IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 188/94

Date of Decision: 8-7-99

B.R.Khude — Applicant.

Shri J.M.Tanpure — Advocate for Applicant.

Versus

Union of India & Ors. — Respondent(s)

Shri R.K.Shetty — Advocate for Respondent(s)

CORAM:

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

Hon'ble Shri. D.S.Baweja, Member (A)

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal? ✗

(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 188/94

Dated this the 8th day of July, 1999.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Baban Ramchandra Khude,
38, Aundh Road,
Behind Dr.Sayyed,
Khadki, Pune. ... Applicant

By Advocate Shri J.M.Tanpure

V/S.

1. The General Manager,
Ammunition Factory,
Kirkee, Pune.

2. The Director General of Ordnance
Factories, 10-A, Auckland Road,
Calcutta.

3. The Secretary,
Govt. of India,
Ministry of Defence
(Deptt. of Defence Production),
New Delhi.

4. Union of India through
the Secretary,
Ministry of Defence,
South Block,
New Delhi. ... Respondents

By Advocate Shri R.K.Shetty

ORDER

(Per: Shri D.S.Baweja, Member (A)

The applicant while working as Labour 'B' under General Manager, Ammunition Factory, Kirkee, Pune was issued a chargesheet dated 8.6.1988 charging him of misconduct on account of wilful neglect of his

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irregular attendance and
duty due to unauthorised absence. The applicant submitted his defence against the chargesheet. An enquiry officer was nominated and enquiry was conducted in which the applicant participated. Based on the enquiry report, the disciplinary authority as per order dated 13.7.1989 imposed punishment of removal from service. The applicant made an appeal dated 22.8.1989 against this order but the appellate authority as per his order dated 17.1.1990 rejected his appeal. Thereafter, the applicant made a revision application on 30.9.1991 but the same had also been rejected as per order dated 18.5.1992 of the revision authority. Feeling aggrieved by the punishment of removal from service, the present OA. has been filed by the applicant on 8.2.1994 seeking the relief of quashing the chargesheet dated 8.6.1988 and the order of removal dated 13.7.1989 passed by the disciplinary authority. The applicant has also prayed for reinstatement in service with full back wages, continuity of service and consequential benefits thereafter.

2. The applicant has assailed the impugned orderson the following grounds :- (a) Chargesheet dated 8.6.1988 is not maintainable as there is no wilful neglect of duty on account of irregular attendance and unauthorised absence since the absence of the applicant was covered by a proper medical certificates. (b) The applicant was not allowed to avail the services of defence assistant. (c) The statement of defence dated 17.6.1988 submitted

by the applicant in reply to the chargesheet had been misinterpreted by the enquiry officer taking the same as admission of the charges. The applicant had not accepted the charges and therefore he had been denied the opportunity of detailed enquiry and accordingly there is a violation of principles of natural justice. (d) A copy of the enquiry report was not furnished to the applicant before imposition of punishment and therefore the applicant had been denied the opportunity of putting in his defence against the findings of the enquiry officer. (e) The orders of the disciplinary authority as well as the appellate authority are non-speaking as they have failed to appreciate the fact that the charges against the applicant were not established and his absence was covered by proper medical certificates. (f) The punishment imposed is harsh and disproportionate to the charges since the periods of absence were also covered by medical certificates and regularised.

3. The respondents have filed the written statement. The respondents contend that the applicant had voluntarily admitted the charges before the enquiry officer and therefore the enquiry officer concluded the proceedings holding that the charges are proved. The respondents have further stated that the applicant in his defence statement dated 17.6.1988 against the chargesheet had neither admitted nor denied the charges and therefore the enquiry officer was appointed to go into the charges framed against the applicant. The

respondents, however, add that the disciplinary authority and the appellate authority had passed their orders after due consideration of all the facts and contentions made by the applicant. The respondents therefore plead that the applicant had been given every opportunity to defend his case and there is no infirmity in the disciplinary proceedings against the applicant leading to the punishment of removal from service. As regards the quantum of punishment, the respondents have submitted that over a short spell of service the applicant had been very irregular in his attendance and was not interested in attending to his duties and therefore the punishment imposed is reasonable and proportionate to the charges. The respondents have also taken a plea that the application is barred by limitation as per the provisions of Section 21 of the Administrative Tribunals Act,1985 because the applicant has agitated the matter through this OA. on 8.2.1994 when his review application had been rejected as per order dated 18.5.1992.

