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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 973/92

Wednesday the 11th day June 1997.

Madhu Sadalapurkar
536 Sarpan Gully
Bhingar, Camp,
Ahmednagar.

... Applicant.

V/s.

Secretary,
Ministry of Defence,
Defence Bhavan,
New Delhi.

The Commandant
Station Headquarters
A.C. Centre & School
Ahmednagar.

... Respondent.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

¶ Per Shri B.S. Hegde, Member (J) ¶

Shri Masurkar has drawn our attention that the applicant has not annexed any impugned order. The applicant was removed from service after proper enquiry on 9.11.83. Thereafter he has filed O.A. 549/87, which was disposed of by the Tribunal on 31.3.92. Against which the applicant has filed this O.A. 973/92. Therefore, in our view, there is no merit in the O.A. Accordingly O.A. is dismissed. M.P. 520/95 stands disposed of.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO.: 94/97 IN O.A. No. 973/92.

Dated this 18th, the Tuesday day of September, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Shri Madhu Sadalapurkar ... Applicant

Versus

Secretary,
Ministry Of Defence & Anr. ... Respondents.

TRIBUNAL'S ORDER BY CIRCULATION :

{ PER.: SHRI B.S. HEGDE, MEMBER (J) }

The applicant has filed this application seeking review of the judgement dated 11.06.1997. Infact, the application was filed by the Counsel himself, and only after it was pointed out to the Counsel by the registry that the verification is not properly filed, he filed a verification signed by the applicant, which has been authenticated by the Counsel, Mr. Prabhakaran.

2. It may be re-called that the applicant had earlier filed the O.A. No. 549/87, which has been disposed by the Tribunal vide order dated 31.03.1992 stating that since the application is defective and the facts have not been properly mentioned nor the grounds are clear, he was given liberty to file fresh application and the

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question of limitation will not come in the way of the applicant if the same is filed within six weeks. With the above observations, the O.A. was disposed of. Thereafter, the applicant filed the present O.A. No. 973/92 on 08.09.1992.

3. The O.A. was admitted on 30.10.1992. On many occasions, none appeared on behalf of the applicant, though Mr. C.N. Nair's name appeared against the applicant. The matter ultimately came up for hearing on 11.06.1997. On that occasion also, the Counsel for the applicant was not present. Accordingly, on the basis of the submission made by the Counsel for the respondents, the Tribunal passed the following order :

"Shri Masurkar has drawn our attention that the applicant has not annexed any impugned order. The applicant was removed from service after proper enquiry on 09.11.1983. Thereafter, he has filed O.A. No. 549/87, which was disposed of by the Tribunal on 31.03.1992. Against which the applicant has filed this O.A. No. 973/92. Therefore, in our view, there is no merit in the O.A. Accordingly, O.A. is dismissed. M.P. No. 520/95 stands disposed of."

On perusal of the documents, we find that the applicant has annexed the Statement of finding by the disciplinary Authority as well as the order of punishment of removal

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of removal from service vide dated 29.11.1983.

Since the statement made by the Counsel for the respondents does not seem to be correct, the order dated 11.06.1997 passed by the Tribunal, is not to be given effect to.

4. The O.A. is restored to file. Issue notice to the parties for further hearing on 19.12.1997
The Review Petition is allowed.

M.R. Kolhatkar

(M.R. KOLHATKAR)

MEMBER (A).

B. S. Hegde

(B. S. HEGDE)

MEMBER (J).

OS*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 973/92

Date of Decision: 26.2.98

Shri Madhu Sadalapurkar

Applicant.

Shri P.A. Prabhakaran.

Advocate for
Applicant.

Versus

Secretary, Min. of Defence and others Respondent(s)

Shri V.S. Masurkar.

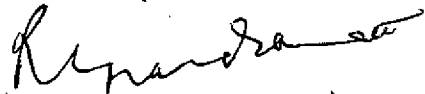
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri. P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*


(R.G. Vaidyanatha)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI: 1

Original Application No. 973/92.

Thursday the 26th day of February 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri P.P. Srivastava, Member (A)

Madhu Sadalapurkar.
536 Sarpan Gally
Bhingar, Camp,
Ahmednagar.

... Applicant.

By Advocate Shri P.A. Prabhakaran.

V/s.

Secretary,
Ministry of Defence,
Defence Bhavan
New Delhi.

