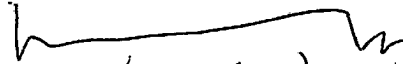


CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

PRE DELIVERY JUDGEMENT IN OA.NO. 973/1998

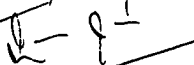
Hon'ble Vice ~~Chairman~~ / ~~Member (J)~~ /
Member (A) may kindly see the above judgement for
approval / signature.


(D. H. Chowdhury)
V.C. / Member(J) / ~~Member (A)~~

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A)

I agree


mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.973/98

Dated this, 17th the rd day of January, 2003.

S.K.Malhotra
(Applicant by Shri S.P.Saxena, Advocate)

... Applicant

Versus

UOI

& Ors.

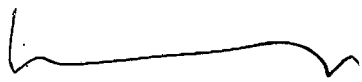
Respondents

(Respondents by Shri R.K.Shetty, Advocate)

CORAM:

HON'BLE SHRI JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN (J)
HON'BLE SMT SHANTA SHASTRY, MEMBER (A)

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


(D.N.Chowdhury)
Vice Chairman

s.j*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH,
MUMBAI.

Original Application No.973/98

Dated this 17th the day of January, 2003

CORAM: HON'BLE SHRI JUSTICE D.N. CHOWDHURY, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

S.K.Malhotra
Ex-Technical Assistant 'B'
Research & Development Establishment (Engineers),
Dighie, Pune 411 015.
(residing at : A-39, Kasturba
Co-operative Housing Society,
Vishrantwadi, Pune 411 015).
(Applicant by Shri S.P.Saxena, Advocate) Applicant

vs.

1. Union of India
Through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi 110 011.
 2. The Scientific Advisor
Ministry of Defence,
DHQ PO, New Delhi 110 011.
 3. The Director,
Research & Development
Establishment (Engineers).
Dighie, Pune 411 015.
 4. Shri M.R. Joshi, Director,
Research & Development Estt. (Engrs.)
Dighie, Pune - 411 015. ... Respondents
- (Respondents by Shri R.K.Shetty, Advocate)

O R D E R

[Per: Justice D.N. Chowdhury, Vice Chairman]

This application under section 19 has arisen and is directed against the order dated 27.10.1997 passed by Respondent No.3 Director, Research & Development Establishment (Engineers), Dighie, Pune dismissing the applicant from service as well as against the order dated 23.6.1998 passed by respondent No.2, the Scientific Advisor, Ministry of Defence dismissing the appeal in the following circumstances.

...2/-

2. The applicant was first appointed as Tracer w.e.f. 05.05.1967 under the respondent No.3. He was promoted to the post of Draughtsman Grade III in 1970 and thereafter he was promoted to the post of Draughtsman grade II in 1978. The applicant was sometimes thereafter was employed in the Unit Run C.S.D. Canteen, situated within the premises of R & D (Estt), Dighie, Pune and he was asked to work as Canteen Manager by the Respodent No.3. When the applicant was working as such he was placed under suspension by order dated 5.6.1982 and thereafter the disciplinary proceedings were initiated on 8.7.1982 for alleged misappropriation of funds while functioning as Canteen Manager. The suspension order was revoked on 25.7.1989 and accordingly the applicant resumed duty. The applicant then moved the Tribunal against the continuance of departmental proceedings and the Tribunal by judgement dated 31.10.1991 in O.A. No.636/1991 directed the respondents to complete the dsdisciplinary proceedings within a year or so and review the order regarding treatment of the period of suspension as non duty for all purposes. A criminal complaint was filed against the applicant before the Addl. Chief Judicial Magistrate, Pune under sec. 409, 477-A, 471 and 467 of I.P.C. By judgement dated 7.9.1994 the applicant was acquitted by the trial court and against the acquittal order the respondents went up to the High Court. It was said that the appeal was pending in the High Court. By its order dated 20.07.1994 the applicant was transferred to New Delhi on permanent basis in his existing post. The applicant also assailed the aforesaid transfer order before the Tribunal and Tribunal vide judgement order dated 20.7.1994 in O.A. No.873/94

