

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 48 OF 1996

Date of Decision: 1. 8. 2001

Abdul Bashir Khan.

Applicant(s)

Shri S.P. Saxena.

Advocate for Applicants

Versus

Union of India & 5 others

.. Respondents

Shri R.K. Shetty

Advocate for Respondents

CORAM: HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓


(SHANTA SHASTRY)
MEMBER (A)

Gaja

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.48/1996

THIS THE ¹⁸TH DAY OF ^{August}~~JULY~~, 2001

CORAM: HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

Abdul Bashir Khan,
age 58 Ex. LDC,
residing at 1811,
Gaffar Baig Street,
Top Floor,
Pune-411 001.

... Applicant

By Advocate Shri S.P. Saxena.

Vs.

1. Union of India
through Secretary,
Ministry of Defence,
North Block,
New Delhi-110 011.
2. Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi-110 011.
3. Chief Engineer,
Southern Command,
Pune-411 001.
4. Director General Naval,
Project Naval Base HQ,
Vishakapatnam-530 014.
5. Garrison Engineer (AF),
Jaisalmer-345 001.
Rajasthan.
6. Assistant Controller of
Defence Accounts (SC),
Khatipura Road,
Jaipur-302 012,
Rajasthan.

... Respondents

By Advocate Shri R.K. Shetty.

h

O R D E R

Hon'ble Smt. Shanta Shastry.

.. Member (A)

The applicant in this OA has assailed the order of the disciplinary authority dated 14.10.94 and the appellate authority's order dated 22.12.1994 dismissing him from service and has therefore, prayed for quashing and setting aside of the impugned orders and to reinstate him with effect from 17.11.1992 till the date of his superannuation.

2. The applicant was working as LDC in the office of the Chief Engineer, Pune and Rajasthan Zone w.e.f. 13.4.1960. In May, 1972 he was transferred to Vishakapatnam vide posting order dated 28.12.1971 of the Chief Engineer, Pune and Rajasthan Zone. He was relieved of his duties on 15th May, 1972. He, however, did not report to DGNP Vishakapatnam (Vizag for fort) as per movement order. He requested for cancellation of the transfer order. Not having succeeded, he filed a writ petition in the High Court of Bombay. The same was not admitted on the plea that it was an administrative matter. The applicant then filed a petition on 17th November, 1973 in the Civil Court, Senior Division, Pune against the posting order. While the case was pending, the DGNP, Vizag initiated disciplinary action against the applicant by issuing a charge sheet on 24.1.1973 for his absence from duty. This was done after giving enough opportunities to him to report at Vizag. However, the disciplinary case was kept pending due to

the Civil Suit. Again a fresh charge memo was issued to the applicant on 10th February, 1975 for the same charge. The civil suit filed by the applicant was finally dismissed on 12th May, 1979. He was, further transferred to GE, Jaisalmer and reported there on 16th November, 1979. The applicant then proceeded on 14 days leave w.e.f. 11.2.1980 but after expiry of the leave, did not rejoin duty. So, a fresh charge sheet was issued to him on 14.7.1980. The inquiry, in pursuance of the charge sheet issued on 10.2.1975 was finalised on 3rd October, 1981, by awarding the penalty of dismissal. The 3rd charge sheet dated 14.7.1980 was cancelled. The appeal preferred by the applicant against the dismissal order was rejected on 15.10.1986 confirming the penalty.

3. Thereafter, the applicant moved O.A. No.776/1987 in this Tribunal. Holding that the enquiry report had not been made available to the applicant before punishing him, the Tribunal directed the applicant to be reinstated with effect from 13.12.1991 with liberty to respondents to pursue the enquiry after giving the enquiry report to the applicant. Accordingly, a copy of the enquiry report was made available to the applicant on 11.2.1992. Thereafter, the final dismissal order was passed on 29.9.1992 after considering the applicant's representation. Again the applicant filed an appeal against the dismissal order. As it was not decided earlier the applicant filed OA No.717/94. As per the directives of this Tribunal to

pass a speaking order on the appeal dated 14.12.1992 the appellate authority considered the matter and confirmed the penalty of dismissal imposed by the disciplinary authority vide speaking order dated 14.10.11994.

