

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 411/2001

Date of Decision: 22.10.2003

J.L. Khatwani Applicant

Shri G.K. Masand Advocate for Applicant(s)

Versus

Union of India & Ors. Respondents

Shri V.S. Masurkar. Advocate for Respondents.

CORAM: HON'BLE SHRI S. BISWAS MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

s Biswas
(S. BISWAS)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 411/2001

THIS THE 22nd DAY OF OCTOBER, 2003

CORAM: HON'BLE SHRI S. BISWAS. .. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. .. MEMBER (J)

Shri J.t.Khatwani, residing
at Building No.198/2287,
Sector-IV, Kane Nagar,
Mumbai - 400 032. Applicant

By Advocate Shri G.K.Masand
alongwith Smt.S.R.Sawant
V/s.

1. Union of India,
through the Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Flag Officer Commanding-in-Chief,
Western Naval Command
Shahid Bhagat Singh Road,
Mumbai
3. Chief Staff Officer (P&A)
Western Naval Command, HQs,
Shahid Bhagat Singh Road,
Mumbai - 400 001. Respondents

By Advocate Shri V.S.Masurkar

(ORDER)

Per Hon'ble Shri S.Biswas, Member(A)

By this application, the applicant has sought quashment of the following impugned orders relating to disciplinary case which were against him for unauthorised absence namely the orders of punishment dated 23.01.1999 being compulsory retirement, the appellate order dated 28.02.2000 revision order dated 22.9.2000 respectively at Annexure-A. By this OA the applicant sought direction upon the respondents to reinstate him in service with consequential benefits.

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2. The necessary facts as stated in the OA are that the applicant was recruited in the year 1964 as LDC with the respondents in Bombay and then he was transferred to Karanja in 1981. He evidently got his promotion as UDC and while posted in the Naval Armament Depot, Trombay, the impugned disciplinary proceedings were initiated against him for unauthorised absence vide charge memo dated 23.02.1996. It has been interalia alleged that he is a habitual absentee as he avails leave without prior permission and proper intimation and further applicant has not produced requisite medical certificate at the time of resuming duty and therefore a major penalty proceedings was initiated against him under Rule 14 of the CCS (CCA) Rules, 1965 for contravening Rule 3 (1) (iii) of CCS (Conduct) Rules 1964. The Disciplinary Authority duly appointed an inquiry officer, according to whose report the charges are proved.

3. The applicant in the representation dated 18/12/96 before the Disciplinary Authority brought on record that first memorandum dated 23.02.1996 initiated under the same subject and proceedings was dropped earlier without prejudice to further action. Thereafter, a fresh charge memo was issued on 09.7.1997. In this charge memo the authority interalia alleged that the applicant was availing leave without prior permission or intimation from 23.11.95 to 12.12.1995 for

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which three certificates were produced covering total period of absence from 29.11.95 to 07.12.95, 07.12.95 to 09.12.95 and 09.12.95 to 12.12.95 from CGHS dispensary and private medical practitioner at the time of resuming duty. Article of charge shows that the applicant, inspite of oral advice and written warning, did not correct himself and continued to avail unauthorised leave and this has resulted in gross misconduct. Therefore, it was necessary to invoke the provisions of Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964. Applicant gave his reply in which he pointed out several personal difficulties in attending duty. In the inquiry report given to the applicant vide letter dated 22.6.1998 it has been stated by the applicant that the inquiry officer stated that Articles 1 and 2 of the charge sheet dated 09.7.97 as not proved and while the proceedings inspite of being dropped was carried on and culminated to an illegal order of compulsory retirement, which has been challenged in this OA. The Presenting Officer had also observed that the proceedings suffered from flaw and could not conclude to a definite finding and he could not elaborate and therefore, he observed that the charges are not proved.

4. In the situation, learned counsel for the applicant has assailed the Disciplinary Authority, Appellate Authority and Revision Authority's orders as illegal, vitiated by non observance of principles of natural justice.

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5. Heard both the learned counsel and went through the records including the facts and inquiry proceedings. Learned counsel for the applicant states that the order of compulsory retirement passed by the Disciplinary Authority is unwarranted and the proceedings are not according to the principles of natural justice while the applicant was exonerated of the charges by the Inquiry Officer.

