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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

OA No. 100/1994

Date of Decision:

BETWEEN:

S. Md. Khasim

.. Applicant

AND

1. The Commanding Officer,  
Airforce Station,  
Suryalanka,  
Banatla. ....

2. OC-in-C,  
Southern Air Command,  
Kowdiar,  
Trivandrum - 695 003.

.. Respondents

Counsel for the applicant: Mr. Krishna Devan

Counsel for the Respondents: Mr. N.V. Raghav Reddy

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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ORDER

(Per Hon'ble Sri B.S. Jai Parameshwar: Member (Judl.))

Heard Sri Krishna Devan, the learned counsel for the applicant and Shri N.V. Raghav Reddy the learned counsel for the respondents.

This is an application under Section 14 of the Administrative Tribunals Act. The application was filed on 27.9.1993. In this OA the applicant has challenged the order bearing No. Surya/Chow-154/PC Dt.7.12.90 (Copy of the order not produced along with the OA) and order No.SAC/C-7529/4/PC dated 13.3.91 (Annexure-5) passed by the respondents 1 & 2 respectively. By those orders the respondent No.1 accepted the findings of the board of inquiry and imposed the punishment of dismissal of the applicant. The applicant preferred an appeal against the order of dismissal before Respondent-2. The respondent 2 confirmed the punishment and rejected the appeal. It is these 2 orders that have been challenged in this O.A.

Facts in brief are to the following effect:-

While the applicant was working as a chowkidar under the respondent -1 he proceeded on leave on 2.9.85. After expiry of the leave he did not report for duties. On 9.9.85 he submitted an application for leave on medical grounds till 2.1.1986.

On 2.1.86 the respondent No.1 served the articles of charges on the applicant for the alleged un-authorized absence and other mis-conduct.

On 3.1.86 the applicant reported for duty. The Respondent No.1 conducted disciplinary proceedings against the applicant with respect to the charge-sheet Dt.2.1.86.

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Suffice it to say that the punishment of dismissal imposed on the applicant as a result of those disciplinary proceedings was set aside by this Bench by its order Dt.5.4.90 in OA No.708/87. While setting aside the punishment this Bench reserved the liberty to the respondents to proceed against the applicant for his misconduct 'Denova'.

In compliance with the directions of this bench Dt.5.4.90 the applicant was reinstated into service effective from 2.5.90. On 29.6.90 a fresh charge sheet was served on the applicant. The imputations made against the applicant are as follows:-

" ARTICLE OF CHARGE - I

THAT the said Shri S. Md. Khasim, Chowkidar absented from duty without leave or prior intimation for a period of 116 days from 09 Sep. 85 to 02 Jan. 86; in contravention of Rule 3 (i) of sub-rule (iii) of CCS (Conduct) Rules 1964.

ARTICLE OF CHARGE - II

THAT the said Shri S. Md. Khasim, Chowkidar is a habitual offender of being AWOL as per the records which is in contravention of Rule 3(1) of sub-rule (iii) of CCS (Conduct) Rules 1964.

ARTICLE OF CHARGE - III

THAT the said Shri S. Md. Khasim, Chowkidar Pass No. Surya/154 is not found at hom address given to Department when the postal authorities contacted to delivery of official communication (ie Registered letters) issued by Air Force Station Suryalanka.

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The case of the applicant is that he worked under respondent-1 from 2.5.90 to 7.12.90 that on 7.12.90 when he reported for duty he was prevented from attending to duty

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that on 24.12.90 he got issued a legal notice seeking reasons for his prevention<sup>t</sup> from attending to duties, that the Respondent -1 then through his letter No. Surya/Chowkidar/154/90/PC Dt.5.1.91 informed his counsel that the applicant had been dismissed from service by his order Dt.7.12.90 that the copy of the order of dismissal and the copy of the report of the Board of inquiry were furnished to the applicant on 7.12.90. Thereafter the applicant, it is submitted, represented to Respondent-1 to furnish copies of the deposition and copy of the report of the board of inquiry that they failed to furnish the same that on 19.1.1991 he submitted representation to the Respondent-2 against the illegal order of dismissal dated 7.12.90 that the Respondent -2 by his order No.SSC/C/7529/4/PC Dt.13.3.91 rejected the appeal and that he has <sup>been</sup> constrained to file this O.A.