4. Heard the arguments of Shri J.M.Tanpure, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents. The respondents have made available the original file containing the disciplinary proceedings and the same has been carefully gone through.

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5. The grounds on which the impugned orders have been assailed have been detailed in Para 2 above. These will be considered one by one to find out if there is any infirmity in the disciplinary proceedings or there is a violation of principles of natural justice.

6. The first ground taken by the applicant is that the chargesheet dated 8.6.1988 is not maintainable. The applicant has stated (i) firstly all the periods of absence during 1986 & 1987 had been covered by medical certificates and the leave had been sanctioned and (ii) secondly for the periods of unauthorised absence in 1987, he had submitted medical certificates covering the entire period and the competent authority could have regularised the periods as the authenticity of the medical certificates had not been questioned. The applicant has also submitted that the medical certificate for the period from 15.12.87 to 31.12.1987 in fact covered the entire period from 5.12.1987 and due to a clerical error, the period of sickness was mentioned from 15.12.1987 by the Doctor. The respondents have, however, contested the stand of the applicant stating charges are specific based on the documentary evidence. On carefully going through the chargesheet and the documents relied upon in support of the charges, we are not inclined to accept the contention of the applicant. The applicant's statement that periods of absence had been covered by medical certificates is not borne out by the Lost Time Charts cited

as listed documents for the years 1986 and 1987. It is noted from these charts that the leave on sickness account had been sanctioned only for few days and most of the absence is covered as Leave Without Pay. Further, whether the leave is sanctioned or not is immaterial as even if the leave is sanctioned by the authority to cover the absence, the irregular attendance feature does not get wiped out. The applicant had been absent for a period of 161 days in 1986 and 207 days in 1987 and it cannot be said that the applicant was regular in attendance particularly so when the leave had been sanctioned without pay. As regards the second charge of unauthorised absence, it is noted that the charge is for not following the rules as laid down by Factory Order No. 1725 dated 14.12.1983 for availing leave on medical grounds. Whether the medical certificate was obtained and submitted after avail ing the leave and competent authority could sanction the leave for the period based on the medical certificates is besides the issue because the applicant had not followed the rules. Keeping these facts in view, we are of the opinion that the charges of irregular attendance and unauthorised absence are very specific and are supported by documentary evidence. We are, therefore, unable to find any merit in the contention of the applicant that the chargesheet is not maintainable and the same deserves to be quashed.

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7. The second ground for challenge is that the applicant had been denied the facility of defence assistant in defending his case. On going through the disciplinary proceedings file and the enquiry report, we find that this allegation of the applicant is without any substance. It is noted from the file that the enquiry officer had written to the applicant on 16.9.1988 asking him to indicate the name and designation of his defence assistant along with his consent to make arrangement of his attendance on the date of hearing. From the record we do not find that the applicant had advised the name of his defence assistant. The applicant except making a general statement has also not made any averment to the fact that he had indicated his choice of defence assistant and the same had not been allowed. Further from the proceedings of the enquiry, it is noted that the applicant had made a statement that he admits the charges and therefore he is not making any defence. With this fact situation, we are unable to appreciate as to how the applicant is making allegation that he had been denied facility of defence assistant in representing his case.

8. The 3rd ground is that the applicant had not been furnished the copy of the enquiry report before the disciplinary authority had passed the order imposing the punishment as per the impugned order dated 13.7.1989. The law with regard to furnishing of a copy of the enquiry report to the

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delinquent employee to enable him to submit his defence against the findings of the enquiry officer has been laid down by the Hon'ble Supreme Court in the case of Union of India vs. Ramzan Khan's case. As held subsequently in the case of Electronics Corpn. of India Limited vs. B.Karunakar, 1992 SCC (L&S) 361, this law is to operate prospectively. The judgement in the Ramzan's case is dated 20.11.1990 and in the present case the punishment order is dated earlier to this date, i.e. 13.7.1989. In view of this, non-supply of enquiry report to the applicant does not vitiate the enquiry proceedings. Further, it is noted that the applicant has not made out any case that prejudice has been caused to his case in defending his case. On perusal of the appeal and revision application, we find that the applicant had also not raised this issue. In view of these facts, we hold that non supply of enquiry report before imposing punishment had not caused any prejudice to the applicant which could vitiate the disciplinary proceedings.

