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CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD.

O.A. No. 1129/91

Date of Decision: 16-11-92

XXXXXX

Mr. Sriramulu

Petitioner.

Mr. A.C. Lakshmanachar

Advocate for
the Petitioner(s)

Versus

DD, Medical Services, "adras and 2 others

Respondent.

Mr. NV Ramana

Advocate for
the Respondent
(s)

COR. M:

THE HON'BLE MR. R.Balasubramanian, Member (Admn.)

THE HON'BLE MR. C.J.Roy, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporters or not ?
3. whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on Columns 1,2,4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

HRBS
M(A)

HCJR
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1129 of 1991

DATE OF JUDGMENT: 16 NOVEMBER, 1992.

BETWEEN:

Mr. Sriramulu .. Applicant

AND

1. The Deputy Director,
Medical Services,
Headquarters, Andhra,
Tamilnadu, Kerala,
Karnataka and Gujarat areas,
Madras-600009.
2. The Deputy Director,
Medical Services,
Headquarters Southern Command,
Pune 411001.
3. Lt. Col. N.K. Debata,
Inquiring Officer,
Offg. Commanding Officer,
Military Hospital,
Golconda, Hyderabad-9. .. Respondents

COUNSEL FOR THE APPLICANT: Mr. A.C. Lakshmanachar

COUNSEL FOR THE RESPONDENTS: Mr. N.V. Ramana, Addl. CGSC

CORAM:

Hon'ble Shri R. Balasubramanian, Member (Admn.)

Hon'ble Shri C.J. Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER(JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant claiming a relief to quash the order of compulsory retirement from service passed in Order No.729/1/M-3/Sriramulu, dated 24.10.1989 by the 1st respondent, as confirmed by DDMS, SC, HQRS, Pune dated 20.9.1991, as it opposed to Law, principles of natural justice and takes away the fundamental right of the applicant to be in employment till he completes the age of superannuation.

2. The facts that are necessary to determine the case are briefly as follows:-

The applicant was a civilian Chowkidar attached to Military Hospital, Golconda. While he was working as Chowkidar in the Military Hospital, three charges were framed against him by an order dated 3.8.1988. The first charge is that the applicant who was on duty on 30.4.1988 at 3.15 hours was found sleeping in the corridor in front of the office. The 2nd charge is that he was found sleeping at 2.45 hours on 4.5.1988 by Major SN Reddy ie., in the intervening night of 3.5.1988 and 4.5.1988. The 3rd charge is that the applicant failed to sign the night duty roster at the interval of every two hours ie., 2400 hours on 3.5.88. The applicant submitted his explanation on 9.8.1988 denying

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the charges of sleeping. With regard to the 3rd charge, the applicant stated that it was the practice to take the rosters where the chowkidars are on duty for signature for convenience. An enquiry was ordered and the enquiry officer submitted his report. On receipt of the Enquiry Officer's report, the ~~xx~~ order dated 24.10.1989 was passed compulsorily retiring the applicant from service.

3. The applicant filed O.A.No.419/90 before this Tribunal ~~xx~~ questioning the order dated 24.10.1989 compulsorily retiring the applicant from service. By a Judgment dated 6.8.1990, the O.A. was allowed following the principles laid down by the Hon'ble Supreme Court in "Ram Chander Vs. Union of India and others (ATR 1986(2) SC 252)" remanding the matter back to the appellate authority for reconsideration and passing of an order in accordance with the rules in light of the directions given by the Hon'ble Supreme Court in the Judgment cited supra. While allowing the O.A., the Tribunal observed that, "it is open to the applicant to agitate this matter and all others matters raised by him in his grounds of appeal and in the present application before us before the appellate authority. The appellate authority will also give the applicant a personal hearing if he so desires."

4. The contempt Petition No.46/91 in OA 419/91 was also filed by the applicant against the respondents and the same was disposed of with a direction to the appellate authority to dispose of the applicant's appeal dated 1-11-1989 by

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affording an opportunity of personal hearing to ~~him~~ ~~applicant~~. Accordingly, the appellate authority ~~rejected~~ ~~re~~ the appeal dated 24.11.1989 ~~rejecting the application~~ vide orders dated 25.6.1991 and 20.9.1991, in the light of the observations made by the Tribunal in OA 419/91 as well as in CP 46/91. Hence, this application.

5. The respondents in their counter filed stated that the applicant had been found repeatedly negligent in his duties and many warnings have been issued by successive commanding officers verbally as well as in writing. His service documents show record of many offences for which he was warned since 1981. There is no welfare committee for which the applicant was a member as averred by the applicant. He was found repeatedly sleeping by various officers during his duty hours and it was proved conclusively in the inquiry conducted. Chowkidars are to sign the duty roster kept centrally after taking a round of their entire area of responsibility. Hence, his explanation of duty roster book going to Chowkidars for signature is not agreed to. The allegation of the applicant that the third respondent acted as Prosecutor as well as the Judge is not correct since the charges were committed by the applicant at different periods. The 3rd respondent has not recommended for compulsory retirement of the applicant but the recommendation was given by Col Abdul Salam, CO. So, the 3rd respondent should not be alleged to have any malafide or prejudices for the recommendation.

