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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

ORIGINAL APPLICATION No.594 OF 1988.

Abdul Ahmed Khan,
45/23, Naval Civilian
Housing Colony,
Bhandup, Powai,
Bombay - 400 078.

... Applicant

Vs.

The Flag Officer Commanding-in-Chief,
Head Quarters, Western Naval Command,
Shahid Bhagat Singh Road,
Bombay - 400 001.

... Respondent

Coram: Hon'ble Member(J), Shri M.B. Mujumdar
Hon'ble Member(A), Shri M.Y. Priolkar

Appearances:

1. Mr. Mohan Sudame,
Advocate for the
Applicant.
2. Mr. V.S. Masurkar,
Advocate for the
Respondent.

ORAL JUDGMENT:

Dated: 12.6.1989.

[Per: Shri M.B. Mujumdar, Member(J)]

On 3.8.1970 the applicant was appointed as a Fireman Grade II in the Naval Armament Depot, Trombay. Unfortunately, he contacted Hansen's Disease (Leprosy). By letter dated 2.1.1986 the Surgeon Lt. Comdr. Indian Navy, Principal Medical Officer, Indian Navy Dockyard Dispensary, referred the applicant to the Vimala Dermatological Centre at Versova. In the column regarding short history of illness in the letter of reference, it was mentioned that the applicant was complaining of Hansen's Disease, Chronic Ulcer on left sole. It was mentioned that the applicant be admitted. But he was not admitted in the Vimala Dermatological Centre at Varsova. He was however, under treatment in that centre for Hansen's Disease from 2.1.1986 to 24.2.1988. On 22.2.1988 he was found fit to resume duties by the Doctor who was treating him at the Centre. The applicant

obtained a certificate to that effect and went to resume his duties in the Naval Armament Depot, Trombay. However, he was told orally that he was already removed from service by order dt. 28.5.1987 and was not allowed to resume duties.

2. On 25.2.1988 the applicant again requested the Naval Armament Supply Officer to allow him to resume his duties as he had become fit to join the duties. But that request was rejected by the Naval Armament Supply Officer by his reply dt. 10.3.1988. Along with that reply a copy of the order dt. 28.5.1987 was sent to the applicant by pointing out that previously also a copy was sent to him, but it was returned with the Postal remark "addressee not traceable". On the same day, i.e. on 25.2.1988 the applicant submitted a representation to the Flag Officer, Commanding-in-Chief, Headquarters of the Western Naval Command requesting to take him on duty and for regularising his absence on medical grounds. That representation was treated as an appeal by the Vice-admiral, Flag Officer Commanding-in-Chief who by his order dt. 1.2.1989 rejected the same and confirmed the penalty imposed on him by the order dt. 28.5.1987. We may point out that we had already admitted this Original Application on 26.10.1988 and hence representation/appeal dt. 25.2.1988 had abated in view of section 19(iv) of the Administrative Tribunals Act, 1985. Hence after admission of the application the appellate authority was not competent to decide the representation/appeal. But this point is not material in this case.

3. On 4.8.1988 the applicant has filed this application challenging the order dt. 25.2.1988 by which he is removed from service. He has also prayed for full back wages with continuity in service and for regularising his absence on medical grounds.

4. By letter dt. 8.12.1988 the Admiral Superintendent directed the applicant to vacate the quarter which was allotted to him while in service. The applicant had filed Misc. Petition No.752/88 for staying the operation of that order. By our interim order dt. 5.1.1988 we have stayed the operation of that order. Thus the applicant is still in occupation of the quarter which was allotted to him while in service.

5. The respondents have resisted the application by filing their exhaustive written statement. They have stated that the applicant was unauthorisedly absent from 27.12.1985. Hence major charge sheet dt. 28.6.1986 was issued to him. The charge sheet was sent to the applicant at his local and permanent address. But it was returned undelivered by the Postal authorities. On 19.10.1986 a notice was issued to the applicant asking him to show cause within one month as to why he should not be removed from the service. The notice was published in the news papers having circulation in the localities of his known address. But still the applicant failed to reply and hence the impugned order dt. 28.5.1987 was passed by Commodore Chief Staff Officer (P&A) as he was satisfied that it was not reasonably practicable to hold the inquiry. By the same order the penalty of removal from service was imposed on the applicant from the date when the order would be communicated to him.

6. We have just now heard Mr.Mohan Sudame, learned advocate for the applicant and Mr.V.S.Masurkar, learned advocate for the respondents.

