

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.697/2000.

Dated this 13th Day of October, 2000.

Coram : Hon'ble Shri Justice Ashok Agarwal, Chairman  
Hon'ble Smt. Shanta Shastry, Member (A).

S.R. Bhingardive,  
(Ex-Watchman, A.F.M.C., Pune),  
8/12 Defence Colony,  
Lullanagar,  
Pune - 40.

.. Applicant.

(By Shri S.P. Saxena, Advocate)

Versus

1. The Union of India,  
through the Secretary,  
Ministry of Defence,  
DHQ, P.O.,  
New Delhi - 11.
2. The Director General  
of Armed Forces Medical  
Services (Army),  
Ministry of Defence,  
M-Block, D.H.Q. P.O.,  
New Delhi - 110 011.
3. The Commandant,  
A.F.M.C.,  
Pune - 40.

.. Respondents.

(By Shri R.K. Shetty, Advocate)

O R D E R (Oral)

[ Justice Ashok Agarwal ]

In disciplinary proceedings conducted against  
the applicant, a penalty of compulsory retirement has been



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imposed upon him. The aforesaid order is issued on 27.4.2000 at Annexure A-1. Aforesaid order was carried by the applicant in appeal and the appellate authority by an order passed on 15.9.2000 at Annexure A-2 has dismissed the same. Aforesaid orders are impugned in the present O.A.

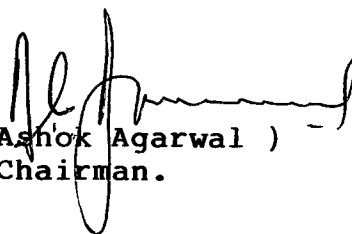
2. Imputations made against the applicant in the disciplinary proceedings are "Absent from duty without intimation wef 18.5.99 to 22.6.99 (36 days)". In the disciplinary proceedings, applicant has submitted a medical certificate issued by the authorised medical attendant and countersigned by the representative of the Civil Surgeon of the Sassoon General Hospital certifying that the applicant was suffering from Colitis fever during the aforesaid period. Aforesaid medical certificate has not been doubted either by the enquiry officer, disciplinary authority or the appellate authority. In the circumstances, it is safe to presume that the applicant was unable to attend ~~to~~ his duties due to illness. Moreover, the record shows that the applicant had been granted extraordinary leave for the aforesaid period. In the circumstances, the only misconduct which can be attributed to the applicant is failure on his part to obtain prior sanction for leave or not sending an intimation of his illness within a period of 7 days. In our judgment, the



penalty imposed for the aforesaid misconduct, on the face of it, is highly disproportionate to the measure of ~~penalty~~ <sup>misconduct</sup> brought home against the applicant. This is particularly so in view of the decision of the Supreme Court in the case of Syed Zahir Hussain Vs. Union of India 1999(1) LLJ 876 SC as also a decision of the Tribunal in the case of Raja Ram Vs. UOI, (1990) 13 ATC 66(Jab). In the circumstances, the aforesaid impugned order of penalty is quashed and set aside. The applicant is accordingly directed to be reinstated back in service forthwith. The disciplinary authority will be at liberty after notice to the applicant to impose a penalty other than the penalty of dismissal, removal or compulsory retirement upon the applicant. The disciplinary authority, we hope will take a lenient view having regard to the fact that the applicant is a Class IV employee (Watchman) and he has a paralytic son to look after.

3. Present O.A. in the circumstances is allowed in the aforestated terms. No costs.

  
( Shanta Shastry )  
Member (A).

  
( Ashok Agarwal )  
Chairman.

sns.