9. The 4th ground and which is the main thrust of the defence of the applicant is that the reply dated 17.6.1988 given by the applicant against the chargesheet had been taken as admission of the charges and on that basis the enquiry officer had held that the charges were proved. The learned counsel for the applicant streneously argued that the applicant

had admitted the charge to the extent that he was absent but had not admitted that he was irregular in attendance as the periods of absence were covered by medical certificates and the same had been regularised. He further stated that for the periods for unauthorised absence during 1987 as mentioned in Charge No. 2, the applicant had produced the required medical certificates of private doctor to cover the periods. The respondents have contested the contention of the applicant stating that the enquiry officer was nominated in view of the fact that the applicant in his reply to the charge sheet had neither admitted nor denied the charges. The respondents have further stated that it was before the enquiry officer that the applicant had admitted the charges and based on his admission during the enquiry, the proceedings were concluded and enquiry officer submitted his report with the findings that the charges were proved. We have carefully considered the rival contentions and also gone through the reply dated 17.6.1988 of the applicant as well as the proceedings of the enquiry and inclined to hold that the contention made by the applicant is not sustainable. The very fact that the enquiry officer was nominated after the applicant had replied to the chargesheet as per his letter dated 17.6.1988 shows that admission of charges by the applicant is not based on this letter. From the

proceedings of the enquiry and the report of the enquiry officer, it is noted from the order sheet dated 22.9.1988 that a preliminary hearing was first held wherein the charges were read and explained to the applicant and it was recorded that the applicant had admitted the charges. This order sheet was signed by the applicant. Subsequently, on the same day the proceedings of the hearing had been recorded wherein again the charges were explained to the applicant and the applicant had admitted the charges and stated that he is not making any defence. This statement is also signed by the applicant. In the enquiry report, the enquiry officer has brought out that it was explained to the applicant that in case he accepts the charges, then there would be no occasion for him to put forward his defence. Inspite of this, the applicant stated that he is admitting the charges. On these facts emerging from the material brought on record, we are not able to subscribe to the contention of the applicant that his reply to the chargesheet dated 17.6.1988 had been taken as admission of the charges. If the applicant had not admitted the charges or he had admitted the charge to the extent that he had been only absent, he could have qualified his admission by stating that he had produced the necessary medical certificatesfor the entire period. If this

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was brought out by the applicant before the enquiry officer, the enquiry officer then could have proceeded further with the detailed enquiry. In the absence of any qualification attached to his admission of the charges, the applicant cannot make a plea subsequently that he had not admitted the charges. Further, it is noted that in his appeal dated 22.8.1989 as well as in his revision application the applicant has not raised this issue. If the applicant was aggrieved by the findings of the enquiry officer based on his own admission, then the applicant should have raised this issue before the appellate authority who could have gone into this aspect. With this fact situation, we are unable to find any merit in this ground of challenge by the applicant.

10. The fifth contention of the applicant is that orders of the disciplinary authority as well as appellate authority are non-speaking as they have failed to appreciate the fact that the charges against the applicant are not established. We have carefully gone through the orders of the disciplinary authority as well as appellate authority and do not find any force in the contention of the applicant. The applicant had admitted the charges as brought out earlier and the orders of the disciplinary authority as well as appellate authority are based on the same.

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We find that the points raised by the applicant in the appeal and review application had been considered by the concerned authority and we find that their orders are speaking and indicate the application of mind.

11. The last ground and on which the learned counsel for the applicant placed considerable emphasis during the arguments is that the punishment imposed is harsh and disproportionate to the misconduct particularly so in view of the fact that the period of absence had been covered by the medical certificates and regularised by the concenred authority. The applicant has further submitted that his record before the issue of chargesheet was unblamished and he was neither issued any show cause notice or any warning for the same and his period of absence had been regularised. The respondents, on the other side,have strongly advocated that the punishment is not very harsh as the applicant had committed serious misconduct by being irregular in attendance for long periods during the year 1986 and 1987 and also remaining on unauthorised absence in 1987 and producing medical certificates after availing the leave. The respondents have further added that the applicant had a total service of 9 years and during his short service his long periods of absence demonstrate that he is not interested in attending to his duties inspite of the fact that his appointment was on compassionate ground. The respondents have relied