The respondents filed their counter contending that in obedience to the order given <sup>by</sup> in this Tribunal OA No.708 of 1987 Dt.5.4.90 a De-nova inquiry was conducted into the misconduct of the applicant, that date and place of hearing were regularly intimated to the applicant, that the applicant submitted his representation to the articles of charge, that the applicant had participated in the disciplinary proceedings that the applicant declined to cross examine the witnesses examined on behalf of the disciplinary authority that the applicant submitted the written brief that there after the Board of inquiry concluded the disciplinary proceedings against the applicant and submitted the report to respondent -1 and that the respondent No.1 by order Dt.7.12.90 imposed the punishment of dismissal on the applicant that against the said order of dismissal the applicant had submitted an appeal to the respondent -2 that the respondent-2 rejected the appeal by his order Dt.13.3.1991 that every opportunity was afforded

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to the applicant during the disciplinary proceedings that there are no grounds to interfere with the orders passed by the Respondents 1 & 2.

The main contention of the learned counsel for the applicant is that the inquiry was conducted behind his back. That the report of the Board of inquiry was not furnished to him to have a say against the same that the copies of ~~the report~~ was furnished to the applicant along with the order of punishment Dt.7.12.1990 that the punishment of dismissal imposed upon the applicant is too harsh having regard to the gravity of charges that mere unauthorised absence without ascertaining the reasons which compelled the applicant to remain absent from duty itself is not a ground to impose the extreme penalty of dismissal.

The first contention of the learned counsel for the respondents placed before us the entire inquiry proceedings. On going through the inquiry proceedings and also considering the submission made by the learned counsel for the respondents, We are of the view that the inquiry was held as per rules.

We requested the learned counsel for the applicant to go through the proceedings of the inquiry and to state whether the board of inquiry ~~dealt with the matter~~

The learned counsel went through the records of the inquiry and submitted that signatures of the applicant appearing in the records of inquiry are forged ones that the board of inquiry obtained signatures of the applicant on blank papers and got typed the matter which was convenient or suitable for them. Even we directed the learned counsel for the applicant to keep the applicant present and to let him go through the proceedings of the inquiry and <sup>to</sup> state whether the signatures in

*B* the inquiry records are his or not.

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the inquiry records are his or not. Though in the first instance the learned counsel for the applicant agreed for such a proposal, but subsequently he resiled from the same. He submitted that the matter may be decided on merits. Having gone through the records of the inquiry and also the various submissions and applications made by the applicant during the inquiry we are fully satisfied that the Board of inquiry gave ample and full opportunity to the applicant in the disciplinary proceedings. His statement that his signatures <sup>in the records</sup> are forged cannot be accepted. At one breath the learned counsel for the applicant submits that the signatures of the applicant in the records of the inquiry are forged. At another breath, the learned counsel submits that the Board of inquiry obtained the signatures of the applicant on blank papers under duress and prepared the matter suitable for them. We are not prepared to accept the said contention of the learned counsel for the applicant. The applicant nowhere in the OA imputed any malafide against the Board of inquiry.

We are not prepared to accept the contention that the inquiry was conducted behind the back of the applicant and without his knowledge. In fact, in the records of the inquiry proceedings there are copies of letters wherein the Board of inquiry intimated the applicant in advance the place date and time of hearing.

Hence the first contention of the learned counsel for the applicant is liable to be rejected.