4. Prior to this, on the very same day when the applicant was dismissed from service another order was passed fixing his pay. In the order dated 29.9.1992 it was stated interalia as follows:

(ii) However, the absence period from 02 Dec. 81 to 12th Dec. 1991 has been reinstated by GE, Jaisalmer vide PTO No.28/12/92 dated 13th July, 1992 based on HOn. CAT Bombay judgement OA No.776/87/7293 dated 27.9.91 in which the intervening period w.e.f. 02 December, 81 to 12 December, 91 by which the individual is entitled for full pay and allowances and leave etc., for the same.

iii) Since the individual was absent from duty w.e.f. 15 May, 1972 to 24 April 1979 for 2535 days, the period of absence has been regularised EOL without M C as the period will not count for pension vide DGNP Vishakapatnam PTO NO.33/47/82 dated 16.8.82. This aforesaid order was not brought to the notice of the appellate authority.

5. The applicant had also applied for voluntary retirement having completed 20 years of service. The same was not agreed to on the ground that he did not have the qualifying service vide reply dated 11.8.1980.

6. It is the contention of the applicant that his transfer was discriminatory and vindictive. There were irregularities in the enquiry as the charge sheet was issued by the disciplinary authority at Vizag, the enquiry report was made available by G.E. Jaisalmer and

the penalty order was passed at Pune. Though the first charge sheet was issued in 1973 it was not acted upon. Even after issuing second charge sheet the enquiry was delayed. The enquiry officer in his report gave the finding of 'Not guilty'. Instead of accepting it, the disciplinary authority imposed the penalty of dismissal in 1981. The appellate authority confirmed the same only in 1986. The penalty is disproportionate for mere unauthorised absence.

7. Further, his entire absence of 2535 days from 15 May, 1972 has been regularised and therefore, the very charge is vitiated and the impugned order need to be quashed and set aside.

8. The learned counsel for the applicant has relied on the judgement of the Supreme Court, wherein it has been held that if a person is charged for unauthorised absence and the same is regularised, then the sting is taken out of the charge and any penalty imposed on the basis of aforesaid charge is vitiated. The respondents, on the other hand have cited the judgment of the Full Bench of this Tribunal in the case of Hari Ram Vs. Delhi Administration & Others (1995 (25) ATC (FB) 697). In this case the Full Bench held that the direction for granting leave in respect of the charge of absence, which had been treated as unauthorised and the order of dismissal had been passed, cannot have the effect of nullifying the order of

dismissal from service. Of late also the Apex Court has upheld this view and therefore, merely because his absence period of 2535 days was regularised will not nullify the penalty order, because the charge was about unauthorised absence, which was against the behavior of the applicant, unbecoming of a Government servant.

9. We have carefully heard the learned counsel for both sides and have perused the relevant pleadings. According to us, the respondents conducted the enquiry in a fair manner. The applicant was given several opportunities to report for duty at Vizag. The appellate authority has passed a speaking reasoned order as directed by this Tribunal. Therefore, the technical objections regarding the earlier disciplinary authority being different from the punishing authority are not relevant especially when the respondents proceeded again from the stage of making available a copy of the enquiry report to the applicant in 1992. The appellate authority's order being a comprehensive order, it is not for us to interfere with it, unless it was a case of no evidence or it suffered from any procedural flaws. That is not the case here. All the same, we do find that an order regularising the absence of the applicant was passed separately on the same day as the date on which penalty of dismissal was imposed. No doubt as argued by the learned counsel for the applicant legally it was not binding on the appellate authority to have considered the order dated 29.9.92. However, we find that such an

: 7 :

order was passed in pursuance of the directions given by this Tribunal in OA ^{717/44}~~7117/92~~ filed by the applicant. We therefore, are of the considered view that this aforesaid order should have been placed before the appellate authority. The applicant also could not refer to this in his appeal as he was not aware of the same. It was received by him later. Considering that the respondents took a very lenient view of the applicant's absence by regularising the same we feel that the order dated 29.9.92 needs to be brought to the notice of the appellate authority for reconsideration.

10. We, therefore, direct the respondents to place the order No. ^{170101/52/470/ELRP/P-GP-IV}~~665781/2075~~ dated 29th September, 1992 issued by the Dakshin Command, Abhiyanta Headquarters Southern Command Engineers Command, Pune before the appellate authority for reconsideration in this matter. This may be done within a period of 3 months from the date of receipt of copy of this order. The OA is disposed of accordingly. We do not order any costs.

Shanta Shastri
(Smt) (SHANTA SHASTRY)
MEMBER (A)

Lakshmi Swaminathan
(Smt) (LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (j)

Gaja