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upon the judgement of Hon'ble Supreme Court in the case of State of U.P. and Ors. vs. Ashok Kumar Singh & Anr. (1996) 1 SCC 302 to support their contention. It is a settled law by the Hon'ble Supreme Court that the imposition of penalty commensurate with magnitude of charge is the right of the disciplinary authority. The High Court/Tribunal in exercise of review power cannot normally interfere with the punishment imposed. The Hon'ble Supreme Court in the case of U.C.Chaturvedi vs. Union of India & Ors, 1996 (32) ATC 44 has held that it is only in exceptional cases if the punishment imposed shocks the judicial conscience that the relief may be moulded by the Court itself or direction issued to the competent authority to reconsider the punishment imposed. This view has been reiterated by the Hon'ble Supreme Court in the recent judgement of Apparel Export Promotion Council vs. A.K.Chopra, AIR 1999 SC 625, which is cited by the learned counsel for the respondents during the hearing. It will be relevant here to reproduce an extract from Para 17 as under :-

> "..... Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty."

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Keeping in view what is held by the Hon'ble Supreme Court as above, and considering the facts and circumstances of the present case, we do not find that the penalty imposed shocks the conscience. The applicant had been irregular in attendance for long periods during the year 1986 and 1987 as brought out in charge No. 1. As per charge No. 2, the applicant had been remaining on unauthorised absence and producing the medical certificates thereafter. From the record, it is also noted that even after the chargesheet being issued, the attendance of the applicant had not been improved. As brought out earlier, we also do not find from the record that the applicant had been absent on account of sickness as claimed by him as the leave on medical ground had been sanctioned only for short periods and most of the periods of absence are sanctioned as leave without pay. An employee is appointed for doing a specific job. If he frequently remains absent without information, the work certainly suffers with serious repercussions on the whole system. Such a conduct of an employee reflects neglect of his duty and constitutes a grave misconduct. Here we refer to what is held by the Hon'ble Supreme Court in the case of State of U.P. & Ors. vs. Ashok Kumar Singh & Anr. as cited by the respondents and referred to above. In this case, the respondents had been remaining absent on several occassions without leave and not

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Keeping in view what is held by the Hon'ble Supreme Court as above, and considering the facts and circumstances of the present case, we do not find that the penalty imposed shocks the conscience. The applicant had been irregular in attendance for long periods during the year 1986 and 1987 as brought out in charge No. 1. As per charge No. 2, the applicant had been remaining on unauthorised absence and producing the medical certificates thereafter. From the record, it is also noted that even after the chargesheet being issued, the attendance of the applicant had not been improved. As brought out earlier, we also do not find from the record that the applicant had been absent on account of sickness as claimed by him as the leave on medical ground had been sanctioned only for short periods and most of the periods of absence are sanctioned as leave without pay. An employee is appointed for doing a specific job. If he frequently remains absent without information, the work certainly suffers with serious repercussions on the whole system. Such a conduct of an employee reflects neglect of his duty and constitutes a grave misconduct. Here we refer to what is held by the Hon'ble Supreme Court in the case of State of U.P. & Ors. vs. Ashok Kumar Singh & Anr. as cited by the respondents and referred to above. In this case, the respondents had been remaining absent on several occassions without leave and not

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following the rules and procedure laid down for the leave. The High Court had held that absence from duty would not amount to such a grave misconduct as to warranting punishment of removal from service. However, the Hon'ble Supreme Court did not appreciate the findings of the Hon'ble High Court and set aside the judgement of the Hon'ble High Court holding that absence from duty without leave is a serious misconduct. The Hon'ble Supreme Court has also held that no interference in the punishment is called for after the punishment is imposed after conducting departmental enquiry. Considering the facts and circumstances of the present case, we are of the view that the charge of irregular attendance and unauthorised absence constitutes a grave misconduct and punishment imposed is not disproportionate to the gravity of charge. We, therefore, do not find that there is any case for interference with the punishment imposed by the competent authority.

12. In the result of the above, we do not find any infirmity in the disciplinary proceedings and denial of any principles of natural justice. None of the grounds made by the applicant in assailing the impugned ourder have any substance or force.

13. In the light of the above, the OA. lacks merits and is accordingly dismissed. No order as to costs.

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA) 8/7/99
VICE CHAIRMAN

mrj.