

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 631/95.

Date of Decision: 16/6/99

Shri Nitin Suresh Bibikar

Applicant.

Shri M.S. Karnik

Advocate for
Applicant.

Versus

Union of India & 2 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? *N/D*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *N/D*

abp.

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO:631/95.

DATED THE 16TH DAY OF JUNE, 1999.

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

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

Shri Nitin Suresh Bibikar,
C/o.Shri U.V.Raje(Advocate),
8-B, Chetan Housing Society,
Near Ashirwad Bus Depot,
Nasik Road,
Nasik-422 101.

... Applicant.

By Advocate Shri M.S.Karnik.

v/s.

Union of India,
Through

1. The Secretary,
Ministry of Defence, South Block,
New Delhi-110 011.
2. The Director General of Artillery,
General Staff Branch(Arty 3),
Army Headquarters,
D.H.Q. P.O.,
New Delhi-110 001.
3. The Commandant,
Mukhyalaya Topkhana School,
The School of Artillery,
Deolali-422 401.

... Respondents.

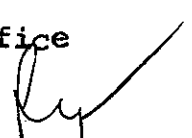
By Advocate Shri R.K.Shetty.

I O R D E R

[Per Shri R.G.Vaidyanatha, Vice Chairman]

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

2. The applicant was working as IDC in the Office



of respondent No.3. He was habitually remaining absent on number of previous occasions. He remained absent unauthorisedly and he was granted leave subsequently by giving warnings. When applicant remained absent again for few days between 30/3/87 and 26/5/87, the administration issued a major penalty charge sheet dated 23/10/87 against the applicant. The applicant filed a written statement admitting the charge of unauthorised absence but pleading for mercy that he will be punctual in future. Then a regular enquiry was held. The Enquiry Officer recorded the finding that the charge is proved. On the basis of Enquiry report, the disciplinary authority by order dated 29/3/88 held that the charge is proved and having regard to the conduct of the applicant remaining absent habitually, he imposed a punishment of removal from service. Being aggrieved by that order, the applicant preferred an appeal, the Appellate Authority vide order dated 13/10/94 confirmed the order of disciplinary authority after taking into consideration all the contentions of the applicant and having regard to his conduct of habitually remaining absent. Being aggrieved by this order, the applicant has approached this Tribunal. His case is that since an assurance or promise was held out that a lenient view will be taken if the charge is admitted, he admitted the charge. Even now for the period mentioned in the charge sheet he only wants mercy so that he can be given another chance and he will improve himself.

3. The respondents in their written statement have pointed out the conduct of the applicant remaining unauthorisedly absent on many occasions for the periods mentioned in the charge sheet, the period prior to charge sheet and period




subsequent to charge sheet. It is therefore stated that no case is made out for interference.

The learned counsel for applicant contended firstly that the applicant pleaded guilty since an assurance or promise was held out that a lenient view would be taken. As far as this contention is concerned, except mere allegation of applicant, there is nothing on record to substantiate this statement. The Appellate Authority has considered this question and rejected on the ground that it is not supported by evidence. The applicant did not give the name of the person who gave this assurance. Further, the question of pleading guilty does not appeal to us since the fact that the applicant was absent unauthorisedly during this period is an admitted fact. It is not disputed that he was unauthorisedly absent and being a Lower Division Clerk he has to attend the office and attend to his work. His absence, therefore, is undisputed and admitted. Therefore, the plea of guilty is based on admitted fact namely because he remained absent on those days. The learned counsel for applicant did not point out that there was any flaw or malafides in conducting the enquiry or about denial of principles of natural justice. It was argued by him that the period of absence prior to issuing of charge sheet has been taken into consideration but this cannot be taken into consideration, since leniency had been shown and leave was granted.

4. Reliance was placed on [AIR 1976 AP 75]
(G.Papaiah v/s. Assistant Director, Medical Services).

That was a case where the charge was framed for the same period for which leave had been granted. It was held that the charge is not sustainable for the same period and it cannot be subject matter of regular enquiry. In the present case the charge is not framed for the period for which leave has



been granted. It is referred in the imputations of charge that the applicant is in the habit of remaining absent unauthorisedly inspite of number of warnings. This is only to show to his conduct and about his absence for each specific period as mentioned in the charge sheet. It is not a case of regularisation of leave or condonation of previous absence. But here is a case where for some unauthorised periods leave was granted subject to warning that he should be careful in future. Therefore the administration condoned the unauthorised absence., with warnings. Notices were issued to him which are referred to in the charge sheet also. One such notice is at page-26, dated 28/10/95. Here referring to the applicant's application for leave dated 14/9/85, the administration informs him that the reasons given by him for absence are not convincing and his remaining absent unauthorisedly frequently which is highly irregular. He has been warned that future lapses will be severely dealt with. The applicant has been issued letters of warning dated 15/5/86, 21/3/87 and 16/6/87, etc. Therefore, it is not the case of administration condoning the previous unauthorised absence of the applicant. It may be to avoid break in service or on sympathetic consideration leave was granted but with the warning that he must be careful in future. These warnings admittedly fell on deaf ears and he remained absent unauthorisedly during the period mention in the Charge sheet and even subsequently.

5. In the charge sheet itself, article-I is the charge which gives the actual period during which applicant remained unauthorisedly absent without leave or permission. Then in the statement of imputations, it is clearly mentioned that the applicant is in the habit of absenting from duty without prior permission and submitting leave application later on. Inspite

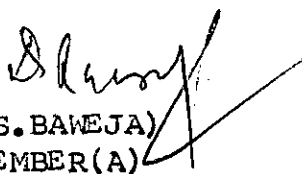
of repeated warnings given to him from time to time he again absented himself. Therefore previous history is given to show the gravity of applicant's absence during the period mentioned in the charge sheet. Then this statement of imputations is supported by documents at Annexure-3 where warning letters are referred to and some of the warning letters, the applicant himself has produced which we have referred to.


Whether removal from service for unauthorised absence is harsh punishment? May be it is a harsh punishment, but as the period of unauthorised absence mentioned in the charge sheet must be considered with the prior conduct of the applicant as mentioned in article-II of the charge sheet that he has been repeatedly remaining absent unauthorisedly inspite of number of warning letters.

6. The applicant has pleaded guilty to the Charge sheet and prayed for mercy and assured that he will be careful in future. The Appellate Authority has pointed out that even after the issuance of charge sheet, the applicant has remained absent unauthorisedly which by itself shows that even during the pendency of the charge sheet, there is no effect in the conduct of the applicant.

Therefore, in the facts and circumstances of the case, we feel it is not a fit case to interfere with the quantum of penalty.

7. In the result, the application fails and is dismissed. No costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.