the said transfer order by 4 weeks. The applicant further pleaded that his health and mental condition had considerably deteriorated and he was taken to Central Mental Hospital Pune where the Govt. doctors examined him on 21.09.1994 and gave him the treatment of psychiatric disorder. A medical certificate issued by the Central Mental Hospital Pune (Exh.A.5) was also sent by the applicant to the Respondent No.3 for availing leave. It was also pleaded that Respondent No.3 and 4 relieved the applicant from the office of Respondent No.3 on 15.9.1994 to enable him to join duty at the office of R & D (Engrs) Cell, New Delhi in the existing grade. According to applicant due to fever, he availed leave from 26.09.1994 to 29.09.1994 on medical ground and submitted a Medical Certificate for the said period of four days and thereafter joined duty at New Delhi on 30.9.1994. According to the applicant, because of urgent domestic problem, the applicant applied for leave from 10.10.1994 to 28.10.1994 and obtained permission to leave the station which fact was not however disputed by the respondents. The applicant further stated that when he came from Delhi to Pune and while he was on leave his mental condition further deteriorated and he had to take treatment from Dr. K.G. Thombre, Specialist/Psychiatrist for his mental illness. The applicant's mental condition did not improve it rather worsened. The applicant had sent medical certificates issued by Dr. K.G. Thombre to Respondent No.3 from time to time and applicant's wife also informed Respondent No.3 about his sickness and treatment by the Specialist/Psychiatrist. As a result of his sickness he could not go to Delhi to join duty and continued to receive the treatment Dr. K.G. Thombre, consulting Psychiatrist. It was further pleaded that Respondent

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No.4 presuming that the applicant's sickness was concocted and therefore, proceeded against the applicant. Respondent No.3 issued a Chargesheet dated 26.09.1995 alleging misconduct under Rule 14 of the C.C.S. (CCA) Rules 1965. It was pleaded that he could not participate in the inquiry because of the ailment and the Respondent completed the inquiry exparte and submitted its finding dated 28.4.1997 stating that misconduct was proved and issued the impugned order dated 27.10.1997 dismissing the applicant with retrospective effect from 29.10.1994. The applicant submitted the appeal to the appellate authority on 12.01.1998 and the same was rejected by order dated 23.6.1998. Hence, this application assailing the order of dismissal as perverse, patently arbitrary and discriminatory and contrary to all ends of justice.

3. The respondents contested the application and submitted its Written Statement. In the Written Statement the respondent contended that all the procedural safeguards were assiduously adhered to by the respondents in the light of principle of natural justice and there was no procedural lapses on the part of the respondents. The applicant was advised to be present himself for inquiry after the chargesheet dated 26.9.1995 served on him. It was contended that inquiry was held on 16.4.1996, 17.5.1996, and 6.6.1996. However, the applicant was conspicuous by his absence and the respondents were compelled to hold the inquiry exparte. The charges were clearly proved against the applicant and accordingly the Disciplinary Authority imposed the punishment of dismissal from service upon the applicant. The applicant was aware of the fact that disciplinary enquiry was being conducted

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against the applicant. It was also averred that much before the commencement of Disciplinary Proceedings the Director of the Office of the Respondents at Pune personally wrote three letters to the applicant being letters dated 4.4.1995, 11.10.1995 and 4.11.1997. The respondents had also published a public notice in the Indian Express and Pune Sakal on 14.9.1997 informing the applicant that the enquiry reports were already sent to him and that he has to submit his say within a period of 15 days from the date of publication of the notice. The respondents also on completion of enquiry the inquiry report was published and thereafter since the applicant did not respond the authority had to take appropriate action as per law and accordingly, the impugned order of dismissal was passed and the appeal preferred to the appellate authority was duly considered and rejected by order dated 23.6.1998. The applicant was given enough opportunity before imposition of penalty of dismissal from service and that the charges were duly proved.

4. Shri S.P. Saxena, learned counsel on behalf of the applicant while assailing the legitimacy of the impugned order of dismissal submitted that the Inquiry Proceedings which was proceeded exparte is vitiated by procedural irregularities. The learned counsel Mr. Saxena basically focussed his argument on three grounds. The learned counsel firstly submitted that the impugned order of dismissal affirmed by the appellate authority was vitiated on the count of infringement of the principles of natural justice, and procedural impropriety. The applicant was denied a fair play in action in defending his case, submitted Shri Saxena. Shri Saxena, the learned counsel also contended

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that the perversity writ large, the impugned order of dismissal was based on findings arrived at in the absence of material in support of the findings of the respondents. Lastly, the learned counsel contended that the impugned order of dismissal on the facts and circumstances was seemingly disproportionate.