7. Obviously, the Disciplinary Authority has passed the impugned order under Rule 19(ii) of the Central Civil

Services (Classification, Control and Appeal) Rules, 1965.

According to that provision, notwithstanding anything contained in that rule 14 to rule 18 of the Rules, where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, the Disciplinary Authority may consider the circumstance of the case and make such orders thereon as it deems fit.

8. From the order dt. 28.5.1987 it is clear that the Disciplinary Authority was satisfied that it was not reasonably practicable to hold an inquiry against the applicant as efforts to communicate with him had failed. But, in our opinion, this was not a valid and legal ground for dispensing with the regular inquiry. It may be noted that Rule 14 lays down the procedure for imposing major penalties. Sub-rule 20 of that Rule provides for holding the inquiry ex-parte when the delinquent does not appear in person before the inquiry authority. In this case if the Disciplinary Authority found that the applicant was not appearing before him he should have held inquiry ex-parte under sub-rule 20. Simply because the applicant could not be served with the charge sheet or did not appear before the Disciplinary Authority that should not have been treated as a ground for dispensing with the regular inquiry.

9. The words "is not reasonably practicable to hold an inquiry in the manner provided in these rules" are explained by the Delhi High Court in R.K.Mishra Vs. General Manager, Northern Railway 1977(2) S.L.R. 127. According to Delhi High Court the impracticability in holding the inquiry must imply some physical or legal impediment to the holding of an enquiry. In this case there was no impediment whatsoever for holding the inquiry ex-parte. We therefore, hold that the Disciplinary Authority was not justified in dispensing with regular inquiry and imposing the penalty of removal from service on the applicant.

10. In this connection we may point out that it was by the Medical Officer of the respondents themselves that the applicant was referred to the Vimala Dermatological Centre at Versova, as the applicant was suffering from leprosy. The certificate issued by the Doctor of the Centre shows that the applicant was under his treatment for Leprosy from 2.1.1986 to 24.2.1988. Regarding the certificate the respondents had made some queries to the Doctor of the Centre. The reply to the queries which is quoted in para 6 of the written statements of the respondents show that the certificate was issued by him but the applicant was never admitted in the hospital and he was being treated as an out door patient. The reply further shows that the applicant was taking treatment for chronic ulcers. Mr. Masurkar submitted on behalf of the respondents that according to the reply the applicant was not suffering from Hansen's Disease i.e. leprosy, but he was being treated for chronic ulcer on his feet. But in the certificate issued by the Doctor of the Centre dt. 22.2.1988, the Doctor has specifically stated that the applicant was under treatment for Hansen's Disease (Leprosy) since 2.1.1986 to 24.2.1988 and this statement is not denied by the Doctor in his reply. Of course, Ulcers on the feet may be due to Leprosy.

11. In result we are required to set aside the impugned order. Of course, we propose to give liberty to the respondents to hold a fresh inquiry against the applicant, if they so want, after considering the facts of the case and especially the fact that the applicant was being treated for leprosy at the Vimala Dermatological Centre, Versova from 2.1.1986 to 24.2.1988.

12. We therefore, pass the following order:

O R D E R

1. The impugned order dt. 28.5.1987 is hereby quashed and set aside.
2. The respondents will be at liberty to hold a fresh departmental inquiry against the applicant for remaining unauthorisedly absent from 27.12.1985 to 25.2.1988 i.e. date on which he approached the respondents requesting for joining his duties by serving a fresh charge sheet. However, by this we do not want to direct the respondents to hold a fresh inquiry. They may consider all the facts including the fact that the applicant was under treatment as an out door patient at Vimala Dermatological Centre, Versova from 2.1.1986 to 24.2.1988.
3. Respondents should take a decision about holding a fresh inquiry within 3 months from the date of receipt of a copy of this order. In case the respondents hold a fresh inquiry the question of regularisation of the period of absence of the applicant from service should be decided according to rules, after the result of the departmental inquiry.
4. If the respondents decide not to hold fresh departmental inquiry against the applicant, then they should regularise the period during which the applicant was absent from duty i.e. from 27.12.1985 to 25.2.1988 by granting him any kind of leave due to him according to rules and pay arrears to him according to rules.
5. If the respondents decide not to hold fresh inquiry they shall pay arrears of pay and

14

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allowances to the applicant from 25.2.1988 till he is actually reinstated in service.

6. The application is disposed of on the above lines with no order as to costs.


(M.Y. PRICKAR)

MEMBER (A)


(M.B. MUJUMDAR)

MEMBER (J)