

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 989/95.

Date of Decision: 3/6/99.

Shri Vinod Dudam Rane Applicant.

Shri S. S. Karkera Advocate for Applicant.

Versus

The Union of India & 3 Ors. Respondent(s)

Shri V. S. Masurkar Advocate for Respondent(s)

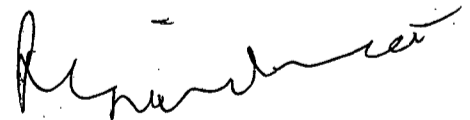
CORAM:

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

Hon'ble Shri. D.S. Eawaja, 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

abp.



(R.G. VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI-400 001.

ORIGINAL APPLICATION NO.989/95.

DATED THE 3RD DAY OF JUNE, 1999.

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

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

Shri Vinod Sudam Rane,
Ex-L.D.C., residing at
8, Sharda sadan, Ramchandra
Pawaskar Road,
Dahisar(West),
Bombay - 400 068.

... Applicant.

By Advocate Shri S.S.Karkera

v/s.

1. The Union of India,
through the Chief of Naval Staff,
Naval Headquarters(DCP)
Sena Bhavan, New Delhi-110 001.
2. Vice Admiral,
Flag Officer Commanding-in-Chief,
Western Naval Command Headquarters,
Shahid Bhagat Singh Road,
Bombay - 400 001.
3. Commodore,
Chief Staff Officer(P&A),
Western Naval Command Headquarters,
Shahid Bhagat Singh Road,
Bombay - 400 001.
4. Deputy General Manager,
Office of the Admiral Superintendent,
Naval Dockyard, Bombay - 400 023.

... Respondents.

By Advocate Shri V.S.Masurkar

I O R D E R I

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

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

The applicant was working as IDC in the Western Naval Command. He remained absent from 4/1/88 to 17/9/88. The department therefore issued a chargesheet dated 12/3/91 alleging that the applicant remained unauthorisedly absent ^{said} for the/period and thereby he has committed misconduct.

The applicant's defence is that while admitting the absence he pleaded that since he was suffering from Mental Depression and was under treatment he could not attend office. Then a regular enquiry was held after recording evidence and after hearing applicant, the Enquiry Officer gave a report that the charge of unauthorised absence is true. Agreeing with that report, the Disciplinary Authority by order dated 10/8/92 held that the charge is proved and enforced penalty of "Compulsory retirement from service with no terminal benefits" on the applicant. Then the applicant challenged that order before Appellate Authority, who by order dated 28/2/93 dismissed the appeal. The applicant preferred a revision application to the Naval Headquarter which came to be disposed of by Vice Admiral, Chief of Personnel in the Naval Headquarters by order dated 28/8/93 and the revision petition came to be dismissed. Being aggrieved by these orders, the applicant has approached this Tribunal.

2. The applicant's case is that the unauthorised absence due to Mental Depression should be condoned and he had even supported this fact by producing Medical Certificate. According to him, the Enquiry was not held as per rules and there was violation of Principles of Natural Justice. He also says that the punishment of compulsory retirement is disproportionate to the misconduct. He has also alleged that the punishment imposed by the Disciplinary Authority is not warranted by the rules.

Respondents in their reply have pleaded all the facts and circumstances of the case and they have justified the action taken against the applicant. Their case is that the applicant was not at all suffering from Mental Depression and the Doctor's certificate has been subsequently explained by the same Doctor that the applicant was treated for Alcoholism and not for Mental Depression. It is also stated that the enquiry has been done as per rules and there is no



defect in the enquiry.

3. The first point canvassed by the applicant is that the punishment of compulsory retirement is not warranted and therefore the punishment is bad and liable to be quashed. It is true that under the rules what is provided is "Compulsory" retirement, the words "with no terminal benefits" were not necessary. In the facts and circumstances of the case, it is a redundant. Since the applicant had put in 4 to 5 years service, the Disciplinary Authority thought that the applicant is not entitled to any benefits; even in a simplicitor order of compulsory retirement, he would not have been given any terminal benefits. Even otherwise when the matter was taken to Revisional Authority, the Revisional Authority has confirmed the order by using words only "compulsory retirement." Therefore, the order of Disciplinary Authority gets merged in the order of Revisional Authority. Therefore, in these circumstances, we do not find any illegality in the order passed. Even if granting for a moment there is some flaw in the order, that portion of the order "with no terminal benefits" can be struck down and Compulsory retirement holds good and in view of the fact that the applicant had put in only 4 to 5 years service, he would not get any benefit.

