment and entered into the order-sheet that it was not delivered. The Enquiring Judge also found the appellant guilty of tempering with the records of the Court. The enquiring Judge also found the appellant guilty of the charge that though the appellant was ordered by the Court pending enquiry and during his suspension to fix the Headquarters at Cuttack he did not comply with the order.
13. In the background of this enquiry the High Court ordered that the appellant be reduced to the rank of Additional District Magistrate. The appellant challenged this order.
14. After the order of reduction on 8 December, 1972 the High Court issued orders posting the appellant as Additional District Magistrate, Sambalpur, and directed him to join at his new station. The appellant did not join the new station nor did he apply for leave. A fresh disciplinary proceeding was started against the appellant for wilful absence from duty. The matter was enquired into by a Judge of the High Court. The appellant submitted that the order reducing him was beyond the powers of the High Court. The enquiring Judge found him guilty. The appellant was given an opportunity to show cause against the order. The appellant did not do so. The High Court thereupon imposed the punishment of dismissal on the appellant and dismissed him. One of the orders of dismissal recited that in pursuance of the order passed by the Court in exercise of its powers under Article 235 of the Constitution in a disciplinary proceeding initiated in charges dated 1 February, 1973 the appellant an officer of the Orissa Judicial Service Class I officiating in the Junior Branch of the Orissa Superior Judicial Service is dismissed from service with immediate effect. Another order of 3 December, 1973 recited that in pursuance of the order passed by the Court in exercise of its powers under Article 235 the appellant an officer of the Orissa Judicial Service Class I, officiating in the Junior Branch of the Orissa Superior Judicial Service, who has been convicted on the charge of criminal contempt by judgment of the Orissa High Court reported in *Registrar of the Orissa High Court v. Baradakanta and another* (1), which was confirmed by the Supreme Court by judgment dated 19 November, 1973 *Baradakanta Mishra v. Registrar, Orissa High Court and another* (2), is on the ground of conduct leading to such conviction, dismissed from service with immediate effect. The judgment of this Court is reported in *Baradakanta Misra v. Registrar, Orissa High Court and another* (3).
15. The respondents contended that the High Court has disciplinary control over District Judges and in exercise of that power the High Court can hold an enquiry and can impose all punishments other than dismissal or removal. The punishment of reduction in rank is said by the respondents

not to be dismissal or removal because reduction in rank does not result in ouster from service. The respondents, therefore, submit that the order of 8 December, 1972 reducing the appellant in rank was within the control vested under Article 235 of the Constitution in the High Court.

16. With regard to the orders of dismissal the respondents submitted that the appellant preferred appeals from the orders. The appeals were heard and dismissed by the Governor. The respondents, therefore, submit that the dismissal in effect and substance is by the Governor. The orders of dismissal are said by the High Court to be recommendation to the Governor of dismissal of the appellant. The respondents submit that the appellant did not challenge the order of the Governor, and therefore, the orders have become final.

17. Article 233 provides that the appointment, posting and promotion of District Judges is by the Governor. The posting of District Judge is the initial or the first posting as District Judge. The promotion of District Judge is appointment of persons by promotion to District Judges. When a Subordinate Judge is appointed as a District Judge the appointment is by promotion but it is a fresh appointment by promotion to be a District Judge.

18. Article 234 provides that appointment of persons other than District Judges to the Judicial Service of a State shall be made by the Governor in consultation with the State Public Service Commission and with the High Court.

Article 235 is relevant for the purpose of present appeal. The article states that control over district Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the Judicial Service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

19. The scope of Article 235 has been examined by this Court in several decisions. The important decisions are *The State of West Bengal v. Nripendra Nath Bagchi* (4), *The High Court of Calcutta v. Amal Kumar Roy* (5), *High Court of Punjab and Haryana v. State of Haryana* (6), (In the matter of N. S. Roy). The effect of the decision is this. The word 'control' as used in Article 235 includes disciplinary control over District Judges and Judges inferior to the post of District Judge. This control is vested in the High Court to effectuate the purpose of securing independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. The word 'control' is accompanied by the word 'vest' which shows that the High Court is made the sole custodian of the Control over the judiciary. Control is not merely the power to arrange the day-to-day working of the Court but contemplates disciplinary jurisdiction on the presiding Judge. The word 'control' includes something in addition to the mere superintendence of these Courts. The control is over the conduct and discipline of Judges. The inclusion of a right of appeal against the orders of the High Court in the conditions of service indicates an order passed in disciplinary jurisdiction. The word 'deal' in Article 235

also indicates that the control is over disciplinary and not mere administrative jurisdiction. The control which is vested in the High Court is complete control subject only to the power of Governor in the matter of appointment including initial posting and promotion of District Judge and dismissal, removal, reduction in rank of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal subject however to the conditions of service to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such an opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could make enquiries into disciplinary conduct.

