

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 832/98

Date of Decision: 29th Feb., 2000

Shri Madhu S. Sadlapurkar

Applicant.

Shri P.A. Prabhakaran

Advocate for
Applicant.

Versus

The Chief of Army Staff, New Delhi
and another.

Respondent(s)

Shri R.K. Shetty.

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. S.L. Jain, Member (J)

- (1) To be referred to the Reporter or not? *yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*
- (3) Library. *yes.*

S.L. Jain
(S.L. Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 832/98

the 29th day of February 2000

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

Hon'ble Shri S.L. Jain, Member (J)

Madhu S. Sadlapurkar
536 Nehru Chowk
Serpan Galli,
Bhingar, Ahmednagar.

... Applicant.

By Advocate Shri P.A. Prabhakaran.

V/s.

1. The Chief of Army Staff
Sena Bhavan, DHQ PO
Army Head Quarters,
New Delhi.

2. Commandant
AC Centre and School
Ahmednagar.

... Respondents.

By Advocate Shri R.K. Shetty.

ORDER

(Per Shri S.L. Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking relief to quash and set aside order of respondent No.1 dated 22.6.1998 issued under his No. A/34179/GS/AC-1., Order of respondent No. 2, 1807/53/A/EST(ii) dated 29.11.1983 imposing the punishment of removal from service and Enquiry Officer's report dated 9.11.1983 with a request to reinstate the applicant in service without backwages and treating the intervening period as qualifying service for all purposes. In alternative it is prayed that the respondent be directed that orders be issued deeming the applicant to have been retired from service minimum qualifying service

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equal to actual plus 10 years of waiting in 30 years making him eligible for pension and other retiral benefits with effect from 1.1.1987, the year in which OA 549/87 was filed.

2. The applicant who was working as Watchman No. 1891418 in the Armoured Corps Central and School (AC Centre and School) from 1966 to 8.12.1983, was served with charge-sheet, Enquiry Officer and Presenting Officer were appointed, applicant participated in the enquiry, Enquiry Officer submitted the report, The Disciplinary Officer passed order of removal from service on 29.11.1983. The applicant filed an OA 549/87 which was disposed of as withdrawn with liberty to file fresh OA as it was not in proper form. The applicant filed second OA 973/92 which was decided on 26.2.1998 directing the respondents to consider the applicant's appeal and pass necessary orders.

3. The grievance of the applicant is that he was served with two charge-sheets dated 11.3.1983 and 29.8.1983. Notice was issued for hearing on 9.11.1983, the order of removal from service was passed by respondent No.2 on 29.11.1983. He attended the duties till that date. He was not given copy of the enquiry report. He received copy of the enquiry report on 23.1.1984. He submitted a representation to respondent No.2 on 23.12.1983 which was disposed of by order dated 23.1.1984. He approached various authorities but there was no response, which resulted in filing OA 549/87 and after it being withdrawn O.A. 973/92. has been filed.

4. The applicant has challenged enquiry on the ground that show cause notice was not necessary as held in the appellate order being illegal. Copy of enquiry report was not given. The Enquiry Officer

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do not know Marathi. Hence explaining the position in Marathi does not arise. Defence Assistant was not allowed. The allegation of habitual defaulter cannot have a say in the Disciplinary proceedings. It could be a factor only in action under Rule 56(j) of Compulsory retirement. The applicant was not aware of the proceedings to be taken against him.

5. The claim of the applicant is resisted by the respondents alleging that the applicant was removed from service on 29.11.1983, the enquiry report was explained to the applicant in Marathi in presence of the Presenting Officer, who was also well conversant in Marathi language and he had signed it. The copy of the enquiry report was issued to the applicant separately through registered A.D. and the receipt of the applicant is on record. The applicant had accepted the charge and had pleaded guilty. The applicant had not made any request for defence assistant verbally or in writing, the applicant was noticed that he is entitled for defence assistant. It is not mandatory on the Appellate Authority to modify the punishment order dated 22.6.1998 which was issued by Dy. Chief of the Army Staff who is appropriate Appellate Authority in this case and not the General Officer Commanding. The charge sheet dated 11.3.1983 issued to the delinquent and he appealed vide his representation dated 6.6.1983 and accepted the charge accordingly. The same was cancelled and another memorandum of charges dated 29.8.1983 was issued to him to which he pleaded guilty. Hence the plea that he was not aware of the matter is not correct. The Presenting Officer who know Marathi has explained. Habitual absence is lack of devotion to duty. Hence prayed for dismissal of the GA alongwith costs.

