

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:562/1998
DATED THE 4th DAY OF DECEMBER, 2002

CORAM:HON'BLE SMT LAKSHMI SWAMINATHAN, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri V.J.Mudras,
Aged about 33 years, Indian Inhabitant,
residing at Quarter No.2,
Salt Department Quarters,
Near Gupta Wadi,
Mithanagar, Mulund(E),
Mumbai - 400 001.

... Applicant

By Advocate Shri S.M.Payak

V/s.

1. The Union of India,
through its Secretary in Food &
Civil Supplies Department,
having his office at Shastri Bhavan
New Delhi

2. The Salt Commissioner,
Salt Department,
having his office at Lavan Bhavan,
2-A, Lavan Marg,
Jahailana Dogari,
Jaipur - 302 004.

3. The Deputy Salt Commissioner
having his office at Exchange Building,
4th Floor, Sir Shivsagar Ramgulam Marg,
Ballard Estate,
Mumbai - 400 001.

... Respondents

By Advocate Shri V.S.Masurkar

ORAL ORDER

Per Hon'ble Smt.Shanta Shastry, Member(A)

The applicant is challenging the order dated 12/11/1997 removing him from service and the Appellate Order dated 12/7/3/1998 dismissing the appeal.

2. The brief facts are that the applicant was working as a sepoy with the respondent no.3 until his removal from service. In September, 1995, according to the applicant one Havildar

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Shri Bhikaji Mehtar had developed illegal liaison with his wife and he used to visit the applicant's house during duty hours while applicant used to be away on duty. This led to frequent quarrels and disturbed his family life and in turn led to mental disturbances and the applicant was not keeping good health. He brought this to the notice of respondent no.3 through complaint but he submits that no action was taken because he could not adduce any evidence in support of his complaint. His prayer for action against Shri Mehtrar was rejected. Therefore he was agitated. The applicant sent his resignation on 15/1/1996 and stopped coming to work. He was in the meantime transferred to Bhandup Office vide order dated 14/5/1996 so as to enable him to be nearer to his house. The applicant submits that he had no intimation about whether his resignation had been accepted or otherwise. On 27/6/1996, the applicant had remained present in the office of respondent no.3 and had requested to grant him Earned Leave for his absence and also reminded about his resignation. To his surprise on 13/1/1997 he was informed that it was decided to hold an enquiry into charges against his unauthorised absence. The Charge Memo was issued on 11/1/1997. The charges were as follows:-

- (1) Wilful absence from duty from 15/1/1996 to 17/3/1996 and 19/3/1996 to 2/6/1996 which amount to misbehaviour and;
- (2) refusal to join duty at the place of his posting on transfer and remaining absent, thereby he failed to maintain devotion to duty and acted in careless manner.

3. The Enquiry Officer was appointed on 10/6/1997 and after holding the enquiry the Enquiry officer submitted his report on 21/8/1997 holding the charges against the applicant as proved. A

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copy of the report was made available to the applicant on 17/9/1997. The applicant submits that since no punishment had been indicated in the letter sent alongwith the Enquiry Officer's report, he could not make any comments. Thereafter the disciplinary authority agreeing with the findings of the Enquiry Officer passed the impugned order dated 12/11/1997 removing the applicant from service. Appeal preferred against the penalty order was dismissed. He was also asked to vacate his Government Quarter by letter dated 5/6/1998.

4. According to the applicant the impugned orders are erroneous, illegal and not warranted by facts or in law are in glaring violation of principles of natural justice and rules framed for purposes of conducting enquiries. The applicant contends that the Enquiry Officer acted as a prosecutor and judge himself though presenting officer had been appointed, this vitiates the enquiry proceedings. The applicant's statement was recorded first. No evidence was led by the disciplinary authority in proving the charges leveled nor was any case made out by presenting officer. The applicant was not cross examined. No oral or written evidence was led. According to the applicant no defence assistant was made available. No opportunity was given to him to cross examine witnesses. This is against the principles of natural justice. Further no reasons are given for the findings by the Enquiry Officer. The disciplinary authority did not issue any show cause notice proposing the penalty of removal. He has not given any reasons for the punishment meted out to the applicant. It is totally disproportionate. The Appellate Authority also has dismissed the appeal without calling

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for records and proceedings and without hearing the applicant in support of his letter dated 22/11/1997. He did not assign any reasons for agreeing with the orders of the respondent no.3. In the charge memo issued to him there was no charge of habitual absenteeism nor was any record produced to show habitual absenteeism on his part and yet the appellate authority has referred to his past absence to treat him as an habitually unauthorised absentee. This shows bias and prejudice. The applicant had offered to resume duty and work sincerely in his appeal but there was total non application of mind. His request was not considered particularly when it was the first time when such an incident had occurred.

