

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.200/2000.

Dated: 12.03.2004.

Hon'ble Shri Anand Kumar Bhatt, Member (A),  
Hon'ble Shri S.G.Deshmukh, Member (J).

K.M.Jadhav,  
New Gautam Nagar,  
Ekta Mitramandal,  
Opp. Hanuman Mandir,  
Govandi,  
Mumbai - 400 043.  
(By Advocate Shri Ramesh Ramamurthy)

...Applicant.

Vs.

1. Union of India,  
through the Secretary,  
Ministry of Defence,  
Government of India,  
South Block,  
New Delhi - 110 001.
2. Flag Officer Commanding-in-Chief,  
Western Naval Command,  
Shahid Bhagatsingh Road,  
Mumbai - 400 001.
3. Admiral Superintendent,  
Naval Dockyard,  
Lion Gate,  
Shahid Bhagatsingh Road,  
Mumbai - 400 001.  
(By Advocate Shri V.S.Masurkar)

: O R D E R (ORAL) :

{Anand Kumar Bhatt, Member (A)}

The applicant has come in this application against his removal order.

2. Facts in brief, are that the applicant was an unskilled labour in Naval Dockyard. He was recruited on temporary basis in the year 1978 and he was regularised in 1990. On 24.10.1998, R-3 imposed the penalty of removal from service pursuant to the inquiry held for the charge sheet dt. 10.7.1997. Appellate order rejecting the appeal was passed by R-2 on 28.9.1999. According

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to the applicant he could not attend the office properly from 1993 onwards for a long time because of his mental illness. He reported for duty after long absence in January, 1998. He was asked to get himself medically examined by the J.J. Hospital and vide their certificate dt. 31.1.1998 he was declared fit for resuming duties. On the basis of this certificate, the Medical Officer-in-Charge of Naval Dockyard issued a certificate for joining duties on 2.2.1998. Applicant was permitted to resume duties w.e.f. 3.2.1998. Charge sheet was issued to the applicant on 10.7.1997. He had applied for leave for the period of absence on 4.2.1998, it was recommended by Senior Foreman and sanctioned by the Center Manager. The applicant was not served the charge sheet and only during the inquiry he was shown the copy of the charge sheet. There was no Presenting Officer in the inquiry and the Inquiry Officer was performing the dual roll of Presenting Officer, as well as, Inquiry Officer. The applicant made a representation on the report of the Inquiry Officer. The main grounds taken by him were that his leave was sanctioned by the Competent Authority and it could not have been cancelled <sup>later,</sup> and he cannot be punished for the alleged mis-conduct when his leave was sanctioned. The appellate authority wrongly rejected the request of the applicant for personal hearing and the said order is not a speaking order. The applicant's absence was due to genuine medical problems and he did not remain absent wilfully or deliberately.

3. The <sup>other</sup> ~~main~~ grounds taken by the applicant are that the orders of the Disciplinary Authority and the Appellate Authority are non-speaking, the applicant's mental illness was genuine, he

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resumed duty on being certified fit and he was taken back on duty. After he was taken back on duty the Respondents had only to pass orders to regularise the period of absence of the applicant by treating him as on duty or not on duty, sanction given for the leave cannot be withdrawn later. The rejection of the request of the applicant for personal hearing by the Appellate Authority was wrong and that the penalty imposed is shockingly dis-proportionate to the alleged mis-conduct.

4. Respondents, on the other hand, have stated in the reply that the applicant was wilfully absent from 30.8.1993 to 2.2.1998 (4 years and 157 days). J.J.Hospital had given a fitness certificate to him dt. 31.1.1998. However, the certificate stated that the applicant was under their treatment from 22.1.1998 as an O.P.D. patient and as there was no active psychiatric symptom he was considered fit to resume duties. The charge sheet which was forwarded to him at his local address was returned un-delivered by the postal authorities. During his absence, no medical certificate was given and this was produced only at the time of resumption of duty. Grant of personal hearing by the Appellate Authority was discretionary and it was not considered necessary. Leave sanction of which the applicant is relying on could not have been sanctioned to him as the Assistant Manager who approved the leave was on the post only for the period from November, 1997 to 12th February, 1998, whereas the applicant remained absent from 30.8.1993 to 2.2.1998. In addition, during the pendency of disciplinary action the period of absence could not be regularised. For this reason the said sanction was subsequently cancelled by the competent authority.