4. The applicant, as already stated, admitted unauthorised absence. The applicant's defence is that he was suffering from Mental Depression. He produced a certificate from Dr. Salvi stating that he had treated him for Mental Depression, that due to Mental depression applicant was unable to attend office. When absence is admitted, the burden is on the applicant to show the reason why he did not attend office. Since the Enquiry Officer entertained some doubt about the Medical Certificate, the Presenting Officer contacted the Doctor and got a clarification by way of another certificate in which he mentioned that he had treated the applicant for alcoholism and not for Mental Depression.



The learned counsel for applicant is no doubt right that in the absence of the applicant the Enquiry Officer and Presenting Officer ~~xxx~~ contacted the Doctor and therefore it violates the principles of natural justice. But principles of natural justice cannot be looked into from a straight jacket. The object of the rule is that the applicant should be given opportunity to ^{explain the} ~~explain the~~ ~~matter xxx~~. After obtaining clarification from the Doctor, the Enquiry Officer ~~xxxxxxx~~ proceeded to question the applicant after giving him a copy of the clarified certificate and the applicant had an opportunity to give an explanation. The applicant's only explanation is that he does not know or he does not remember. Therefore, the applicant had sufficient opportunity to explain the second certificate given by the Doctor. The applicant himself could have sought the leave of the Enquiry Officer to examine the Doctor to prove his case even after he ~~xxx~~ issued a second certificate. Though there may be some irregularity in the procedure adopted by Enquiry Officer, no prejudice is caused to applicant since the document is shown to applicant and he had an opportunity of meeting the document, and even an opportunity to examine the Doctor to prove his case. In these circumstances, we do not attach much importance to this aspect.

5. During the questioning by the Enquiry Officer, the applicant stated that whatever happened during his period of absence, he honestly requested the administration to have mercy on his family and pardon him and give him a fresh chance to work and prove himself to the best of his abilities. It virtually amounts to acceptance of guilt and praying for mercy.

In the facts and circumstances of the case, since the applicant has prayed for mercy and Mental Depression is not proved, we feel that the finding of Disciplinary Authority



for misconduct of unauthorised absence is justified and the Appellate Authority and Revisional Authority have also confirmed the penalty imposed by the Competent Authority.

The Learned Counsel for applicant made a submission that even if misconduct is proved, the penalty imposed by Competent Authority is harsh particularly when the applicant does not get any terminal benefits and it is dis-proportionate penalty particularly when the applicant is a youngster with a long tenure of service left.

In a case where an young official had put in 4 to 5 years service, a penalty of compulsory retirement amounts to "removal from service." Since the applicant will not get any terminal benefits. The applicant had no doubt remained absent for few months. He has given some explanation as to why he could not be present. Even accepting the second certificate of the applicant, the applicant had some problem namely, Alcoholism. It may be due to that that the applicant could not attend office. In these circumstances, the question is whether the punishment of 'Compulsory retirement', which in the case of the applicant, practically amounts to removal from service is warranted in this case.

The Supreme Court has observed that even if a Court comes to the conclusion that the penalty is dis-proportionate, it should not interfere with the same but leave the matter to the Competent Authority to decide about the quantum of punishment.

6. In the facts and circumstances of the case, we feel that it is a fit case in which the matter should be referred back to the Appellate Authority to apply his mind to the facts and circumstances of the case and then decide about appropriate penalty to be imposed on the applicant. We do not want to fetter the discretion of appellate authority and give liberty to him to take a proper decision as he deems fit. We also feel that it is a fit case in which the applicant should be heard in person with or without his



Assistant, and then the Appellate Authority can apply his mind and take proper decision he deems fit in the circumstances of the case.

7. In the result the application is partly allowed. The order of Appellate Authority and Revisional Authority confirming the order of penalty are set aside, while confirming the finding of misconduct against the applicant, the matter is remanded to Appellate Authority only to decide the question of penalty in the light of the judgement of this Tribunal. The Appellate Authority shall give a personal hearing to applicant with or without his defence assistant and apply his mind and take whatever decision he deems fit regarding penalty to be imposed on the applicant. Since it is an old matter of 1988, the Appellate Authority should dispose of the appeal within a period of four months from the date of receipt of copy of this order. No costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.