20. In *N. S. Rao's case* (4) (supra) this Court said "The Governor has power to pass an order of dismissal, removal or termination on the recommendations of the High Court which are made in exercise of the power of control vested in the High Court. The High Court of course cannot terminate the services or impose any punishment on District Judge by removal or reduction. The control over District Judge is that disciplinary proceedings are commenced by the High Court. If as a result of any disciplinary proceeding any District Judge is to be removed from service or any punishment to be imposed, that will be in accordance with the conditions of service.

21. It is indisputable that the appellant was promoted to the post of Additional and Sessions Judge. That is the cadre of District and Sessions Judge. He was reduced in rank. Reduction in rank is one of the major punishments mentioned in Article 311. The major punishments are dismissal, removal or reduction in rank. The words 'dismiss, remove or reduce in rank' have a stigma, namely, the meaning which they bear as three major punishments in Service Rules. The difference between dismissal and removal is that dismissal ordinarily disqualified any future employment and removal ordinarily does not. See *Parshottam Lal Dhingra v. Union of India* (7). If one is reverted by way of punishment for misconduct Article 311(2) is attracted. The expression 'reduction in rank' means that the person who holds the position of a Subordinate Judge has been reduced to the post of a Munsif. The rank of a Subordinate Judge is higher than that of the Munsif. But Subordinate Judges in the same cadre hold the same rank though they have to be listed according

to their seniority in the Civil List. Therefore, losing some places in the seniority list in the same cadre does not amount to reduction in rank under Article 311 (2). See *The High Court of Calcutta v. Amal Kumar Roy* (5). Reduction in rank may be brought in the garb of a reversion. See *Debash Chandra Das v. Union of India and others* (8).

22. It was argued in *N. N. Bagchi's case* (1), (supra) that the extent of control exercisable by the High Courts under Article 235 must be so cut down as to keep disciplinary jurisdiction out. This argument was not accepted by this Court. This Court said that the provisions that certain powers are to be exercised by the Governor and not by the High Court do not take away other powers from the High Courts. This Court however incidentally added that in exercising these special powers in relation to inquiries against District Judges, the Governor would always have regard to the opinion of the High Court in the matter. This Court concluded by

holding that there is nothing in Article 311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry.

23. The High Court within the power and control vested under Article 235 could hold disciplinary proceedings against the appellant and could recommend the imposition of punishment of reduction in rank on the appellant. The actual power of imposition of one of the major punishment, viz., reduction in rank is exercisable by the Governor who is the appointing authority. The order passed by the High Court on 8 December, 1972 reducing the appellant in rank is unconstitutional and is quashed.

24. The two orders of dismissal dated 3 December, 1973 are based on the order of 8 December, 1972. The substratum of the orders of dismissal being unconstitutional the orders of dismissal cannot have any legal force. Further, the contention of the High Court that the orders of dismissal passed by the High Court merged in the orders passed by the Governor cannot be accepted. If the order of the initial authority is void an order of the appellate authority cannot make it valid. The order of the Governor used the word 'confirm.' The appellant filed appeals to the Government. The appeals were dismissed. The confirmation by the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void.

25. For the foregoing reasons as is pointed out in *N. S. Rao's case* (2) the High Court cannot terminate the services or impose any punishment on the District Judge if as a result of a disciplinary proceeding any District Judge is to be removed from service or any punishment is to be imposed that should be in accordance with the conditions of service.

26. In the present case the conditions of the Civil Services (Classification, Control and Appeal) Rules, 1962, framed under Article 309 provides in Rule 14(4) that the appointing authority alone can impose penalties as specified in Clauses (vi) to (ix) of Rule 13. Clause (vi) is the penalty of reduction in rank and Clause (ix) is dismissal from service. Therefore, under the conditions of service the High Court cannot reduce in rank or dismiss a District Judge.

