

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

Original Application No. 1115/92.

Dt. of Order: 7-6-96.

Between :-

Gunshiranjan Pal

...Applicant

And

1. Union of India, represented by its Secretary, Ministry of Defence, New Delhi.
2. The Director General of E.M.E., Army Headquarters, DHQ Post, New Delhi.
3. The Commandant, Military College of Engg., E.M.E., Trimulgherry, Secunderabad.

...Respondents

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Counsel for the Applicant : Mr. Gunshiranjan Pal
(Party-in-person)

Counsel for the Respondents : Mr. V. Rajeshwar Rao, Addl. CECSC

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CCRAM:

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI : VICE-CHAIRMAN *hsc*

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A) *hsc*

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Treating the conduct of the applicant as willfull dis-obedience of the orders of superiors and refusal to take classes for DE-50 course, disciplinary proceeding was initiated against him on the charge that he had failed to maintain devotion to duty and thereby violated rule-3(1)(ii) of the CCS(Conduct) Rules, 1964.

We have gathered the above facts from the counter affidavit of the respondents and we see no reason not to accept them as these have not been disputed in the rejoinder filed by the applicant.

3. The Disciplinary Enquiry was held under Rule-16 of CCS (CC & A) Rules, 1965. Vide Ministry of Defence memorandum dt.5-3-87 on charge of willfully refusing to take Machine Drawing classes for DE-50 course at the Military College at Secunderabad inspite of clear and repeated instructions given to him by his officers. The applicant in his defence statement dt.10-7-87 denied the charge. It appears that the applicant did not participate at the enquiry and the oral enquiry was completed ex parte. Evidence and statements were recorded at the enquiry. The Defence statement filed by the applicant dt.10-7-87 was also taken into account. The Enquiry Officer concluded on the material before him that the charge against the applicant was proved beyond doubt. A copy of the Enquiry Report was furnished to the applicant but he refused to comment on the enquiry report or submit any

to take Machine Drawing classes for DE-50 course with immediate effect, pending decision on his application dt.8-5-86. The applicant did not comply with that direction but submitted another application on 13-5-86 to the Commandant, MCEME requesting him again that he might not be loaded with the Machine drawing classes. He appears to have stated that he would not be able to carry out the orders but that would not be construed as dis-obedience since he would not teach effectively, which would dilute the teaching standard in the organisation. Lt.Col.Deoli, however informed the applicant on 13-5-96 that since his application to the Commandant would take a few days for a decision thereon and that it was not possible to hold the classes for DE-50 course in abeyance and therefore, ordered applicant to take these classes as per programme pending the decision and that non compliance would be taken as dis obedience of the order for which action would be initiated against him. After all ^{this} ~~the~~, the applicant did not comply with the directions. The Dy. Commandant vide his letter dt.27-5-86 intimated the applicant that he had willfully avoided taking the Machine Drawing Classes and ordered him to take classes as assigned, failing which disciplinary action would be taken against him. Even thereafter, the applicant did not take the classes. A preliminary Enquiry was ordered by the Adjutant MCEME vide his note No.21401/ Adjt dt.10-6-86. It was reported on that enquiry that the applicant did not take the classes on the scheduled dates and he continued to refuse to take the classes.

6. The applicant has argued his case personally. He has pressed only the ground No.1 mentioned above and has not urged the remaining two grounds. Hence the narrow question is whether the decision given by the President on the revision petition of the applicant can be said to be illegal, perverse or so unreasonable and calls for interference.

7. The ground stated in the appeal memo was as follows :-

"In view of other pressing assignments and other commitments I wanted atleast one months preparation time for teaching Machine drawing OE-50 course.... that preparation time was not given.

There is no standard whatsoever of how much time for preparation should be given. If there is anything as such one months time is not necessary, I may be considered lacking in that subject but that by no stretch can be considered as wilfull dis-obedience of orders".

✓ This is the substance of the contention.