The Commandant
Station Headquarters
A.C. Centre & School
Ahmednagar.

... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman¶

This is an application filed by the applicant challenging the order of removal from service passed by the Disciplinary Authority and confirmed by the Appellate Authority. The respondents have filed reply opposing the application. We have heard counsel for both sides.

2. The applicant at the relevant time, namely in 1983 was working as Watchman in AC Depot and Holding Wing, Ahmednagar. It appears that the applicant was absent for quite some time during 1983. Therefore, the authorities issued two different charge sheets for two different periods alleging mis-conduct for being absent from service without leave.

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The applicant appears to have sent reply to both the chargesheets.

Then the Enquiry Officer was appointed and held the enquiry and the Enquiry Officer had recorded the findings of the applicant and he recommended that necessary action may be taken as per the disciplinary Rules. The papers were submitted to the Disciplinary Authority.

Then the Disciplinary Authority by order dated 19.10.83 perused the enquiry report and passed the order dated 29.11.83 accepting the report of the Enquiry Officer and imposed the penalty of removal of service, against the applicant. Then the applicant preferred an appeal to the Appellate Authority. The Appellate Authority by order dated 23.1.84 found that the order of Disciplinary Authority is correct and purported to reject the appeal. It is also seen from the record that the applicant had addressed one more appeal to the G.O.C. Southern Command on 31.1.84. There is nothing to show that any order was passed on the appeal.

3. Since the applicant's services are terminated by the order of the Disciplinary Authority, the applicant has filed an O.A. 549/87 challenging the order of Disciplinary authority. That application came for final hearing on 31.3.92, when the Tribunal noticed that there are some defects in the application and therefore permitted the applicant to withdraw the applicant with liberty to file fresh application. Subsequently the present application is filed by the applicant challenging the order of removal from service. It is alleged that the enquiry is not held.

according to law and there are many defects in the enquiry conducted by the concerned authority. Hence the applicant approached this Tribunal with the prayer to reinstate him in service with retrospective benefits.

4. The respondents have filed reply stating that the application is barred by limitation. On merits it is stated that the applicant was absent unauthorisedly and enquiry was held as per the Rules and proper punishment have been imposed as per Rules. The applicant had been removed from service with effect from 29.11.83, the date of order of the Disciplinary Authority.

5. The learned counsel for the applicant has questioned the correctness and legality of the order passed by the Disciplinary authority and the Appellate Authority. He had questioned the legality of the procedure adopted by the Enquiry Officer. Then he further argued that the penalty of removal from service is excessive and harsh and it is not a fit case for such harsh penalty. Then he argued on merits. The learned counsel for the respondents stated that the application is barred by limitation delay and laches. He submitted that the scope of judicial review is limited and the Tribunal cannot interfere with the order passed by the Competent Authority.

6. As far as the merits are concerned, we do not find any ground to interfere with the impugned order passed in this case. The applicant was absent unauthorisedly and did not apply for leave. The fact



that the applicant was absent for certain period was not disputed. The applicant did not apply for leave and did not gave any explanation for the same. Hence the Competent Authority has felt that action should be taken as per Rules.

7. As far as the procedure adopted in the enquiry is concerned, it is because the applicant had admitted the charge of being absent without applying for leave, *no evd. was recorded.*

8. The learned counsel for the respondents states that the application is barred by limitation. It is true that prima facie the application appears to be barred by limitation, but we must take into consideration that the applicant is illiterate Group 'D' official who ^{was} is working as Watchman in the Army. He challenged the order of termination by filing the previous O.A. and the Tribunal found that the application is defective. The Tribunal vide order dated 31.3.92 has clearly observed that the applicant can file fresh O.A. ^{and that} The question of limitation will not come in the way, if the application is filed within six weeks. The learned counsel for respondents contended that since the application is not filed within six weeks, the application is barred by limitation. But this delay has been explained by the applicant in the Rejoinder that he has received the copy of the order in the previous case in August 1992 and the present application is filed in September 1992 within the period of six weeks. Even the copy of the order produced in this case which is at page 7 of the paper book shows that the certified copy is dated 28.7.92. Therefore the

applicant must have received the copy of the order a few days later and within six weeks the present O.A. has been filed. Having regard to the status of the applicant namely Grade "D" official, ^{we} ~~and he~~ he cannot say that there is any delay on the part of the applicant in filing the present O.A. Hence we do not find any merit in the contention of the respondents that the application is barred by limitation, in view of the earlier order passed by this Tribunal on 31.3.92.

