

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 523 /1993

Date of Decision: 17.3.97.

Arvind Keshu Parmar (deceased) Petitioner/s

Shri A.M. Mehta Advocate for the
Petitioner/s

V/s.

Union of India & Others Respondent/s

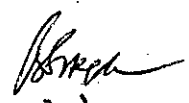
Shri R.R. Shetty for Advocate for the
Shri R.K. Shetty, CGSC. Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member (J)

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

- (1) To be referred to the Reporter or not ? b
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

ssp.


CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

~~OPEN COURT~~ / PRE DELIVERY JUDGMENT IN OA

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193


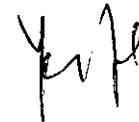
Hon'ble ~~Vice~~ Chairman / ~~Member~~ (J) / Member (A)
may kindly see the above Judgment for
approval / signature.


~~V.C.~~ / Member (J) / ~~Member~~ (A) (K/S)

Hon'ble ~~Vice~~ Chairman

Hon'ble ~~Member~~ (J)

Hon'ble ~~Member~~ (A) (K/S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, GULESTAN BUILDING NO. 6
PRESCOT ROAD, FORT, MUMBAI-400001.

O.A. 523/93

Dated this 17th day of March 1997.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri P.P. Srivastava, Member (A).

Arvind Keshu Parmar
HQ-111 MC/Area Bombay,
AFi Bldg., Dhobi Talab
Bombay 400 020
At present Pratapnagar
No.1, Behind St. Xavier
High School,
Jamnagar (Gujarat)

- Died during the pendency
of Application - through
his heirs and legal
representatives -

1(1) Nimuben Arvind Parmar
1(2) Nitin Arvind Parmar
1(3) Rohit Arvind Parmar
1(4) Usha Arvind Parmar

Minors through their
natural guardian
no. 1(1) Nimuben
Arvind.

1(5) Shantilal Kesu Parmar
All residing at Jamnagar
at Pratapnagar No. 1
Behind St. Xavier's School
Jamnagar (Gujarat)

(By Advocate Shri A.M. Mehta)

..... Applicants

v/s

1) Union of India
(through Respondent No.3)

2) Shri B.S. Shekhawat
Colonel Commandant
Aroham Mukhalaya
Embarkation HQ
P.B. No. 331, Bombay-1.

3) Lt. General
Quartermaster General
Army Head Quarters
'A' Wing, Sena Bhavan
New Delhi 110001

(By Advocate Shri R.R. Shetty
for Shri R.K. Shetty, CGSC)

... Respondents

ORDER

[Per: Shri B.S. Hegde, Member (J)]

Heard Shri A.M. Mehta, counsel for the applicants and Shri Ravi Shetty for Shri R.K. Shetty, counsel for the Respondents. In this O.A., the applicant has challenged the removal order passed by the Disciplinary Authority vide dated 4-9-1991 and the order of the Appellate Authority confirming the order of the Disciplinary Authority vide dated 19-3-1993 respectively on the ground that the orders passed by the Respondents are unjust, improper and arbitrary and also seeks pay and allowances from 1-8-1983 to 30-6-1986 with interest etc.

2. The brief facts of the case are : The applicant is appointed as a temporary Safaiwala at 111 MC/MF Detachment, Jamnagar by the Respondents on 25-1-1982. Since he was not discharging his duties satisfactorily, his services have been terminated under Rule 5 (i) of CCS (Temporary Service) Rules 1965 which has been challenged by the applicant before the Civil Judge (Senior Division) Jamnagar and obtained a stay order. The Respondents went in appeal against the stay in the District Court. However, the District Court also upheld the decision of the Civil Judge, Jamnagar. Thereafter, the matter was transferred to CAT, Ahmedabad after formation of the said Bench under the A.T. Act, 1985 and numbered as TA 1176/86. Despite the stay order obtained by the applicant against the termination notice, the applicant did not join despite several letters sent by the Respondents. The applicant remained absent

