

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.52/86

Shri Chagan Namdeo Alhat,
Survey No.569, Bund Garden,
Water Supply,
Pune-411 001.

.. Applicant

V/s

1. Union of India and

2. Director, Research and
Development (Engrs),
Dighi,
Pune-411 001.

.. Respondents

Coram: Hon'ble Vice-chairman B.C.Gadgil

Hon'ble Member J.G.Rajadhyaksha

Appearance:

Shri V.B.Raikar,
Advocate for the Applicant

Shri H.M.Mehta,
Advocate for the Respondents.

Oral Judgement: (Per Vice-chairman B.C.Gadgil) Dt.17.10.86

The applicant was serving as a Helper (unskilled labourer) with the Research & Development Establishment at Dighi. He joined service sometime in 1965. In 1983 a departmental inquiry was held against him for unauthorised absence from duty from 10-1-83 to 24-5-83. The inquiry officer held the inquiry on the basis of the relevant charges. He found the charges proved. His report was considered by the disciplinary authority and on 23-9-83 the applicant was removed from service. He had preferred an appeal against this punishment and it was dismissed on 15-3-1984. The applicant, thereafter filed the

present application challenging the said punishment.

The respondents have filed their affidavit in reply contending that the punishment was inflicted after following the necessary procedure. It was also contended that taking into account the past service of the applicant the punishment of removal from service cannot be said to be excessive or harsh.

We have heard Mr. Raikar for the applicant and Mr. H. M. Mehta for the respondents. Mr. Raikar made submissions as regards the procedure that has been followed. In the first place, he contended that the inquiry officer has ^{transgressed} ~~transcended~~ his limits inasmuch as he has practically cross examined the applicant while recording the statement of the applicant. The statement of the applicant is at page 61 of the compilation. After going through it, we do not find anything to suggest that there was an element of cross examination. What the inquiry officer did was to elicit the information that was relevant for the purpose of the enquiry. For example the claim of the applicant was that he had sent an oral message with one Mr. Naik that he would be absent from duty. Certain questions were put to the applicant in order to find out as to how and when the applicant told Mr. Naik to give intimation about such absence. The applicant's replies show that he ~~has~~ told Naik on 10-1-83 to intimate the absence to the office. He then stated that he had checked with Naik whether he had given the intimation to the office. Naik told that there was nobody in the office to receive such intimation. The applicant's claim was that he was

ill and he could not join and, therefore, he remained absent. The applicant was asked as to whether he knew that the 'under treatment certificate' is to be obtained from the Doctor and forwarded to the office. The applicant replied that he knew, but he did not accordingly send such a certificate. In our opinion these types of question were really meant for the purpose of getting relevant information and it would be very difficult to stamp the statement as being in the shape of cross examination. We may add that the inquiry officer has examined Mr.Naik with a view to find out whether the applicant had sent any message through him to the office. Mr.Naik said that he does not remember that the applicant has told him to give any message.

It was next urged that the appellate authority had passed a ~~lacuna~~ ^{lacunae} order and not discussed the evidence in details. The order of the appellate authority is on page 69 of the compilation. The reading of the appellate order does not indicate that the concerned authority has recorded findings on various points that are required to be decided by ^{him} ~~them~~. It will not therefore be possible to say that the said order suffers from any ~~a~~ lacuna.

It was lastly submitted by Mr.Rairkar that removal from service is an extreme penalty which is not called for on unauthorised absence for about 2 months. On the face of it, the argument appears to be sound. However, the quantum of punishment depends upon various factors and in the present case the respondents have placed on record that from 1965 to 1983 the applicant has habitually remained unauthori-

usedly absent. The period of absence ranges from 15 days in one year to 169 days in one year. It is not necessary to give all the details. Suffice it to say that in the year 1970 there was an unauthorised absence of 111 days, whereas in 1971 such absence was for 163 days. In 1977, the applicant was unauthorisedly absent for 169 days, while in 1981 and 1982 he was absent for 105 days and 165 days respectively. Apart from that, the respondent has also stated in the affidavit various punishments that have been inflicted on the applicant before the present inquiry was held. There were in all 9 punishments from 1971 to 1983. Each of those punishments was for habitual absence. In some cases a warning was administered to him while in some other inquiries his increments were withheld or his pay was reduced. It was contended by Mr. Mehta that all these service records are relevant when the disciplinary authority has decided upon the quantum of punishment. Mr. Raikar contended that such records has not been put to the applicant during the enquiry. In our opinion it was not necessary to do so, particularly, when it is not possible for the applicant to deny all these punishments and his unauthorised absence. The submission of Mr. Raikar that the punishment is disproportionate to the nature of misconduct is also not acceptable. The result is that the application deserves to be dismissed and it is accordingly dismissed with no orders as to costs.

B.C. Gadgil
(B.C.GADGIL)
Vice-chairman

(J.G. RAJADHYAKSHA)
Member