

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 104/2000
DATED THE 25th JANUARY, 2002.**

**CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)**

Shri Dilip Kamlakar Madaye,
working as A.M. Begari
in the Western Naval Command,
Mumbai.

... Applicant

By Advocate Shri S.V. Marne

V/s.

1. The Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi
2. The Flag Officer,
Commanding in Chief
Western Naval Command,
Headquarters Office,
Shahid Bhagat Singh Road,
Mumbai.
3. The Chief Staff Officer (P&A),
Headquarters,
Western Naval Command,
Shahid Bhagat Singh Road,
Mumbai

... Respondents

By Advocate Shri V.S. Masurkar

(ORDER)

Per Smt. Shanta Shastri, Member(A)

The applicant in this case was proceeded against departmentally under Rule 14 of the CCS (CCA) Rules 1965. The article of charge was as follows:-

Article-I : Shri DK Madaye, AM Begary has unauthorisedly remained absent from duty from 01 Nov 93 onwards without prior permission/intimation and therefore has not

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maintained devotion to his duty and therefore has violated Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

2. A regular enquiry was conducted as the applicant failed to submit any statement of defence in reply to the charge memo issued on 30/3/98. The Enquiry Officer after conducting the enquiry gave the finding that since the delinquent had pleaded guilty in writing, he is guilty of the charges framed against him. Thereafter, the enquiry report was forwarded by the disciplinary authority vide letter dated 13/11/98 to the applicant giving him an opportunity of making such submission on the report of the enquiry as he desired. The applicant acknowledged the receipt of the said letter and gave his submission on 23/11/98 in reply. The submission of the applicant was carefully considered and thereafter the disciplinary authority considering the record of the enquiry and the facts and circumstances of the case, imposed a penalty of removal from service on the applicant vide his order dated 29/1/99. The applicant carried the same in appeal to the Appellate Authority vide his appeal dated 8/3/99. The Appellate Authority again after carefully examining all the points made out in the appeal and after careful examination of all the relevant documents and records found no merit in the appeal and confirmed the order of the disciplinary authority vide order dated 11/11/99.

3. Aggrieved by the aforesaid orders of the Disciplinary authority and the Appellate authority, the applicant has prayed

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to quash and set aside the same and to reinstate him in service w.e.f. 29/1/99 with full backwages and other consequential benefits.

4. The applicant was appointed as A.M.Begari with the respondents in February, 1992. On 1/11/93 according to the applicant he fell sick and therefore he was unable to attend his duty from that day. The applicant submits that he was treated in the KEM Hospital, Mumbai and his mental condition was not sound and he was unable to understand the normal course of things. As he was suffering from mental disorder he had to remain absent. He thus remained absent from 1/11/93 till 23/11/98 when he resumed duty by producing a medical fitness certificate.

5. It is his contention that when he was mentally unsound and was absent, the respondents served the charge sheet dated 30/3/98. Being of unsound mind he could not submit any representation against the charge sheet nor could he attend the office and intimate the fact of his sickness to the Controlling Officer. Further, when he was issued a letter asking him to attend the enquiry on 7/10/98 he though attended the enquiry was again not in a sound state of mind. He could not understand the contents of the letter. He learnt later on that his statement was recorded admitting that he was found guilty of the charges. It is the contention of the applicant that such a statement taken when he was not of sound mind has no value in law. The applicant further states that he had not received any intimation from the respondents after the enquiry. He recovered from sickness on 22/11/98 and based on the medical certificate issued by the Resident Medical Officer of the KEM Hospital on 23/11/98 about his being fit, he approached the office and made a

representation to allow him to resume the duty. He was allowed to resume the duty on the same day. The applicant further submits that he received the report of the enquiry officer thereafter asking him to make submissions on the report. According to the applicant without waiting for any representation from him on the report of the enquiry officer, the disciplinary authority passed order dated 29/1/99 removing him from service. In that order it was stated that the applicant had submitted his submissions on 23/11/98. The applicant submits that the representation dated 23/11/98 was not on the report of the enquiry officer but was for allowing the applicant to resume his duties. Thereafter, he preferred an appeal to the Appellate Authority who also without properly applying his mind to the various contentions urged by the applicant rejected the same. The case of the applicant is that the entire enquiry was conducted when he was not in a sound state of mind. His plea of guilt was illegally recorded on 7/10/98. The Disciplinary authority failed to take into consideration the medical certificate dated 23/11/98 submitted by him. This fact is not even mentioned in the order of the disciplinary authority ignoring a vital aspect of the case. The applicant has alleged that the Appellate Authority while dealing with the medical certificate not being considered by the disciplinary authority gave the reason that the Hospital Authority had nowhere recommended any leave to the applicant during the period of absence. According to the applicant the Doctors only recommend rest to the patient and not leave. The applicant has further