27. If the reduction of the appellant is without jurisdiction then the appellant is deemed to continue as a District Judge. The High Court could not dismiss the appellant. Dismissal could only be by the Governor. This is clear from the decisions of this Court in *N. S. Rao's case* (2) (supra) and *Shamsher Singh and another v. State of Punjab* (9).

28. The appeal, therefore, accepted. The judgment of the High Court is set aside. The orders passed by the High Court on 8 December, 1972 and 3 December, 1973 are quashed.

29. In view of the orders being quashed the appellant will be deemed to be an Additional District Judge up to the date he retired. Parties will pay and bear their own costs.

Appeal allowed.

बख्तालत श्रीमान

महोदय

वादी (मुद्दै)
मुद्दै (मुद्दालेह)

का

वकालतनामा

Caseno 847/07



आपकी आज्ञाकारी आज्ञा

नं० मुद्दमा

बनाम

प्रतिवादी (रिस्पान्डेन्ट)

सन पेशी की बा०

१९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

वकील

एडवोकेट महोदय

को अपना वकील नियुक्त करके (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तस्दीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानो) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी। मैं यह भी स्वीकार करता हूं कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूंगा। अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

नाम अदालत

नं० मुकद्दमा

नाम फरीकान

Jagdish Narain Desai

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १९

ई०

Accepted

19/4/48

A-7/160
A/83

**Before Central Administrative Tribunal
Additional Bench Allahabad**

Registration No. 847/87 of 19 87

Shri J.N. Dwivedi District..... Applicant

VERSUS

Union of India Respondents

I/We.....

in the above matter hereby appoint and retain

SHRI KRISHNA CHANDRA SINHA, Advocate High Court
to appear, act and plead for me/us in the above matter and to conduct/prosecute and defend the same in all interiocutory or miscellaneous proceedings connected with the same or with any decree or order passed therein, appeals and or other proceedings therefrom and also in proceedings for reviw of judgment and for leave to appeal to Suprem Court and to obtain return of any documents filed therin, or receive any money which may be payable to me/us.

2. I/We futher authorise him to appoint and Instruct any other legal practitioner authorising him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so.

3. I/We hereby authorised him/them on my/our behalf to enter into a compromise in the above matter, to execute any decree/order therein, to appeal from any decree/order therein and to appeal, to act, and to plead in such appeal or in any appeal preferred by any other party from any decree/order therein.

4. I/we agree that if/we fail to pay the fees agreed upon or to give due instruction at all stages he/they is/are at liberty to retire from the case and recover all amounts due to him/they and retain all my/our monies till such dues are paid.

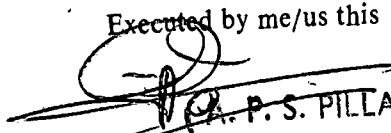
5. And I/We, the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my own acts, as if done by me/us to all intents and purposes.

Executed by me/us this

day of

19

at


(P. S. PILLAI)
Manager

Canteen Stores Department
Executant/s are personally known to me he has/they have/signed befor me

Satisfied as to the identity of executant/s signature/s.

(where the executant/s is/are illiterate blind or unaquainted with the language of vakalat)

Certified that the content were explained to the the executant/s in my presence in.....the language known to him/them who appear/s perfectly to understand the same and has/have signed in my presence.

Accepted



K. C. SINHA
Advocate

Additional Standing Counsel
Central Government

High Court-Allahabad
Counsel for Applicant/Respondents
No.....

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE O.A. 247 OF 1987

NAME OF THE PARTIES J. N. Durevedi Applicant

Versus

Union of India Respondent

Part A.

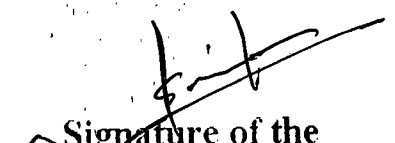
Sl.No.	Description of documents	Page
1	General order	A-1
2	A-1 Order sheet	A-1 to A-7
3	A-2 Judgment May 2, 1989	A-2 - A-16 A-12
4	A-3 Petition with Annexure	A-13 to 114
5	A-4 Power	A-115
6	A-5 Counter - Affidavit	A-116 to 133
7	A-5 R.A.	A-134 to 151
8	A-6 Power Service Lal Report	152 to 158
9	A-7 Power	A-159 to 160
10		
11		
12		
13		
14		
15		
16		
17		
18		

CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Dated 06-06-2011

Counter Signed.....


Signature of the
Dealing Assistant

Section Officer/In charge