132

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from duty from 27-8-1983 to 1-7-1986. He ultimately resumed duty at Baroda on 2-7-1986 and the Respondents took him on duty without any hesitation in compliance of the order of the Civil Judge, Jamnagar and the District Judge respectively; thereafter, the applicant filed a contempt petition on account of his not being paid pay and allowances for the period 27-8-1983 to 1-7-1986. The CAT Ahmedabad Bench dismissed the said contempt petition and held no contempt has been committed by the Respondents. Thereafter, he did not make any application for regularisation of the period of absence. On the whole, he remained absent for 1040 days. It is contended by the Respondents that as per Rule 32 (2) (a) of the CCS Leave Rules 1972 a temporary employee can be granted only 90 days EOL on any one occasion otherwise than on medical grounds. The applicant's absence from duty exceeded 90 days i.e. the permissible limit; accordingly, they issued a show cause notice to the applicant asking him for the reasons for his prolonged absence. Instead of answering show cause notice, the applicant's advocate contended that he was actually attending the duty but he was not allowed to mark his presence in the attendance register and he was not informed of the Unit's transfer to Baroda due to which he could not join the duty at Baroda in time; that statement of the applicant is not based on record. If he is unaware of the transfer of the Unit, he would not have joined at Baroda on 2-7-1986; that itself shows the conduct of the applicant. It is not disputed that the applicant remained absent for a period of 1040 days without any application or intimation to the Respondents. Pursuant to the show

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cause notice, the Respondents held an enquiry and sufficient opportunity was given to the applicant to produce any evidence in support of his contention that he was actually attending the duty; nevertheless, he could not produce any documents or witnesses in support of his contention. Accordingly, the Enquiry Officer vide his order vide dated 30-3-1991 held him guilty of his unauthorised absence. It is further observed in the Inquiry Report that the applicant failed to resume duty consequent upon stay order of the Civil Judge, Jamnagar despite numerous letters issued to him by 111 MC/MF Detachment from which the charge of unauthorised absence from duty is proved.

3. The findings of the Inquiry Officer is approved by the Disciplinary Authority and accordingly the order dated 4-9-1991 imposing penalty of removal from service on the applicant was passed and the said order is upheld by the Appellate Authority vide order dated 19-3-1993 by passing a speaking order under Rule 27 (2)(a) to (c) of the CCS (CCA) Rules 1965.

4. During the course of hearing, when we asked the learned counsel for the applicant in what way the order passed by the Inquiry Authority and the Appellate Authority is not in accordance with the rules or any infirmity or irregularity, the learned counsel for the applicant was not able to show any infirmity in the orders passed by the respective authorities but only contended saying that the applicant was attending the duty but he was not allowed to sign the muster roll; that statement is not based on record or evidence.

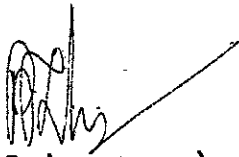
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As stated earlier, even after obtaining stay order from the Civil Judge, Jamnagar, it was open to him to attend duty, failing which he could have taken proceedings contempt/against the Respondents which he did not do; instead, he remained absent and resumed duty at Baroda only on 2-7-1986; that itself shows the conduct of the applicant. Therefore, in the light of the above, we do not see any infirmity in the orders passed by the respondent authorities and the procedure adopted by both the authorities are in accordance with the rules and the findings of Disciplinary Authority and the Appellate Authority are warranted by evidence on record. The Apex Court has held on more than one occasion "that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the finding of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislation or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly


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not a matter for the Tribunal to concern with etc."

5. In view of the above ratio laid down by the Apex Court, the applicant has not made out any malafide and/or bias by the Respondents and as such we do not see any justification in cancelling the orders passed by the respondent department and accordingly we see no merit in the O.A. and the same is therefore dismissed with no order as to costs.



(P.P. Srivastava)
Member (A)



(B.S. Hegde)
Member (J)

ssp.