5. Shri R.K. Shetty, learned counsel for the respondents contended that the authority scrupulously complied with the principles of natural justice and the applicant on his own avoided the notices and allowed the authority to pass exparte order. Mr. R.K.Shetty, learned counsel submitted that the authority framed charges and furnished to the applicant which was duly served on him. It was for him to defend the charges which he stoutly avoided with ulterior motive. The learned counsel for the respondents disputing the contention learned counsel the materials on record and submitted that the authority after duly applying its mind and on consideration of all relevant aspects decided to resort to impose the penalty of dismissal when he found the applicant guilty of charges. The allegation of perversity is unfounded contended Mr. Shetty.

6. Mr. R.R.Shetty, lastly submitted that the authority on assessment of facts lawfully imposed the order of dismissal. There is no arbitrariness in the order. The Tribunal in exercise of its power under sec. 19 of the Administrative Tribunals Act, 1985 is vested with the power of judicial review within the allowable parameter but under no circumstances, the said power of judicial review can be used as an appellate power.

7. Before addressing the issues involved in this application it could be appropriate to rehearse certain material facts having bearing on the issues. It would be appropriate to refer to the material facts from the pleadings. As mentioned earlier by Memo dated 26th Sept. 1995, the authority proposed to hold enquiry against the applicant under Rule 14 of the CCS (CCA) Rules 1965 charging the applicant on two Articles of Charge mentioned in Annexure I which are reproduced below:

"ARTICLE-I

Shri SK Malhotra, D/Man-II is charged for continuous unauthorised absence from duties w.e.f 29th Oct 1994 onwards without any permission and without submitting medical certificate or even intimating the specific period of leave required by him on medical grounds. He has thus indulged in misconduct which is highly unbecoming of a Government Servant.

ARTICLE-II

Shri S.K. Malhotra is charged for misconduct of misusing Govt. money paid to him as advance TA/DA for his move to Delhi."

8. In the Statement of Imputations of Misconduct or misbehavior in respect of articles of charges framed against the applicant in Article I and II, it was recounted that the applicant applied for " 19 days E.L. w.e.f. 10th Oct. 1994 to 28th Oct. 1994 which was regularised as due. However, on expiry of the said leave he did not report back for duties and continue absenting himself without any permission/intimation. He submitted application dated 29th Oct. 1994 asking for leave on medical grounds wherein he neither mentioned the specific period of leave required on medical grounds nor submitted any medical certificate in support thereof." The certificate dated 21th Sept.

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1994 was annexed in the O.A. as Exh. A. 5, it was a Certificate issued in Marathi by the Supdt. of State Mental Hospital wherein he certified that the applicant was under treatment of mental ailment since 21.9.1994. On a survey of materials on record it appears that in the Disciplinary Proceedings in its entirety the applicant did not participate. The authority conducted the enquiry ex parte. The respondents contended that the applicant deliberately did not participate and his plea raised was unjustified. According to respondents the Certificate dated 29.11.1994 referred to by the applicant issued by the Supdt. of Mental Hospital, Pune, did not indicate that the applicant was unsound and therefore there is not valid reason on the part of the applicant for not participating in the inquiry. The respondents in the Written Statement referred to the communication dated 9th April, 1995 addressed to the wife of the applicant in reply to her letter dated 25.3.1995 wherein his wife stated that the applicant was not medically fit to reply the official communication. The Administrative Officer in the said communication wrote to her that the authority did not receive any medical certificate from her husband indicating his mental conditions and suggesting that he was either insane or not able to behave in a normal manner. The communication also admitted that it received a medical certificate dated 28th Nov. 1994 wherein it was intimated that he was undergoing treatment in the OPD of CMH, Poona. According to the authority the Certificate was vague and there were other documents which contradicted amongst themselves. By another communication dated 4th Nov. 1997 which was referred to by the Respondents addressed to the

applicant also indicated that the plea raised by the applicant about his mental ailment was totally false. Thus, from the material on record it thus transpired that the respondent authority which was keen to proceed with the inquiry was labouring with the impression that the plea of the applicant as to his mental ailment was a lame excuse. It is evident that the authority was toiling with the opinion that the applicant put up a mere pretence. There was no contrary medical opinion falsifying the plea of mental disorder raised by the applicant. Mr. R.K.Shetty, learned counsel for the respondents referred to a communication signed by the Supdt. of Regional Mental Hospital dated 24.4.1995, the said communication only referred to the fact that the applicant was examined in the OPD on 21.9.1994, 20.10.1994, 23.10.1994, 28.11.1994, 20.12.1994, 30.1.1995, and on 27.3.1995 by different Psychiatrists for his complaints of sleeplessness, pressure (sic) thoughts depression and inability. He was treated by tranquillizers but he was not recommended leave, he was treated in OPD level only. That document also did not indicate that the applicant was mentally sound. But the officer stated that the person who was treated by different Psychiatrists on those dates but he was not recommended leave and that he was treated in OPD level. Merely because a person was treated in the OPD did not totally rule out the possibility of abnormality of the patient or that he did not suffer from psychiatric disorder. There is no other report from any competent authority ruling out the possibility that the applicant was not in a good mental shape. It seems that the authority proceeded in this case on the assumption that the applicant was free from maniac disorder and conducted the enquiry exparte.