6. A preliminary objection has also been raised regarding the competence of the Disciplinary Authority to award major penalty to the applicant who is a Group-C employee under the respondents. The respondent authorities have placed before us an order dated 13th September 79 in response to this objection showing that the Flag Officers Commanding-in-Chief is competent to impose the penalty under this order. Therefore, this point is not further pressed by learned counsel for the applicant. A copy of this order is taken on record.

7. It is a fact that both the Inquiry Officer and Presenting Officers have given report stating that the charges are not proved. It has also been observed there was technical flaw in the procedure adopted. The Disciplinary Authority has not agreed with them and proceeded to decide the case by giving liberty to applicant to make submission and the applicant has taken

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full benefit of the report submitted by the Inquiry Officer. The Inquiry Officer as well as Presenting Officer's report were referred in the punishment order stating that in the representation the charged officer did not bring out any new point nor he proved his innocence or pointed out any flaw in the departmental proceedings and has held that the charged officer did remain absent in 1995.

8. The Disciplinary Authority has taken up the following points for consideration before punishing the charged officer. The applicant submitted that he did not remain absent in 1995 willingly as his wife was not keeping well and he himself was sick during 1995. This was informed to the higher authorities orally. He had also produced requisite medical certificate from Private Medical Practitioner and CGHS stating that he was under treatment for 10 years.

9. The Disciplinary Authority has also observed that the charged officer is a habitual absentee without prior intimation and medical certificate. Inspite of repeated suitable instructions, he has not improved and continued to be absent in 1995. As contained in memo dated 09th July, 1997 neither he took charge in the office before competent authority nor he forwarded the medical certificate. When the question came about intimation to his Officer-in-Charge, the applicant

stated that he did intimate. It has also been observed that he could have indicated the probable duration of leave required to his Officer-in-Charge who visited his house. We also would have liked to know if there was specific intimation what prevented the authorities to find out the fact from the said Officer-in-charge. There is nothing on record in this regard. The Disciplinary Authority also commented on the medical certificate dated 12th March, 98 issued by the CGHS to the charged officer saying that this was not brought to the notice of Disciplinary Authority or to the Inquiry Officer during the course of the inquiry, this was produced only after the inquiry was over.

10. We are not willing to make much comment on the factual position on which the Disciplinary Authority analysed why he differed with the report of the Inquiry officer and Presenting Officer and ordered punishment of compulsory retirement to the applicant with effect from 30th January, 1999.

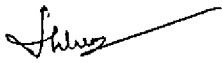
11. As usual the applicant thereafter preferred an appeal, which was also rejected. However, the Appellate Authority in his order dated 28th February, 2000 after hearing the applicant has passed a detailed order. to supplement further why the contention of the inquiry officer was not accepted and the penalty had been confirmed. Again a revision order was passed on 22.9.2000. The Vice Admiral, Chief of Army went into

the case in detail and confirmed the findings of the Disciplinary and Appellate Authorities. The revision application was rejected as devoid of merit. It is a fact that the applicant is a habitual absentee and we have gone through the record particularly the order passed by the Disciplinary, Appellate and Revision Authorities that technically for some of the period when he was availing leave which was not properly applied for, nor he produced necessary medical certificate. These are also partially admitted. The applicant did not forward any medical certificate and he had sent only verbal intimation which was not accepted.

12. On perusal we find the orders of the Disciplinary Authority and Appellate Authority and Revision Authority as detailed. No prejudice are attributable to this extent Even medical certificates were produced only after the inquiry was over which shows that the charges are partly proved and that in our view is enough for awarding punishment in a disciplinary proceedings. What is relevant in this case is that respondents authorities have not tried to deny any opportunity to the applicant or expressed any deliberate ill will towards the applicant which can be held as denial of justice or prejudicial to the admitted part of the unauthorised availment of leave.

6. Under the circumstances, we find that the

penalty of compulsory retirement requires no interference. The Disciplinary Authority can always differ with the Inquiry Officer's report, which he has discussed in detail. We are not going into that. In our considered view, the punishment is not harsh as evidently he is a habitual absentee which affects the day to day work of the department. In the result, the OA is dismissed as devoid of merit. No costs.


(M. HUSAIN)
MEMBER (J)


(S. BISWAS)
MEMBER (A)

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