contended that he had to remain absent because of his medical illness. It cannot be called unauthorised absence. The applicant has also denied that any letter was sent to him on 17/1/1995 to resume the duties immediately as stated in the charge sheet. According to the applicant no such letter was received by him nor was he given a copy of documents mentioned in Annexure-3 to the charge memo. Therefore, the applicant has prayed to quash and set aside the charge sheet, report of the enquiry officer as well as the orders of the disciplinary authority and the appellate authority.

6. The respondents have submitted that the applicant had remained absent without any prior intimation or permission and had not submitted any medical certificate during the period of his absence. According to law, applicant has to intimate about his sickness alongwith medical certificate relating to his being unfit, periodically. Both the disciplinary authority and the appellate authority have passed speaking orders disclosing detailed reasons. The applicant was given an opportunity and was asked to resume his duty on 17/1/95. When the applicant failed to pay any heed, his production of a medical certificate on 23/11/98 is just an afterthought. The applicant had clearly admitted his guilt and had given so in writing.

7. We have heard the learned counsel for the applicant as well as the respondents. In our considered view, the applicant has not denied that he remained absent from 1/11/93 till 22/11/98 being a Government servant, the applicant was duty bound to intimate about his absence. The applicant claimed that he was of

unsound mind during the period of his absence but if that were so he should have produced medical certificate to that effect when he was actually sick and after he became fit. The applicant has failed to produce any certificate during his absence. It is only on the day of resumption of duty that he produced a medical certificate showing that he is fit to resume. This certificate only shows that he was an out door patient and he was suffering from some Psychotryes but nowhere is it stated that the applicant needed any rest or he should not go for work. Besides, this is for the entire period of absence of nearly five years. There are also no daily or occassional sheets of OPD treatment produced alongwith the certificate. Such a medical certificate produced after five years period cannot wipe out the unauthorised absence of the applicant. Further, the respondents did give him an opportunity to resume duty. Though he claims that he was of unsound mind even at the time he attended the enquiry on 7/10/98 he had not produced any certificate of sickness. It is seen from the replies given by the applicant during the enquiry that he has answered all the queries like a normal person. There does not appear to be any confusion or any indication to show that he was of an unsound mind. If he were mentally unsound he could not have attended the enquiry. Further he has even given in writing, accepting his guilty. It cannot therefore be said that his statement recorded by the Enquiry Officer on 7/10/98 was not legally valid. / The applicant has made a grievance that he was not provided with the documents enclosed with the charge sheet. However he does not seem to have raised the issue of non supply

of documents at any time either on receipt of the charge sheet, or during enquiry or in appeal. In any case the documents were the leave record and the Daily Attendance Register. The applicant did not deny that he was absent from 1/11/1993 to 22/11/1998 nor did he claim that he had given any leave application. Therefore no prejudice could have been caused. This cannot therefore vitiate the enquiry.

8. The applicant has also submitted that the Disciplinary Authority passed the penalty order without waiting for his representation. Instead he considered applicant's representation for allowing him to resume duty, as the representation on the Enquiry Report. We have perused the order of the Disciplinary Authority wherein there is specific reference to applicant's submission dated 23rd November 1998. Further there is a letter dated 23/11/98 from the respondents allowing the applicant to resume duty. The first para of this letter reads as follows:-

"1. This has reference to your representation dated 23/11/98 in reply to this office letter No.SH0/277/22 dated 13/11/98 and enclosures thereto." This confirms that the applicant had made his submission on the Enquiry Report forwarded to him on 13/11/98.

9. We find thus that the enquiry officer has conducted the enquiry as per rules and both the disciplinary authority and appellate authority have passed speaking orders. The appellate authority has taken into consideration all the points raised by the applicant in his appeal, has dealt with them point by point.

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10. In the circumstances, we are unable to find any merit in the present application. We are therefore not inclined to interfere with the orders of the disciplinary authority and the appellate authority.

In the result, the OA is dismissed with no order as to costs.

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(SMT. SHANTA SHASTRY)
MEMBER(A)

S.L. Jain
(S.L. JAIN)
MEMBER(J)

dt 25/11/02
to applicant's dependent (S)
on 1/2/02

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