9. The applicant was charged for the alleged misconduct for absenting from duties w.e.f. 29th October, 1994 onwards without any permission and without submitting medical certificate or even intimating the specific period of leave required by him on medical grounds. It was all throughout out pleaded on behalf of the applicant that mental ailment prevented him for attending duties and for that purpose he submitted certificate. In this background, it would be appropriate to refer to the materials relied upon by the Enquiry Officer. As regards to the charge the first witness examined by the Enquiry Officer, was Shri R.K. Sehgal, Scientist "B" in charge of R. & D (Engineers) Cell. The witness in reply to Question No.1 as to when the delinquent officer reported for duty at R & D Cell New Delhi on transfer from Pune stated that Shri S.K. Malhotra reported for duty at R & D E (E) Cell New Delhi on 30th Sept 1994 (F/N). In regard to second question about unauthorised absence of the applicant the witness stated that the applicant applied for 19 days leave w.e.f. 10th Oct. 1994 to 28th Oct. 1994. On expiry of this leave he was supposed to report back duty on 29th Oct. 1994 but he was absenting from duty without any permission and had not cared to respond to any of the numerous letters issued to him. As regards second charge of misuse of Govt. money amounting to Rs.2,810/- by not utilising the same for the purpose for which it was drawn, the witness stated that the delinquent officer did not submit the claim and had ignored all reminders asking him to submit the adjustment claims. The witness was lastly asked by the Enquiry Officer whether the delinquent officer had approached

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him in person or through letters or through any friend/colleague of his to help him regularize his absence and his outstanding advance TA/DA to which it was replied that the applicant never approached the witness either personally or otherwise in this or any other matter. The other witness was Mrs. Asha Kaduskar, Administration Officer who incidentally happened to be the Presenting Officer in response to question of the Enquiry Officer to the effect whether delinquent officer answered to the question of charge in the affirmative and to the question put by the Enquiry Officer as to whether the delinquent officer communicated anything to the office verbally or in writing or through somebody else regarding this case to which the witness replied that the applicant did not do so till that date. The witness also stated that the delinquent Officer did not submit any leave application or medical certificate for his absence from 29th Oct. 94 onwards. As per the second charge the witness was asked by the Enquiry officer that whether he could confirm that a sum of Rs. 2810/- was paid to the delinquent officer as advance TA/DA for his move to Delhi, the witness answered that the on transfer was still outstanding against him since he had not submitted the adjustment claim to which the witness replied that Witness No.1 of the department i.e. Shri R.K. Sehgal stated that the applicant reported for duty at R&E E (Engrs) Cell New Delhi on 30th Sept. 1994. He was also specifically asked that it was obvious that he had travelled from Pune to Delhi. Therefore the witness was asked how could one say that he had not utilised the amount of Rs.2810/- for the purpose for which it was paid to him. The witness stated that the Delinquent Officer reported at Delhi on 30th Sept. 1994. However, as per rules he was supposed

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to submit this TA/DA claim in adjustment of the amount of Rs.2810/ drawn by him as advance which would have been the proof of his having used the money for the purpose for which he had drawn the same. "Unless the individual submits the proof of bonafide use of the amount it is clearly and simply misuse thereof. Even the Audit authorities will not settle the issue unless the adjust claim is submitted to them." The contention of the witness was that the delinquent officer did not submit the adjustment claim. The charge was misuse of Govt. money which was advanced to the applicant to undertake the journey from Pune to Delhi. Evidence on record did not establish the charge of misuse of Govt. money. The Enquiry Officer however, mechanically held that the applicant guilty of charge No.2 which perse is perverse. As to the charge of unauthorised absence the only evidence placed by the Disciplinary Authority was that the applicant was absenting from duty without any permission and that he did not make any endeavour to help the respondents to regularize the leave by submitting proper medical certificate. Admittedly the respondents were in receipt of Medical Certificate dated 29.10. 1994 from Supdt. of State Mental Hospital, Pune. The communication signed by the wife of the application dated 10.5.1995 which was received by the Witness No. 1 Shri R.K. Sehgal on 25.5.1995. Vide communication dated 29.5.1995 Witness No.1 Shri R.K. Sehgal informed the applicant's wife that the Registration Number of the Doctor was not legible and accordingly requested the wife to obtain Registration number . of the Doctor and intimate the same to the office. The said communication of the Witness No.1 advised the wife of the applicant to intimate the Regn. No. of the Doctor directly to the Director R&D Estt