The second contention of the applicant is that before passing the impugned order of dismissal Dt.7.12.90

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he was not furnished with the copy of the report of the Board of inquiry and this has resulted in violation of principles of natural justice. It is his case that he has not been given sufficient opportunity to explain the observations made by the Board of inquiry. The fact that the respondent -1 furnished the copy of the report of the Board of inquiry to the applicant along with copy of the order of dismissal Dt.7.12.90 is not in dispute. Even in para-7 in the counter, the respondents categorically admit that they had furnished the copy of the report of the Board of inquiry along with order of dismissal on 7.12.90. Even in the reply to the rejoinder the respondents

Therefore in our humble view there is a technical lapse on the part of the respondent-1. The respondent-1 should have given the copy of the report of the Board of inquiry to the applicant before taking any decision and should have given a reasonable time to the applicant to represent against it. The respondent-1 then should have considered the findings of the Board of inquiry, the explanation of the applicant and should have taken a decision as to inflict the punishment or otherwise. Hence in our view the second contention of the applicant deserves to be accepted.

The next contention of the learned counsel for the applicant is that the punishment imposed on the applicant is too severe and harsh having regard to the gravity of charges. As already observed the main charge related to unauthorised absence from 2.9.95 to 2.1.86. It is stated by the applicant that on 9.9.95 he had submitted an application for sanction of leave on medical grounds. The respondent-1 should have considered whether there was any justification for the applicant

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to remain absent from duty and whether the grounds submitted in the leave application Dt.9.9.95 were true or not. We also feel that punishment of dismissal appear to be too harsh.

We have made this observation knowing fully well the limitations of the Tribunal in regard to the interference with the punishment imposed by the disciplinary authorities. As we are setting aside the impugned orders on account of technical lapse stated above we impress upon the respondent -1 to take a pragmatic view of the matter before imposing punishment which he feels just, reasonable and proper.

Since the disciplinary authority failed to furnish a copy of the report of the Board of Inquiry, to the applicant and failed to give a reasonable liberty to the applicant to represent against it we are constrained to set aside the impugned orders.

Hence we feel it proper to issue the following directions to Respondent-1 :-

(i) The impugned orders dated 7.12.90 and 13.3.91 passed by R-1 and R-2 are hereby set-aside.

(ii) Liberty is given to the respondents to pursue the disciplinary proceedings from the stage of supplying a copy of the inquiry report. If a copy of the inquiry report has already been supplied to the applicant, he should be informed so within 15 days for giving his explanation.



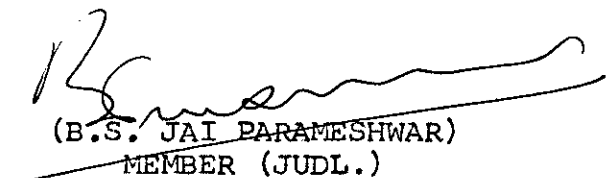
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(iii) The applicant should submit the reply within one month from the date of receipt of a copy of the inquiry report or on receipt of the letter informing him the fact that a copy of the inquiry report had already been given to him. On the basis of the explanation received, the disciplinary authority should take a suitable decision as regards continuation of the disciplinary proceedings.

(iv) The treatment of the period from 7.12.90 till the date of his reinstatement shall be decided by the disciplinary authority in accordance with the rules.

With the above directions, the OA is disposed of.  
No order as to costs

(Inquiry proceedings consisting of 3 files are returned to the learned counsel for the respondents under proper acknowledgement)

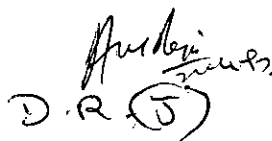
  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL.)

  
(R. RANGARAJAN)  
MEMBER (ADMN.)

17.4.97

Date: 17<sup>th</sup> April 1997

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D.R. (J)

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TYPED BY  
COMPARED BY

CHECKED  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. S. RAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:  
M(J)

DATED: 17/4/97

ORDER/JUDGEMENT

R.A/C.P/M.A.No.

in

O.A.No. 100/84

ADMITTED INTERIM DIRECTIONS ISSUED  
ALLUDED  
DISPOSED OF WITH DIRECTIONS  
DISMISSED  
DISMISSED AS WITHDRAWN  
ORDERED/REJECTED  
NO ORDER AS TO COSTS

YLKR

II COURT