8. In dealing with this contentions, the President was of the opinion as follows :-

"Although Sri Paul was initially given one week time for preparation but it was extended twice to make it 3 weeks. However the main issue is not the preparation time but the attitude of Sri Paul. This behaviour constitutes wilfull dis-obedience of the order."

representation. The report of the enquiry was submitted to the President who agreed with the findings of the Enquiry Officer but decided to take a lenient view having regard to the good behaviour of the applicant before 17-8-86 and imposed the penalty of with-holding the increments of his pay for one year without cumulative effect. The said order was passed under Rule-15 of CCS (CC & A) Rules, 1965 on 7-6-91.

4. Aggrieved by the aforesaid order the applicant submitted an appeal to the President of India on 24-6-91. It was treated as a revision application under Rule-29 of the CCS (CC & A) Rules, 1965 and has been rejected by order dt.30-12-91 for the reasons mentioned in the said order. The said order is impugned by the applicant in this OA. He prays that the same may be set aside. The OA was filed on 14-12-92.

5. The impugned order decides the 3 points that were urged by the applicant in the appeal (revision). First ground was that he was not given one month's time for preparation. With that ground we shall deal in some detail after grounds 2 and 3. The second ground was that Col.C.O.Ceoli had ill motives and had indulged in manipulation of record of the applicant. The third ground was that the enquiry officer as well as the Secretary, Ministry of Defence both were prejudiced against him as a result of which simple and vital points were ignored.

was not in the nature of analysis of the evidence on record which was part of the enquiry proceedings. The recital of the order starts with the reference to Disciplinary proceedings and the charge as was framed. It was not incumbent on the revisional authority to give detailed reasons relating to the facts and conclusions arrived at the enquiry when the order findings were ~~under revision~~ was being confirmed but even so the 3 main grounds urged by the applicant were explained to demonstrate that no substance was found in them. In this background it cannot be said that the finding is not referring to the charge. It is clear that the manner in which the contention regarding time for preparation is dealt with in the order implies that it was found that there was no substance in the contention and that ground did not warrant dis-obedience. The order clearly related to the behaviour constituting dis-obedience to the orders of the superiors which was the subject matter of the charge. We therefore find it difficult to interfere with the impugned order. Unless the impugned order could be interfered with, which we are not inclined to, it is not open for us to go behind the findings of the Enquiry Officer or to the merits of the case. The result therefore is that the application is liable to be dismissed.

12. For the purpose of the record we may mention that we are informed that the applicant had filed OA 426/93, which has already been disposed of. He had also filed OA 518/91, which has also been disposed of. He had filed a review petition in OA 426/93. That has also been disposed of.

9. It is thus the opinion formed on merits and the view as taken could reasonably be taken and it is not open to us to go behind the said opinion. Coupled with this conclusion in respect of other allegations, it was opined that the applicant had not brought out any evidence to establish the allegation regarding prejudice or manipulation of records nor to establish the allegation regarding pre-judicial decisions of the enquiry officer or the Ministry.

10. The applicant however argued that on the first contention the reason given in the order is not relatable to the charge as was framed and therefore his revision has been rejected on an irrelevant consideration and that renders the decision untenable. What he submits is that whereas the charge against him as was framed was that he had wilfully refused to take the classes of Machine Drawing DE-50 Course, but the order on revision speaks about his attitude in not utilising the time of 3 weeks given to him for preparation which cannot amount to any wilful dis-obedience. He therefore submits that the conclusion drawn that his behaviour constituted wilful dis-obedience of the orders of superiors is erroneous.

11. At the first blush it may appear that the conclusion about constituting wilful dis-obedience of the order is based on a different ground than as was mentioned in the charge. However, a careful reading of the order as a whole leaves no manner of doubt that the reasons given are referring to the contentions raised by the applicant seriatim and it

It appears that OA 1338/95 on the subject of promotion is separately pending. Since that case has no relevance to the instant case, there is no reason for us to withhold the disposal of this case.

13. In the result, the O.A. is dismissed. No order as to costs.

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कायाचर अधिकारी
COURT OFFICER
नियोग प्रशासनिक अधिकारी
Central Administrative Tribunal
हैदराबाद बायपुर नं
HYDERABAD BENCH.