

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, AT MUMBAI  
CAMP : AT GOA  
O.A.NO.142/2001**

Dated this Friday, the 5<sup>th</sup> day of May, 2006.

**CORAM: HON'BLE SHRI A.K. AGARWAL, VICE CHAIRMAN  
HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)**

Shri Winston Dias Redempto  
Residing at  
House No.321, Scravado,  
Chinchinim, Taluka Salcete,  
Goa.

..... Applicant

(Applicant by Shri S.P. Patnekar, Advocate)

vs.

1. Union of India,  
through Secretary,  
Ministry of Defence,  
South Block  
New Delhi.
2. The Chief Engineer,  
Kochi Zone, Kochi Naval Base,  
Kerala.
3. S.E. Commander,  
Works Enginner (Navy)  
Mangor Hills, Vasco-da-Gama.
4. Garrison Engineer (NW),  
Mangor Hills, Vasco-da-Gama.

..... Respondents

(Respondents by Shri E.P. Badrinarayan, Advocate)

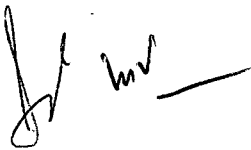
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ORDER

Per: S.G.Deshmukh, Member (J):

The present O.A. is filed for quashing and setting aside the order dated 16.5.2000 passed by the Appellate Authority confirming the punishment of removal from service imposed on the applicant by the Disciplinary Authority.

2. The applicant's case is that he was working as a Ref/Mech (S.k.) under the Assistant Garrison Engineer E/MI since 1983. It is contended that while on duty he got sanctioned his leave from 3.10.1997 to 31.10.1997 and upon such sanction he proceeded on leave. It is contended that during the period of leave he fell ill and therefore, he had submitted applications from time to time for extension of leave along with the medical certificates. It is contended that the Disciplinary Proceedings were initiated against him under Rule 14 of the CCS (CCA) Rules vide Memorandum dated 30.7.1998 for the charge that he remained absent from duty w.e.f. 3.10.1997 without any intimation or sanction of leave. Even after repeated requests, he has neither reported nor sent any leave application. The Enquiry Officer was appointed to conduct the enquiry. It is further contended that another Memorandum dated 10.2.1999 for leaving the country without taking permission from the department and submitting false Medical Certificates and remaining absent was issued to him. The Enquiry Officer submitted his report holding that charge in respect of remaining absent from duty w.e.f. 3.10.1997 without intimation and the applicant has not sent any leave application were not proved. The Enquiry Officer held that the charges that the applicant remained absent without sanctioned leave from 3.11.1997 to 21.1.1999 and left the country without taking permission from Department were proved. The Enquiry Officer submitted his report to the Disciplinary



Authority and the Disciplinary Authority held that the charges are proved beyond reasonable doubt and imposed the penalty of removal from service by order dated 22.7.1999. The applicant preferred an appeal and the Appellate Authority dismissed the appeal and confirmed the punishment imposed by the Disciplinary Authority by its order dated 16.5.2000. Hence this O.A.

3. The respondents appeared and resisted the application by filing their counter affidavit. The respondents contended that applicant did not produce tangible and valid evidence to justify his unauthorized absence for leaving his post of duty and leaving for abroad for the purpose of employment. According to the respondents they have conducted a proper enquiry against the applicant. It is contended that the applicant was directed to appear before the Medical Authorities for the second opinion but the applicant ignored and failed to appear before the Medical Board for second opinion on his alleged sickness. It is contended that sufficient opportunity was granted to the applicant to defend his case. The enquiry conducted by the respondents is as per rules and in accordance with the principles of natural justice.

4. The applicant filed the rejoinder and reiterated the averments made in the O.A.

5. We have heard the learned counsel Shri Patnekar, for the applicant and Shri E.B. Badrinarayan for the respondents.

6. The learned counsel Shri Patnekar while arguing on behalf of the applicant submitted that the respondents passed the orders without applying the mind as the leave of the applicant from 3.10.1997 to 31.10.1997 was sanctioned by the Competent Authority, the said leave period cannot be treated as absence. The learned counsel submitted that the respondents erred in holding that the applicant was absent though the

leave was sanctioned. The learned counsel also submitted that the respondents were wrong in holding that the Medical Certificates and other evidence produced by the applicant were not sufficient to substantiate the stand of the applicant. According to him, the contention of the respondents that the applicant remained absent without any intimation, in fact, when regular applications, supported by the Medical Certificates were produced by the applicant, is wrong. He further submitted that the respondents did not follow the principles of natural justice while conducting the enquiry. The learned counsel submitted that the copies of the letters issued by the Passport and the Police Authorities were not given to the applicant during the course of enquiry though those were relied upon by the Enquiry Officer. The learned counsel submitted that not allowing the inspection of those copies and not supplying the copies of those documents, the applicant was caused prejudiced in his defence. The learned counsel submitted that the Enquiry Officer has given finding in negative in respect of his absence with effect from 3.10.1997 without intimation and not sanctioning the leave application. Even then, the Disciplinary Authority and Appellate Authority held him guilty for the same. The learned counsel relied on the judgements in the case of (1) *State of Punjab vs. Bhagat Ram AIR 1974 SC 2335* and (2) *B.D. Gupta vs. State of Haryana*.