(Engrs) Dighie, Pune who was the final sanctioning authority. The communication dated 4.4.1995 sent by the Administrative Officer for Director R&DE (Estt), the P.W.No.2 also mentioned about the receipt of the communication from the wife of the applicant dated 25.3.1995 wherein she mentioned that the applicant was not medically fit to reply to the official communications. On the other hand the communication also indicated that the department received a medical certificate dated 28.11.1994 that he was undergoing treatment in the OPD, CMH, Poona-6 and the said communication mentioned that the Certificate was vague and there were other documents which contradict amongst themselves. Applicant had applied for leave on medical ground vide application dated 4.12.1994 which is at Exh.10 to the O.A. which also indicated that the applicant applied for leave till his recovery. The applicant also attached the Medical Certificate No.966142 by the Medical Officer. The Enquiry Officer however, in his report found that the applicant was absent from duty without permission and even without submitting the medical certificate or even intimating the specific period of leave required by him on medical grounds. It seems that the Enquiry Officer travelled beyond the charge No.1 The findings of the Enquiry Officer was that the applicant absented from duty without submitting any Medical Certificate is on the face of it not sustainable. The applicant was not charged for submitting false or fake medical certificate or that the applicant did not submit the medical certificate. Even otherwise there was no evidence on record to show that there was contrary medical opinion falsifying the certificate issue by the Medical Officer of State Mental

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Hospital. The finding arrived by the Enquiry Officer is, therefore, not sustainable and in reaching its findings of the Disciplinary Authority also fell into obvious error in mechanically accepting the report of the Enquiry Officer. The appeal submitted by the applicant also received the same fate. The appellate authority turned down the plea of the mental state of the applicant as false relying upon the interview by the Welfare Officer and some other officers who detailed the applicant on 13.3.1995. The conclusion reached at by the Welfare Officer was never placed before the Enquiry Officer, who reached his own conclusion that the applicant was guilty of the charges. The findings as to the charge No.2 the appellate authority seemingly faulted in resting its conclusion as to charge No.2 at para (c) of the appellate order to the effect that the applicant might not have travelled from Pune to Delhi on 25th Sept. 1994. "It was stated that one of the reasons for this was that he physically did not travel on the dates mentioned by him in his application dated 29.10.1994. This letter was made by him to make a case that he tried to reach Delhi in proper time. Since he had committed on paper that he reached Delhi on 25.9.1994 and since he might not have travelled on those days, he has not given journey details. Thus the charges of not refunding the advance are also well proved. His contention that he had reached Delhi and hence his claim could have been deemed to be received with whatever travel expenses are admissible as per rules, does not stand to reason. If he would have produced the receipts, he would have been proved false in his claim that he reached Delhi in time with an intention to join duties within the normal joining period. Therefore he was not in a position to

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give the journey details to the respondents." The above reasonings given by the authority is based on assumptions and presumptions. The charges of not refunding the advance was also not justified firstly non refunding of the advance was not the charge and secondly the materials placed before the Enquiry Officer clearly proved that the applicant undertook the journey. Similarly the appellate authority also fell into error in arriving at the guilt of the applicant on the ground that he did not avail the Govt. Hospital facilities or RMO's and Welfare Officer's services despite all out efforts from the establishment to extend all possible help if needed, which was not the subject matter of the charge. The applicant specifically prayed for a personal hearing before the appellate authority. In the instant case the enquiry was conducted exparte. No good reasons are assigned for denying a personal hearing to the applicant to enable him to place his case effectively before the Appellate authority. The order of the appellate authority is faulty on that count also. The applicant served in the department for about 30 years. Rule 27 of the CCS (CCA) Rules, 1965 does not specifically provide for the grant of a personal hearing by the appellate authority to the Government servant before deciding the appeal preferred by him against a penalty imposed on him. There is however, an instruction issued by the Govt. of India, Department of Personnel and Training in the O.M. No.11012/20/85-Est.(A) dated the 28th October, 1985. The above mentioned Govt. instructions however, observed that the principle of right to personal hearing applicable to a judicial trial or proceeding even at the appellate stage is not applicable to departmental inquiries, in which a decision by the appellate authority can generally be