9. ^{which} However one glaring defect ^{is} ~~is~~ appeared on the record ^u that the order of punishment is passed by the Disciplinary authority who was holding the rank of Major General. If we treat the order dated 23.1.84 ~~as~~ ^{is} an Appellate order then we find that it is passed by an officer holding the rank of Brigadier. The rank of Brigadier is less than the rank of Major General, therefore, the Brigadier ^{could} ~~should~~ not have sit in appeal on the order passed by the Major General. The Brigadier must have passed the order as Officiating Commandant treating the applicant's representation dated 23.12.83 as application in review. If that is the case then there should be further order by the Appellate authority. There is an appeal dated 31.1.84 at page 28 of the paper book submitted by the applicant addressed to the General Officer Commanding, Southern Command, Pune. We can take judicial notice that the Southern ~~Command~~ ^{of} is headed by an officer ^{at} the rank of Lt. General who is admittedly higher in rank than the Disciplinary authority, who is holding the rank of Major General. The Appellate order must ^{be} ~~have~~ passed by the GOC, Southern Command, but we do not find any orders passed by such an officer from the

available materials and records. No order was passed by Lt. General on the appeal of the applicant dated 31.1.84.

10. The learned counsel for the applicant contended that the penalty imposed by the Disciplinary authority is ^{excessive} ~~extraneous~~ and harsh and placed ^{reliance} ~~relevance~~ on the decision of the Supreme Court reported in 1997 SCC (L&S) 576 State of Punjab and Others V/s. Dharam Singh. That ^{was} ~~is~~ a case where the Police officer had remained ~~absent~~ ^{was} for a period of 11 months; after holding disciplinary enquiry he was removed from service. The Supreme Court observed ~~that~~ in the circumstances of the case the punishment of removal from service should be modified to one of compulsory retirement.

The scope of interference by this Tribunal regarding the punishment is also very limited. However we notice that there is no other allegation of mis-conduct of the applicant except absence for 81 days which was the subject matter of the charge sheet. The question ~~is~~ whether the case of removal from service is a matter which has to be decided by the Appellate Authority, taking into consideration the status of the applicant namely he is a Group 'D' official of the rank of Watchman and he is an illiterate person. He has to take a decision whether mere absence for 81 days without any other mis-conduct calls for such a ^{excessive} ~~extremous~~ punishment or it can be substituted by penalty of compulsory retirement. It is for the Appellate Authority to examine the facts and circumstances of the case and award whatever punishment as provided

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under the Rules. Since the Appellate Authority has not passed any order we remit the matter to the Appellate Authority to pass appropriate order both on merits and regarding the punishment. If the Appellate Authority decides the case on merits and accepts applicant's case then he has to set aside the punishment and reinstate the applicant in service. If the Appellate Authority does not decide to accept the case of applicant on merits, then he has to decide what is the proper punishment in the light of the observations made. Then he can pass appropriate order regarding the punishment. In case he come to the conclusion that compulsory retirement would meet the ends of justice then the question is whether the applicant should be entitled to arrears of pension from 1983 till today. As rightly argued on behalf of the respondents there is an inordinate delay on the part of the applicant in approaching this Tribunal both on first occasion and also on the second occasion. In the circumstances we feel that the applicant would not be entitled any arrears of pension or other benefits from 29.11.83 till the date of filing the present application. i.e. on 5.9.92. If at all he would be entitled to monetary benefit from 5.9.92., if the Appellate Authority comes to the conclusion that the compulsory retirement is proper punishment. The matter is fully left to the discretion of the Appellate Authority to pass appropriate order in the peculiar facts and circumstances of the case.

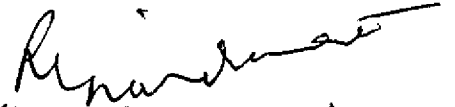
11. In the result, the O.A. is allowed partly. The matter is remitted to the Appellate Authority to pass an order on the Appeal of the

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applicant dated 31.1.84 which is at page 28 of the paper book of the O.A. Since this is a matter of 1983, the Appellate Authority shall pass a speaking order on appeal within a period of four months from the date of receipt of this order. In the circumstances of the case there will be no order as to costs.



(P.P. Srivastava)
Member (A)



(R.G. Vaidyanatha)
Vice Chairman

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