

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.707/1999.

Mumbai, this the 5th day of March, 2003.

Hon'ble Shri Govindan S.Tampi, Member (A),
Hon'ble Shri K.V.Sachidanandan, Member (J).

Gopikrishna Bhoja Shetty,
Quarter No.J-49/3 & 4,
Ordnance Estate,
Ambernath - 421 502.
(By Advocate Mr.R.Ramamurthy)

....Applicant.

v.

1. Union of India,
through the Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi - 110 001.
2. The Chairman,
Ordnance Factory Board,
10/A, Shahid Khudiram Bose Marg,
Calcutta - 700 001.
3. The General Manager,
Machine Tool Prototype Factory,
Ambernath - 421 502.
(By Advocate Mr.R.K.Shetty)

...Respondents.

: O R D E R (ORAL) :

By K.V.Sachidanandan, Member (J).

The applicant was first appointed as a Labourer on or about 17.1.1980. Since he was suffering from Hepatitis he could not attend to his duties for about three months from April, 1997 to July, 1997. He submitted necessary sickness and medical certificates in his section in April, 1997 and he was allowed to join his duties on 16.7.1997 after production of fitness certificate. He was issued with a Chargesheet Memorandum dt. 18.8.1997 under Rule 14 of the CCS (CCA) Rules, 1965 for unauthorised absence from duty for the period from 28.4.1997 to 15.7.1997. An enquiry was conducted, but he could not attend the enquiries due to recurrence of his hepatitis conditions. The fact was also brought to the notice of the Disciplinary Authority

...2.

and the Inquiring Authority and he had also furnished an unfit certificate on that behalf. The enquiry was conducted ex-parte and the Enquiry Officer submitted a report holding the applicant guilty of the charges levelled against him. He submits that he has not received any report by post as alleged by the Respondents, but he received the impugned order dt. 24.10.1998 passed by the Respondent NO.3 imposing the penalty of compulsory retirement from service. He filed an appeal on 17.11.1998 addressed to Respondent No.2 against the said penalty. He pointed out that the absence for the said period was on genuine medical grounds and that he had submitted medical certificates as per procedure prescribed. Thereafter, he received a letter dt. 22.4.1999 from the General Manager asking the applicant to vacate the Quarters occupied by him. His request for retaining the quarters till his appeal is disposed of was not acceded to and the same was rejected on 1.7.1999 and the Estate Manager vide letter dt. 2.7.1999 was instructed by Respondent No.2 to take necessary action to evict the applicant. Subsequently, he received the order of the Appellate Authority dt. 29.6.1999 under a covering letter dt. 24.7.1999, wherein the appeal was rejected without proper appreciation of the facts of the case. The order in the appeal also refers to certain previous penalties imposed upon the applicant. The applicant was not put on notice that his past record of service will also be taken into account for deciding his appeal. He had more than 23 years of service still left and had unblemished record of service for 18 years. He has pleaded in the OA that the penalty imposed is too harsh.

....3.

Aggrieved by the said order, he has filed this OA seeking the following reliefs :

- (a) that it be declared that the impugned orders dated 24.10.1998 and 29.6.1999 are bad in law, illegal and liable to be quashed and set aside and that the applicant is entitled to be reinstated in service w.e.f. 24.10.1998 with all consequential benefits flowing therefrom.
- (b) that this Hon'ble Tribunal be pleased to quash and set aside the impugned orders dt. 24.10.1998 (Ex. 'A') and 29.6.1999 (Ex. 'B').
- (c) that this Hon'ble Tribunal be pleased to direct the Respondents to reinstate the Applicant in service w.e.f. 24.10.1998 with all consequential benefits flowing therefrom.
- (d) that the Respondents be permanently restrained from taking any steps for evicting the Applicant from the Quarters in his occupation, in the Ordnance Estate, Ambernath, pursuant to the impugned Orders dt. 24.10.1998 and 29.6.1999.
- (e) that such other and further order or orders be passed as the facts and circumstances of the case may require.
- (f) that costs of this Application be provided for.