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taken on the basis of the records before it. However, a personal hearing of the appellant by the appellate authority at times will afford the former an opportunity to present his case more effectively and thereby facilitate the appellate authority in deciding the appeal quickly and in a just and equitable manner. As Rule 27 of the CCS (CCA) Rules does not preclude the grant of personal hearing in suitable cases, it has been decided that where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the appellate authority may after considering all relevant circumstances of the case, allow the appellant, at its discretion, the personal hearing.

10. As pointed out earlier, the enquiry was conducted ex parte by the Disciplinary Authority. The applicant prayed for a personal hearing. The subject matter was in dispute. Admittedly there was no case of controversy as to the applicant was prevented to attend the office and co operate with the enquiry in view of the psychiatric disability. The authority was aware that on the basis of the enquiry the livelihood of the applicant as well as of the Members of his family was likely to be affected. Statute did not exclude an order hearing. No reasons are also ascertained as to why the prayer for oral hearing was declined. The appellate authority in our view also failed to act justly, fairly and reasonably, which seriously prejudiced the applicant.

11. Needless to say that if a decision is afflicted to some defect in the decision making process and arrived at a decision or the decision was reached in a manner for which it was not


justified, such decisions are vitiated by arbitrariness and therefore, violative of equality clause enshrined in Article 40. In the area of exercise of public power it is no doubt the public authority which charged the power to take a decision on the subject the balancing of relevant consideration, primarily a method for the administration. It is not for the court to dip into. Courts should however, intervene and interdict whoever the authority acted manifestly inadequate consideration of looking into the relevant considerations. The decision is also flawed on the ground of material ground of material defect in the decision making process. Admittedly, in the instant case, the respondents totally brushed aside the plea of the applicant. The plea of mental disability raised by the applicant is a ipse dixit without trying to probe and ascertain the plea raised by the applicant on his behalf. The Director while passing the impugned order mechanically aggrieved with the findings of the enquiry officer in respect of both the articles of charge and held that he charges can be proved beyond doubt. The enquiry officer, in his report dated 23.6.1998, which was accepted by the disciplinary authority only referred to the document No.3 dated 4th April, 1995 addressed to the wife of the applicant itself indicated that the applicant's wife reported the authority that her husband was not medically fit to reply to the official communications. The said communication also mentioned that it received a medical certificate from the applicant dated 29.9.1994 where where it was indicated that he was undergoing treatment at CMH, Poona. The enquiry authority did not address its mind to any of the pleas raised on behalf of the applicant. The material evidence available before him were even properly considered by the Enquiry Officer. The findings of the Enquiry Officer, accepted by the


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Disciplinary and Appellate authority suffered from the vice of perversity, non application of mind which finally affected the ultimate decision of the authority.

12. Neither the Disciplinary Authority nor the appellate authority also took into consideration the long services rendered by the applicant and mechanically imposed the impugned order of dismissal without taking into consideration of the relevant materials.

13. For all the reasons stated above we are of the considered view that the impugned order dated 27.10.1997 imposing the penalty of dismissal from service on the basis of enquiry as well as the appellate order dated 23.6.1998 are not sustainable in law and accordingly both the orders are liable to be quashed and set aside and thus the same are set aside. We, therefore, order that the applicant is to be reinstated in service after regularising his period of absence, but he would not be entitled for any backwages. The applicant will be entitled for all the consequential benefits save and except any backwages. The Respondents are directed to complete the exercise within a period of 3 months from the date of receipt of a copy of this order. Application is allowed. No costs.


(Smt. Shanta Shastry)
Member (A)


(D.N. Chowdhury)
Vice Chairman

s.j*

CP 65/2003
For orders
on 10/6/2003

Dated: 10.6.2003 (21)
Ms. Sujatha for Sh. S.P. Sarsena
Counsel for the applicant.

A request for adjournment was
made on behalf of the applicant. The
learned Counsel for the applicant has not
been informed as to what has transpired
after the applicant was called by the
respondents.

Adjourned to 30-6-2003.

May
(S. Mathotva)
M(A)

(J. Dhaliwal)
M(J)

Order/Interim order despatched
to Appn 13/6/03
13/6/03