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of compulsory retirement given by Col. Abdul Salam. The applicant was given ample opportunities to cross examine or call the witnesses in his support. The inquiry conclusively found that the applicant was guilty of all the three charges. The security risk involved in defence establishment cannot be compromised and the punishment imposed on the applicant is in accordance with law. Hence, the application is liable to be dismissed.

6. The applicant filed a rejoinder stating that the respondents did not file any paper in support of their contention that the applicant was issued many warnings by the successive Commanding Officers verbally and as well as in writing. He states that out of personal prejudices, he has been implicated in this case. In view of the above, the applicant states that the application is liable to be allowed with a direction to the respondents to reinstate him into service.

7. We have heard the learned counsel for the applicant Mr. A.C.Lakshmana Char and the learned Additional Standing Counsel for the Respondents, Mr. N.V.Ramana, Addl.CGSC.

8. The short point involved in this case is whether all the charges are proved against the applicant after giving opportunity to the applicant to defend his case.

9. Pursuant to the orders of the Tribunal dated 6.8.90 in OA 409/90 and the orders dated 13.8.1991 in CP 46/91, the

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appellate authority keeping in view the observations made in the Judgments cited supra, reconsidered the case of the applicant and gave a detailed finding while rejecting the appeal of the applicant.

10. We have also seen the records and gone through the evidence. The learned counsel for the applicant states that all the witnesses were not spoken that the applicant was sleeping while on duty. Major Nagaraj came on 29th April 1988 night for the 2nd time to check and ~~saw~~ the applicant sitting and smoking a cigarette. Therefore, that Mr. Nagaraj taken prejudice against the applicant. We feel/it cannot have any bearing on the appraisal of the evidence. It is the case of the applicant that the Major Nagaraj has informed all the Chowkidars about the applicant sleeping on duty but the Defence Counsel stated that only two witnesses were spoken and the rest of the witnesses were not spoken. However, it is not necessary that all the witnesses should speak about the incidence. Quality of the evidence is important but not the number of the witnesses. Moreover, it is a Defence organisation where security risk is much and the staff on duty should not sleep. It is evident that the applicant himself admitted the 3rd charge.

11. We have gone through the evidence and we do not find any ground to interfere with the findings of the Inquiry Officer especially in view of the fact that the 3rd charge

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has been accepted by the applicant and with regard to the 1st and 2nd charges, we feel that these charges are proved through after going ~~to~~ the records and the evidence of Maj. Nagaraj and other witnesses who consistently stated that the applicant was sleeping while on duty. Hence, all the three charges were proved and we see no reason to interfere with the findings of the Inquiry Officer.

12. The learned counsel for the applicant contends that the punishment imposed is not in consonance with the offence committed by the applicant. This is a matter of security lapse where security risk is more. Where the applicant was posted is a place of much security risk wherein he is not supposed to sleep on duty.

13. Besides, the Hon'ble Supreme Court in "Union of India Vs. Parma Nanda (AIR 1989 SC 1185)", held that "the Tribunal cannot interfere with the penalty on the ground that it is not commensurate with delinquency of employee."

14. In view of the above cited decision of the Hon'ble Supreme Court, we see no reason to interfere with the quantum of punishment imposed on the applicant.

15. The learned counsel for the applicant contends that the Inquiry Officer was prejudiced against the applicant. It is evident that the applicant had failed to protest when the Inquiry Officer was appointed to inquire into the charges.

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If the applicant was aggrieved that the Inquiry Officer was prejudiced against him, he ought to have protested but without protesting, the applicant participated in the inquiry at that point of time and hence this plea on behalf of the applicant cannot be accepted at this stage. Had he protested, the respondents, may be, would have changed the Inquiry Officer. Incidentally, in this case, the disciplinary authority cannot be changed though the Inquiry Officer could be changed as the disciplinary authority cannot be changed against the rules. Only the Inquiry Officer can be changed where there was a protest in this regard by the delinquent employee.

16. For the reasons stated above, we do not find any flaw in the inquiry nor violation of any natural justice nor any prejudice of conduct in conducting the inquiry. 
The applicant has failed to establish his case.

17. The application is devoid of merits and is accordingly dismissed with no order as to costs.

(R.BALASUBRAMANIAN)
Member (Admn.)

(C.J. ROY)
Member (Judl.)

Dated: 16th November, 1992.

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By Registrar (I)

To

1. The Deputy Director, Medical Services, Headquarters, Andhra, Tamilnadu, Kerala, Karnataka and Gujarat Areas, Madras-9.
2. The Deputy Director, Medical Services, Headquarters Southern Command, Pune-1.
3. Lt. Col. N. K. Debata, Inquiring Officer, Offg. Commanding Officer, vsn Minilitary Hospital, Golconda, Hyd-9.
4. One copy to Mr. A. C. Lakshmanachar, Advocate, 1-1-385/44, Gandhinagar, Hyderabad.
5. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
6. Copy to All Reporters as per standard list of CAT. Hyd.
7. One copy to Dy. Registrar (J) CAT. Hyd. (8) One spare copy.

DYM