

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 737/94.

Date of Decision: 5.8.98.

Smt.L.Manjeshwar.

.. Applicant

Shri R.P.Saxena

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K.Shetty.

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble Shri D.S.Baweja, 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
(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 737/94.

Wednesday, this the 5th day of August, 1998.

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

Smt. L.K.Manjeshwar,
Himangi Maheshwar Housing
Society, Room No.24, 4th
Floor, R.T.O. Road,
Near 4 Bungalows,
Andheri(W),
Bombay - 400 058.

... Applicant.

(By Advocate Shri R.P.Saxena)

V/s.

1. Union of India, through
the General Manager,
Canteen Stores Department,
Adelphi 119, M.K.Road,
Bombay - 400 020.
2. Quartermaster General, through
The General Manager, CSD,
Adelphi 119, M.K.Road,
Bombay - 400 020.
3. The General Manager,
CSD, Adelphi 119, M.K.Road,
Bombay - 400 020.
4. Shri S.C.Sharma,
Asstt. General Manager(M.R.),
through the General Manager,
CSD, Adelphi 119, M.K.Road,
Bombay - 400 020.

... Respondents.

(By Advocate Shri R.K.Shetty).

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the
Administrative Tribunals Act. The respondents have filed
their reply. We have heard the learned counsels appearing
on both sides.

2. The applicant was working as an L.D.C. (a civilian
employee) in the Canteen Stores Department (CSD) under the

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Ministry of Defence. It appears that she was granted leave to go abroad and went on leave and the leave was granted up to 25.3.1991. The applicant remained absent from 26.3.1991 and onwards. But the applicant had sent some leave applications from abroad stating her inability to come due to illness. She sent some medical certificates also. But there is no medical certificate and no application for leave for the period from 8.9.1991 to 3.10.1991. The concerned authority instituted disciplinary enquiry against the applicant for unauthorised absence for the period from 26.3.1991 to 3.10.1991.

The applicant was questioned by the Enquiry Officer orally about the charges. She accepted the charges, but pleaded that her absence was due to sickness and she had already sent ~~a~~ medical certificate which ^{was} ~~was~~ genuine. In view of her admission, the Enquiry Officer submitted a report that the charge is proved by admission of the delinquent.

Then the Disciplinary Authority accepted the Enquiry Report and imposed a punishment of removal from service as per his order dt. 8.2.1993. The applicant challenged the same before the Appellate Authority. The Appellate Authority by order dt. 30.3.1993 dismissed the appeal by confirming the order of the Disciplinary Authority. Being aggrieved by that, the applicant has approached this Tribunal challenging the orders of the respective authorities.

3. The applicant has taken many grounds in the O.A. challenging the order of the Disciplinary Authority and the Appellate Authority.

On the other hand, the respondents have filed a reply

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justifying the action taken against the applicant for unauthorised absence which is a serious mis-conduct. Therefore, they have submitted that no case is made out by the applicant for interference by this Tribunal.

4. At the time of hearing, the learned counsel for the applicant contended that the admission of guilt recorded by the Enquiry Officer is not simple admission of guilt, but it is a statement made by qualification and therefore either the entire statement should be acted upon or the ~~oral~~ ^{written} statement should be rejected. He therefore submitted that the orders of the respective authorities passed on the so called admission is not sustainable in law. Then it was argued that the quantum of punishment is dis-proportionate to the alleged mis-conduct. It was further submitted that when the period of absence has been regularised by granting extraordinary leave without pay the question of unauthorised absence no longer survives. Then it was further submitted that the Appellate Authority has not passed a speaking order referring to number of grounds taken by the applicant in the memorandum of appeal. On the other hand, the learned counsel for the respondents supported the impugned orders of the Enquiry Officer, Disciplinary Authority and the Appellate Authority. He also submitted that the scope of judicial review is very limited both on merits and also regarding the quantum of penalty.

5. After hearing both sides, we find that the application must succeed on a short ground. The order of the Appellate Authority is very cryptic and he has not considered the grounds taken by the applicant in the appeal memorandum. He has not applied his mind to the facts of

the case, but by a very cryptic and short order dismissed the appeal. The learned counsel for the applicant brought to our notice a decision of the Apex Court reported in 1986(1) SLJ 383 SC - R.P.Bhati V/s. Union of India & Ors. where the Supreme Court has observed that the Appellate Authority is required to pass a speaking order to consider the contentions of the applicant in the appeal memo as required by Rule 27(2) of the CCS (CCA) Rules, 1965.

In our view, the above observations of the Supreme Court squarely applies to the facts of the present case. When the applicant has taken so many grounds in her appeal memo, the Appellate Authority should have given an indication in his order about considering the facts of the case and the grounds urged by the applicant. Since the impugned order of the Appellate Authority does not ~~confine~~ ^{conform} to the requirements of law particularly in the light of the law declared by the Apex Court, we hold that the order of the Appellate Authority is not sustainable in law and the matter should be remitted back to him to pass appropriate orders according to law.

6. We are also in agreement with the counsel for the applicant that *prima facie* the punishment of removal from service on the face of it appears to be harsh and disproportionate to the alleged mis-conduct. We have already seen that the alleged mis-conduct is one of unauthorised absence from 26.3.1991 to 3.10.1991 which covers a period of 192 days. During that period the applicant had sent four leave applications covering a period of 168 days. There is no finding given by 

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either Enquiry Officer, Disciplinary Authority or Appellate Authority about the genuineness or effect of these four leave applications. Then there was an unexplained absence of 24 days for which there was no medical certificate. Either it is a case of 24 days absence without medical certificate or it may be for a period of 192 days absence without proper legal medical certificate. In either way the punishment of removal from service appears to be harsh and dis-proportionate. The Appellate Authority has not applied his mind to this question also. The learned counsel for the respondents is right in his submission that this Tribunal should not ~~frightly~~ interfere with the question of penalty. But since we are remitting the matter to the Appellate Authority, we have given our view on *prima facie* consideration that the penalty on the face of it appears to be harsh and disproportionate and shocks the ~~conscience~~ of the Court.

7. We direct the Appellate Authority to take the appeal on file and give a personal hearing to the applicant who will be at liberty to ^{Supplement} submit the appeal memorandum by whatever grounds that is open to her in law both regarding penalty, merits and then the Appellate Authority shall apply his mind to the facts of the case and take a decision both regarding merits and penalty and then pass a speaking order. Needless to say that if the applicant is aggrieved by any order passed by the Appellate Authority she may challenge the same according to law. Since this is a case of 1991 we expect the ~~Appellate~~ Authority to dispose of the appeal expeditiously and preferably within a period of four months from the date of receipt of this order.



8. In the result, the O.A. is allowed partly. The order of the Appellate Authority dt. 30.8.1993 is hereby set aside. The case is remitted back to the Appellate Authority to dispose of the appeal after giving personal hearing to the applicant in the light of the observations made in this order. All contentions of both counsels on merits are left open. In the circumstances of the case there will be no order as to costs.

D.S. Bawali
(D.S. BAWALI)
MEMBER (A)

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

B.