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6. The applicant has filed an affidavit of Dhondiba who has stated that he had given consent in writing on 5.11.1983 to the applicant to attend his departmental enquiry, as his Defence Assistant, the employer did not consider the same and no summons was sent to him to participate the departmental enquiry, which was scheduled to be held on 9.11.1983. Such an affidavit sworn on 16.8.1995 has no bearing in the case for the reasons that he has no occasion to appear before the Disciplinary Authority or the Enquiry Officer and the proceedings of the enquiry does not say that the applicant desired his assistance which was refused. Hence this ground fails.

7. It is true that the applicant was not served with the copy of enquiry report before passing the order of punishment of removal from service, but in our considered opinion when the punishment was awarded on 29.11.1983 it is of no consequence for the reason that Mohd. Ramzan Khan's case reported in 1991 SCC L&S 612 is prospective in operation.

8. The learned counsel for the applicant has drawn our attention to the fact that the applicant who is illiterate person was not made aware that he is entitled to defence assistance. We are not satisfied with the submission for the reason that it is mentioned in the charge-sheet itself that he is entitled to take assistance of Government servant to present his case on his behalf.

9. The learned counsel for the applicant argued that as applicant's absence said to be unauthorised absence has been regularised, hence no disciplinary proceedings are warranted. He relied on a judgement

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of Apex Court reported in 1999 (1) ATJ 191 State of Punjab and Others V/s. Bakshish Singh. We have carefully gone through the judgement of the Apex Court and we are of the considered opinion that the ratio of the said judgement is not the same as argued by the learned counsel for the applicant, but provisions under Order 41 Rule 33^{C.P.C.} are examined. Hence the said authority does not help the applicant.

10. The learned counsel for the respondents relied on Full Bench judgement (CAT) VOL.III Hari Ram V/s. Delhi Administration and others. and argued that the unauthorised absence has been treated as extraordinary leave. Hence disciplinary Proceedings are competent. On perusal of the said authority we are of the considered opinion that it is the intention which is to be looked into while deciding such facts. On examination we find that it is impossible to note that the intention of the Disciplinary Authority was to continue the applicant in service by condoning his unauthorised absence by granting him leave without pay. The period of absence will be treated as leave without pay. The intention of the Disciplinary Authority was to terminate the service of applicant.

11. The learned counsel for the applicant relied on the order passed in OA 973/92 particularly in para 10 and 11 of the order and argued that when this Tribunal had ordered to consider the case of punishment and pass the order of compulsory retirement, the Appellate Authority committed an error in ignoring the same. On perusal of the order we find that while deciding the same OA, this Tribunal has referred to the judgement of the Apex Court 1997 SCC (L&S) 567 State of Punjab and others V/s. Dhanam Singh,

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mentions the fact and the decision thereon with the observations that it is for the Appellate Authority to examine the facts and circumstances of the case and award whatever punishment provided under the rules. In such circumstances we cannot come to a finding that this was a finding recorded which was to be followed in every circumstances.

12. The learned counsel for the respondents relied on 1999 SCC (L&S) 283 Union of India and others V/s. Kulamoni Mohanty and others and argued that the Tribunal had no jurisdiction in interfering with the quantum of punishment. We are entirely in agreement with the learned counsel for the respondents and the authority relied on.

13. The learned counsel for the applicant relied on 1999(2)SC SLJ 106 Syed Zakir Hussain V/s Union of India and others and argued that absence from duty for a period 7 days and punishment of dismissal has been be held too harsh. He further argued that in the said case the employee was reinstated in the department of passing of the order of the Tribunal. In our considered opinion the said decision does not help the applicant for the reason that it is a case of 81 days unauthorised absence. The learned counsel for the applicant relied on 1996(32) ATC 323 V/s. Union of India decided by the CAT Ahmedabad Bench. On perusal of the said authority we find that the applicant was having 29 years of service and absence of 41 days on 5 occasions, sanctioned leave was also taken into consideration which is not a case before us.

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14. In the result we do not find any merit in the
OA. It is liable to be dismissed and is dismissed
accordingly. No order as to costs.

S.L. Jain
(S.L. Jain)
Member (J)

D.S. Baweja
(D.S. Baweja)
Member (A)

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