7. On the other hand, the learned counsel for the respondents submitted that the respondents have conducted proper enquiry against the applicant by following the principles of natural justice. Every opportunity was given to the applicant. The learned counsel submitted that the applicant was directed to appear before the Medical Authority but the applicant failed to appear before the Medical Board on his alleged sickness. The learned counsel submitted that the punishment imposed by the authorities is

proportionate to the misconduct alleged and proved against the respondents. The learned counsel relied on the judgment in the case *Shahoodul Haque vs. The Registrar, CO-Operative Societies, Bihar and Anr. 1975 (3) SCC 108* .

8. We have considered the rival submissions, perused the papers on file and considered the case laws cited by the learned counsel for the parties. It is apparent from the order of the Appellate Authority dated 16.5.2000 that the Disciplinary Proceedings were initiated under Rule 14 of the CCS (CCA) against the applicant vide Memorandum dated 30.7.1998 and 10.2.1999 for leaving the country without taking permission from the Department and submitting false Medical Certificates. It cannot be disputed that the jurisdiction of the Tribunal in disciplinary cases is very limited, for instance, where it is found that domestic enquiry is vitiated for non observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence or the punishment is totally disproportionate to the proved misconduct of an employee. After perusal of the enquiry report, the order of the disciplinary authority and the appellate authority reveals that the Enquiry Officer has relied on letters issued by the Police Authorities and the Passport Authorities. It is also apparent that the copies of these letters were not supplied to the applicant. Moreover, the applicant was not allowed to inspect the documents in question. It is also apparent that those documents are brought on record without examining any witness in that respect. The applicant has been denied the opportunity to defend his case because of non supply of the documents and not allowing him to inspect those documents. Thus, it is certain that the Enquiry Officer relied on extraneous matters. Facts sought to be proved must be supported by statements made in the presence against the charged officer when enquiry is held. Statements made in those letters are

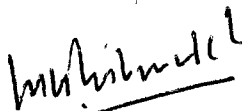
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made behind the back of the applicant. Such statements cannot be treated as substantive evidence. It is one of the basic principle of the Enquiry, which cannot be ignored. The failure of the Enquiry Officer to allow inspection and to furnish the applicant copies of the letters issued by Passport Authorities and the Police Authorities has caused prejudice to the applicant in making his defence.

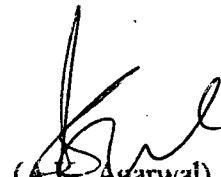
9. It is true that the domestic enquiries need not be conducted in accordance with technical requirements of criminal trial. But, even in disciplinary proceedings the charge framed against the delinquent must be proved by legally admissible evidence. No punishment can be imposed unless the charge is proved. In the instant case, the copies of letters issued by the Police Authorities and the Passport Authorities were not supplied to the applicant, not only that but the applicant was not allowed to inspect those letters. The applicant could not make out his defence as he was not allowed to go through the documents in question which were relied upon by the Enquiry Officer. Enquiry Officer adopted a procedure which is contrary to the Rules of Natural Justice. The ultimate decision based on the letters which were not supplied to the applicant is required to be quashed. The enquiry held in these circumstances without supplying the documents which were relied by the Enquiry Officer is required must be regarded as one held in violation of statutory rules. It was necessary for the Enquiry Officer to supply the copies and allow the applicant for inspection of those letters which have been relied by the Enquiry Officer. Admittedly, the applicant was not allowed the inspection of the letters issued by the Police Authorities and Passport Authorities but those have been used as evidence against the applicant while holding him guilty by the Enquiry Officer.

10. The orders passed by the Authorities are required to be set aside as those are in violation of rules and principles of natural justice. Accordingly, the Appellate Order dated 16.5.2000, the order of the Disciplinary Authority imposing penalty of removal and the report of the Enquiry Officer are hereby quashed and set aside and the matter is remanded to the Disciplinary Authority. The Disciplinary Authority is to supply the copies of the documents which were to be relied in the Enquiry. The applicant is to be treated under deemed suspension since the date of removal i.e. from 22.7.1999. The Disciplinary Proceedings are to be completed within a period of 3 months from the date of receipt of a copy of this order. Accordingly, O.A. stands allowed on the above terms.

No. order as to costs.



(S.G. Deshmukh)  
Member (J)

  
(A.R. Agarwal)  
Vice Chairman

Sj\*