5. The respondents however have opposed the admission. They submit that when a complaint was made against Shri Mehtar by the applicant, it was pointed out to him that as per the Attendance record of the office both the applicant and Shri Mehtar were on duty from September, 1995 to 14/1/1996 whereafter the applicant remained unauthorisedly absent so question of Mehtar visiting applicant's residence during office/working hours did not arise. The applicant did not file any complaint of any such nature nor was any complaint received from Applicant's wife or neighbours residing in the sepoy's quarters and when he did complain under letter dated 20/9/1996 a reply was given to him in Hindi vide letter dated 1/11/1996. In this letter, chronologically the details w.e.f. 15/1/1996 were clearly brought out and it was stated that this was a final warning to the applicant to join duty. In spite of that he did not report for duty so the disciplinary proceedings were initiated. The applicant had stopped attending

office and had submitted a conditional resignation on 13/4/1996. This was not accepted. Instead, out of sympathy, he was shifted to a office near his residence. As per rules three months notice is required to be given for resignation. The applicant did not submit such a notice.

6. The respondents submit that the enquiry against the applicant was conducted properly as per procedure. The presenting officer was appointed and there is no objection to the enquiry officer asking a few questions to come to a correct conclusion. It is seen from the proceedings dated 9/7/1977 and the enquiry officer's letter dated 26/3/1997, that the applicant had been asked to state the name of defense assistant but he did not avail of this facility. The case of the prosecution was based on documents and so no eye witness as were produced. The disciplinary authority had forwarded the report of the enquiry officer as per requirement. However, there is no provision to intimate the proposed penalty when opportunity is to be given to the delinquent employee to offer comments to take the decision under the CCS CCA (Discipline and Appeal) Rules. There is also no provision to give personal hearing and nor was such a request made by the applicant. The respondents submit that the Appellate Authority has also issued a detailed speaking order and has satisfied himself about the procedure followed in the enquiry. In spite of giving warning the applicant had failed to resume duty. Therefore, there was wilful unauthorised absenteeism on the part of the applicant and the disciplinary authority rightly concurred with the findings of the Enquiry Officer and penalised

the applicant by removal from service. Therefore no interference is called for in the matter.

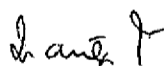
7. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have given our careful consideration to the rival contentions. It is seen from the pleadings that the applicant had in a fit of disturbed mind given resignation from service as according to him one Shri Havildar in his office was having an illegal affair with his wife by visiting the applicant's house during duty hours and since the respondents had not taken any action against his complaint, he was not in good health mentally. The respondents had failed to communicate to him anything about acceptance or otherwise of his resignation. He had even reminded them and had taken this ground during enquiry also. But without intimating him about the fate of his application for resignation, a departmental enquiry was conducted. We find that the respondents had enquired into the complaint made by the applicant and had found no substance in the complaint, yet in order to give relief to help the applicant, the respondents had transferred him to a place near to his residence, so that he could keep an eye. But the applicant did not accept the transfer order nor did he join at the place of transfer. Infact, it is seen that the respondents had even given a notice in the Newspaper on 28/6/1996 stating that the applicant had been unauthorisedly absent from duty w.e.f. 15/1/1996 and he has been since transferred and posted back to Bhandup Salt Factory and the posting order had been first sent by the office messenger and he refused to accept it. It was sent by Registered post to his official resident but it came back undelivered and therefore the

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applicant was called upon to report for duty in the Office of the Bhandup Salt Factory within seven days of publication of notice. He was also warned that if he fails to report for duty action under CCS CCA Rules will be taken against him. Yet the applicant failed to join duty. Thus, he remained unauthorisedly absent. The applicant's contention is that he did not join duty because he had tendered his resignation. Merely tendering application does not permit the applicant to remain absent unless it is accepted. The applicant had not even followed the procedure of giving three months notice, his resignation being conditional was not accepted. No doubt in one letter dated 1/11/1996, it had been advised to the applicant that if he failed to join duty within a week from the receipt of the letter, his resignation from service w.e.f. 15/1/1997 would be accepted or disciplinary action would be taken. When the applicant was issued a charge memo disclosing the intention of the respondents to take disciplinary action against him, it automatically ruled out the acceptance of the resignation by the respondents. The applicant has himself presumed that his resignation had been accepted while it had not been so accepted. The charge was proved against the applicant in the enquiry held against him. Infact he even admitted his unauthorised absence and thus causing inconvenience to the administration he had expressed his regrets in the appeal filed. The objections raised regarding Enquiry Officer asking questions, not allowing him to cross examine witnesses, not giving a show cause notice by the disciplinary authority, etc have already been satisfactorily answered by the respondents. The applicant has further alleged that the appellate authority

did not apply its mind properly to the appeal. After a perusal of the order of the appellate authority on the other hand shows that the Appellate Authority has applied its mind properly and has passed a detailed order discussing the behaviour of the applicant and also giving the reasons as to why the applicants absence from duty was considered as unauthorised. His applications for leave were not supported by any medical sick report and the applicant had also acknowledged during the course of the enquiry that he continued to be absent from duty as he had already tendered his resignation. Thus, the appellate authority has passed a reasoned order Making reference to his past record of absenteeism could not vitiate the proceedings as the appellate authority has referred to it because the applicant had in his appeal stated that this was the first instance that he was unauthorisedly absent. It has been established that he remained unauthorisedly absent without being backed by any medical certificate under the circumstances no fault can be found with the orders of the disciplinary authority or the appellate authority. 8. In our considered view, the applicant has not been able to make out any case to quash and set aside the impugned order. In the facts and circumstances of the case, the OA fails and is dismissed accordingly with no order as to costs.



(SMT. SHANTA SHASTRY)
MEMBER(A)



(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN

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