2. The Respondents have filed a detailed written/reply statement contending that the unauthorised absence from 28.4.1997 to 15.7.1997 was wilful and he had never produced any medical certificate during the period when he was absent, but produced an unfit, as well as, fitness certificate only on the date when he resumed duty on 16.7.1997 claiming that he was unwell on account of viral hepatitis. The applicant has been living in the Ordnance Factory Estate where there is a fullfledged complete modern hospital which would have provided him free medical treatment, despite which he preferred to go to a private Doctor by name Dr.Kolthe who is far away from the Ordnance Factory

Estate. The charge sheet was served upon the applicant on 18.8.1997 and the applicant had categorically stated in his reply statement that he remained absent without prior sanction of leave or intimation or sanction of leave or intimation. But he has disputed the fact that he was absent due to lack of devotion to duty or wilful neglect of duty. It is contended in the written statement that non-production of an unfit medical certificate at the appropriate time tantamount to a person remaining unauthorisedly absent. Since he was absent in the enquiry proceedings on several occasions, an ex parte enquiry was held. The applicant throughout never had a clean record and has always been a source of nuisance, indiscipline and a specialist in unauthorised absence throughout his career. The applicant is therefore, estopped from challenging the validity of the ex-parte enquiry after absenting himself during the enquiry. Applicant was given enough chances to remain present and participate in the enquiry which the applicant deliberately refused to do. The appellate authority confirmed the order upon the appeal of the applicant vide its order dt. 29.6.1999 and a series of imputation of warning and punishment was imposed on the applicant has been described on page 5, 6 and 7 of the written statement. Applicant was afforded with opportunity to defend his case and the applicant has brought out irrelevant points in the OA and therefore, the OA does not merit. The applicant was unauthorisedly occupying the government accommodation allotted to him while he was in service and that he has no right to claim when he has been compulsorily retired from service on 24.8.1998 and his appeal having been turned down by

the competent authority. The Appellate Authority has considered the fact that the applicant was warned on two occasions during this period and seven statutory penalties were imposed on him for his mis-conduct. The non-attendance of the applicant in the enquiry proceedings was deliberate and wilful. The respondents submitted that the Disciplinary had kept balance between the charge and penalty. The case of the applicant was considered sympathetically and imposed a penalty of compulsory retirement. The applicant was given the opportunity to state his defence which he did not avail. Therefore, the respondents urge that the OA be dismissed.

3. We have heard Learned Counsels Mr.R.Ramamurthy for the applicant and Mr.R.K.Shetty for the Respondents. They have taken us through the pleadings, materials and evidence placed on record. The Learned Counsel for the respondents argued that the non-attendance in the enquiry proceedings by the applicant was deliberate and the punishment has been sympathetically considered. It is further submitted that the enquiry report and the appellate authority's orders have been passed with due application of mind and does not require any interference by this Tribunal. The Articles of Charges reads as follows :

ARTICLE - I

That the said Shri G.B.Shetty, T.No.MM/28/0917, while functioning as Lab. (S/S) in MM Section, Machine Tool Prototype, Ambarnath stands charged for his unauthorised absence from duty.

His unauthorised absence from duty is in contravention of establishment orders contained in F.O. Pt. I No.338 dt. 18.9.1992 and Rule 3.1 (ii) & (iii) of CCS (CCA) Conduct Rules 1964, amounting to wilful neglect of duty lack of devotion to duty and act unbecoming of Govt. Servant constituting "GROSS MISCONDUCT".

ARTICLE - II

That the said Shri G.B.Shetty, T.No.MM/28/0917 was remained unauthorisedly absent w.e.f. 28.4.1997 to 15.7.1997. He had not obtained any prior sanction of leave nor any intimation/unfit medical certificate was submitted by him. However, he had joined duty on 16.7.1997 alongwith unfit and fit medical certificate dt. 28.4.1997 & 15.7.1997 respectively obtained from a Private Medical Practitioner to cover the above period of absence. His unauthorised absence has effected the day to day work of the section adversely.