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The applicant was found guilty of the charges framed against him and there is no procedural infirmity or violation of principles of natural justice on the part of the Disciplinary Authority, as well as, the Appellate Authority.

5. For the applicant, Shri Ramesh Ramamurthy argued that the applicant was suffering from Schizo<sup>-phrenic</sup>~~phrenic~~ psychosis from 1993 for about four years. The charge sheet was not served on him. The applicant was allowed to resume duties after a fitness certificate and legal opinion dt. 3.2.1998 (Ex. 'G'). The applicant had applied for regularisation<sup>of period of absence</sup>. Once the leave was approved the charge sheet does not stand. The order dt. 10.7.1998 by which the earlier sanctioned~~ed~~ was reviewed and his leave was not approved was not shown to him during the inquiry. The Inquiry Officer cannot take any documents on record after the inquiry is closed. The Local Leave Daily List was duly filled in in the office and his period of absence from 30.8.1993 to 2.2.1998 was duly shown as Extraordinary Leave on medical certificate. Appellate Authority has used the word wilful absence which was not in the charge. Personal hearing was not given by the Appellate Authority. There is no proper application of mind in the decisions of the Disciplinary and Appellate Authority.

6. From the side of Respondents Shri V.S.Masurkar stated that the Apex Court has held that sanction of leave cannot absolve an employee of mis-conduct. The earlier leave was sanctioned to the applicant <sup>by</sup>~~was~~ by an officer who was not competent. The argument about the document not on record taking into consideration by the Inquiry Officer was not taken by the

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applicant before the Disciplinary Authority, as well as, Appellate Authority. Personal hearing is not a statutory right, but it is on the basis of decisions given by the Court. There was admission by the applicant and it cannot be said that the order was passed without any application of mind. Shri Masurkar has cited Maan Singh Vs. Union of India & Ors. {2003 (1) SC SLJ 329}, in which it has been held that for the Police Constable frequent unauthorised absence for which he was later on sanctioned leave did not invalidate the dismissal order for the charge of unauthorised and wilful absence from duty. He has also cited the Apex Court ruling in State of Punjab and Ors. Vs. Charanjit Singh {2003 (6) SLR 499}, in which similar view has been taken that treating the period of absence as leave without pay by the Disciplinary Authority does not mean condonation of mis-conduct.

7. In rebuttal, Shri Ramesh Ramamurthy has stated that it is not necessary for the applicant to work under the leave sanctioning authority for the entire period of leave to be sanctioned.

8. We have considered the case. The Apex Court ruling cited by the respondents is relevant here that in case the unauthorised absence is regularised by some kind of leave, it does not mean that the mis-conduct of unauthorised absence is condoned. It has not been disputed that the medical certificate and leave application were given by the applicant only after he was allowed to resume duties after a long period of absence of more than four years. However, the applicant was allowed to resume duties after obtaining legal opinion from the office of the Judge Advocate and



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The period of absence from 30.8.1993 to 2.2.1998 will not be counted for determining the pensionary benefits. However, as it had already been regularised as EOL, the total service excluding the period of absence be counted for determining the pensionary benefits of the applicant. In view of this, the subsequent order SMS No. DYT/MYU/4596/65/05 dt. 10.7.1998 not approving his leave is quashed.

9. The O.A. is allowed partly as above. No costs.

  
(S.G. DESHMUKH)  
MEMBER (J)

  
(ANAND KUMAR BHATT)  
MEMBER (A)

B.