

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 9th day of June, 2003

Coram: Hon'ble Mr.V.K.Majotra - Member (A)
Hon'ble Mr.Shankar Raju - Member (J)

O.A.801 OF 2000

V.M.Korde.
Draughtsman Grade III,
C.Q.A.E., Aundh,
Pune.
(By Advocate Shri S.P.Saxena) - Applicant

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
O.H.Q. P.O.,
New Delhi - 110 011.
2. The Director General of
Quality Assurance,
Directorate of Quality
Assurance, Ministry of
Defence, OHQ, PO,
New Delhi 110 011.
3. The Controller,
C.Q.A. (EE),
Aundh Camp,
Pune 411 027.
(By Advocate Shri R.K.Shetty) - Respondents

O R D E R (ORAL)

By Hon'ble Shri Shankar Raju, Member (J) -

Applicant has impugned respondents' order of penalty dated 18.11.98 reducing his pay to the lowest of the pay scale for a period of three years withholding of increments as well as the appellate order dated 10.8.99, maintaining the punishment.

2. Applicant was proceeded against in a major penalty chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 for remaining absent from duty during the period 1994-95 without prior sanction of leave or intimation and also gross misconduct and negligence of not reporting to duty even after confession made on 18.1.95. The enquiry proceeded where applicant was held

guilty of charge. Disciplinary authority by an order dated 28.12.95 removed applicant from service. Appeal preferred against the order was disposed of on 6.2.97 where taking cognizance of denial of reasonable opportunity to applicant punishment was set aside. The period of absence was directed to be regularised as per FR 54 (iv) and with further direction to continue proceeding from the stage of regular hearing. The proceeding was held in pursuance of the above where applicant was held guilty of the charge by the enquiry officer (EO) and on reply to the findings disciplinary authority imposed upon him a major punishment which was confirmed in appeal, giving rise to the present OA.

3. Learned counsel for applicant contends that although de novo proceeding was permissible but the same should have been held from the stage where non-compliance of natural justice has been assailed, i.e., witness S.L. Pradeep should not have been examined afresh, rather applicant should have been given an opportunity to cross-examine him on his earlier statement as calling afresh and recording his testimony as a result improving upon the prosecution case which is not permissible.

4. It is further stated that once the leave is sanctioned ex-post facto the charge of remaining absent loses its validity and cannot be sustained as well as punishment imposed. It is further stated that applicant has submitted his medical record and application and the alleged admission which is treated as a confession dated

18.1.95 is a conditional acceptance on the ground of remaining absent on mitigating circumstances which has been wrongly construed as an admission.

5. Lastly, it is contended that applicant in response to the second medical examination ordered by respondents had not received the copy by the time applicant was declared fit and stated that the earlier punishment imposed cannot be taken into consideration having attained finality.

6. On the other hand, respondents' counsel Sh. R.K. Shetty contended that to ascertain the authenticity of medical record applicant was called for second medical examination but he has not complied with the same. According to respondents punishment is commensurate with the misconduct keeping in view the unexplained period of absence and moreover the medical record has not been submitted prior and no prior permission has been taken to avail the leave by not reporting to medical examination, medical certificate as well as fitness from the private Doctor is permissible at the discretion of the competent authority and this act of applicant which has thrown doubt on the authenticity of the medical record which is rightly turned down.

7. It is stated that ample opportunities have been given to applicant to defend the charge and as no fresh witness was examined de novo proceeding ordered and the course adopted is in accordance with the rules. As applicant is irregular in attendance and his incorrigibility has been proved from his past record

absenting from duty without prior permission or sanction of leave is a serious misconduct for which punishment imposed is commensurate. Moreover, by referring to the admission through statement dated 18.1.95 is concerned, it is stated that in so far as the misconduct alleged of absenting without seeking prior permission or sanction the same is admitted, unconditionally, unequivocally and in absolute terms and as a voluntary statement if no further grievance is raised against it the same is permissible and is apt^u sufficient to impose upon applicant punishment impugned in the present OA.

8. In the rejoinder applicant has re-iterated his earlier pleas taken in the OA and in so far as second medical examination is concerned, it is contended that applicant was on medical leave and was treated by a recognized Doctor who declared him fit to join duty and as he was declared fit there is no question of his re-examination. However, he has failed to rebut as to service of the notice for medical examination on him.

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. In so far as first legal ground raised by applicant as to examination of witness afresh is concerned, as per Rule 27 of the CCS (CCA) Rules, 1965 it is open for the appellate authority while modifying the orders to pass suitable directions. As one of the contentions put-forth by applicant is against an ex-parte proceeding where he was deprived of an opportunity to cross-examine the witnesses, the

appellate authority having regard to the principles of natural justice and to afford applicant a reasonable opportunity, directed holding of proceeding from regular stage. This could have given an opportunity to applicant to have examined the witnesses in his presence and his defence has been taken care of by affording him an opportunity to cross-examine witnesses. As no serious prejudice has been caused and the procedure adopted is in accordance with law the above ground fails and is rejected.

11. In so far as treatment of period as leave is concerned, as it is settled by the Apex Court the period is decided to regulate and maintain the office record and would not have any effect on regularising the period of absence or condoning the misconduct.

12. As regards admission of applicant is concerned, from the perusal of his statement made on 18.1.95 applicant who has been alleged to have in the chargesheet misconducted to the extent of absenting himself without prior sanction or intimation without leave admitted that the leave application alongwith medical certificates was filed after reporting for duty. This clearly shows that in so far his not seeking prior permission or availing sanctioned leave the same is admitted. The aforesaid admission clearly states that applicant shall join duty place and will proceed on leave in future only after prior sanction or intimation of leave leaves no doubt that admission is absolute, unconditional, unequivocal and on his own volition

without any pressure or threat and the same is to be treated as a valid admission and sufficient to hold applicant guilty of charge.

13. However, the contention put-forth that he was absent on account of mitigating circumstances due to illness cannot be countenanced as Rule 19 (3) of the CCS (Leave) Rules, 1972, it is the discretion of the authority concerned to subject a government servant to second medical examination in case of doubt as to the genuineness of the medical record on submission of the record from private Doctor as applicant is a CGHS beneficiaries he has been directed through a communication to undergo second medical examination vide letter dated 22.9.94 and 17.10.94. As applicant has not availed his plea of mitigating circumstances and absence of illness cannot be treated as a valid ground. In his rejoinder he has not specifically controverted and taken the plea of non-communication of the second medical examination notice. Accordingly the same is proved to be served upon him. Having failed to respond to the notice the medical ground taken by applicant to justify his absence is not justifiable and is liable to be rejected.

14. No other legal infirmity has been brought out to warrant our interference. Moreover, in a disciplinary proceeding this Court cannot assume the role of an appellate authority and to adjudge the correctness or truthfulness of the charge. From the perusal of the orders passed by respondents we do not find any violation of the procedural rules. The orders passed are reasoned and as the punishment has been

observed to be commensurate having regard to the conduct of applicant in past the same withstand the scrutiny of law.

15. In the result, OA is found bereft of any merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

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