His unauthorised absence from duty is in contravention of establishment orders contained in F.O. Pt. I No.338 dt. 18.9.1992 and Rule 3.1 (ii) & (iii) Conduct Rules, 1964 amounting to wilful neglect of duty, lack of devotion to duty and act unbecoming of Govt. Servant constituting "GROSS MISCONDUCT".

The Enquiry Officer submitted his report on 24.10.1998 (Ex. 'A') by holding the enquiry ex-parte on the ground that the applicant was constantly absent in the proceedings which is challenged by the applicant. Whereas, the Appellate Authority sitting on the judgment of the Disciplinary Authority has passed appellate order dt. 29.6.1999 vide order No.12073/A/VIG wherein in para 2 of the said order, the following finding has been arrived at :

"The case in brief is that the said Sri G.B.Shetty remained absent from duty during the period from 28.4.1997 to 15.7.1997 without any intimation/prior sanction of leave. In the past also he has been penalised on several occasions for unauthorised absence/irregular attendance."

4. It is very clear from the charge sheet ~~that has been~~ quoted above that the applicant's unauthorised absence on several occasions have been taken as a consideration for upholding the order of the Enquiry Officer. In other words, extraneous considerations has influenced the Appellate Authority in deriving to such a conclusion, which is not in the true spirit of

procedure law. Besides, his earlier unauthorised absence and imposition of penalties on several other occasions was not a subject matter of the charge sheet which has been considered by the appellate authority in passing the said order. Besides, it is also an admitted fact that the applicant was not put on notice for these offences as per the charge sheet. Therefore, there is a clear violation of Article 16 of the Constitution and the order of the Appellate Authority per se is vitiated by extraneous considerations which is not a subject matter of the charge sheet and therefore, is faulted and has to be set aside. This is also evident in the reply statement submitted by the Respondents which reads as follows :

"...which is evident from the following administrative and disciplinary penalties imposed upon him :-

- (i) warned on two occasions
- (ii) censured on three occasions
- (iii) Withheld annual increment on three occasions.
- (iv) Pay reduced by one stage for a period of one year without cumulative effect on account of poor attendance from 1.1.1990 to 31.5.1991. "

The main ground that has been taken in the OA is that the Appellate Authority has taken into account the past record of service of the applicant while disposing of the appeal and the said fact has prejudiced the mind of the Appellate Authority and he has not explained the same in his order dt. 29.6.1999. As per law the applicant is entitled to be put on notice of past record of service and penalty for past incidence for deciding the appeal. The said absence of notice vitiates the Appellate

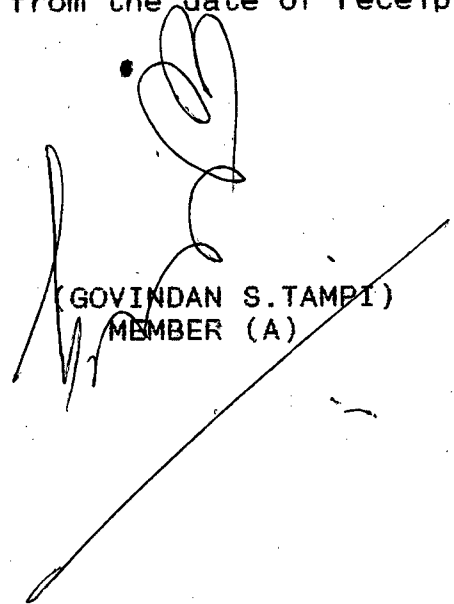
Authority's order dt. 29.6.1999 and the same is liable to be quashed and set aside.

5. Considering the above aspects, we are of the view that the order of the Appellate Authority is not in good spirit of law and therefore it has to be set aside.

6. In the conspectus of facts, we allow the OA and the Appellate Order is quashed and set aside and the matter is remanded back to the concerned authority for issuing fresh order keeping out of consideration the matter which did not form part of the charge sheet or the disciplinary order. This exercise shall be completed within four months from the date of receipt of copy of this order. No costs.



(K.V.SACHIDANANDAN)
MEMBER (J)



(GOVINDAN S.TAMPI)
MEMBER (A)

B.