

62

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

OA.1373/95

dt. 24-3-98

R. Sanyasi Appadu

: Applicant

versus

1. The Flag Officer Commanding-in-Chief  
Eastern Naval Command  
Visakhapatnam - 14

2. Chief Staff Officer (P&A)  
Eastern Naval Command, Naval Base  
Visakhapatnam - 14

3. The General Manager  
Naval Armament Depot,  
Visakhapatnam - 9 : Respondents

Counsel for the applicant : P. Bhaskar  
Advocate

Counsel for the respondents : V. Bhimanna  
CGSC

CORAM

HON. MR. A.V. HARIDASAN, VICE CHAIRMAN, (ERNAKULAM BENCH)

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

OA. 1373/95

1a

at. 24.3.1998

## Order

Order (per Hon. Mr. H. Rajendra Prasad, Member (Admn.) *✓* *mp*)

The applicant was proceeded against under Rule 14 of CCS(CCA) Rules, 1965 for unauthorised absence from 31-3-1986 till the date of issue of the Memo of charges. He participated in the inquiry which was held in that connection and also availed of the service of a Defence Assistant. A copy of the inquiry report - which held the charge as duly established - was supplied to him and the applicant submitted his final explanation. Taking into consideration the facts and circumstances of the case as well as the report of the inquiry officer and the applicant's final defence, the Disciplinary Authority imposed the punishment of reduction of pay by three stages for a period of two years during which, it was stipulated, he would not earn increments, and further that the reduction would have the effect of postponing his future increments. Aggrieved by this order the applicant submitted an appeal. It was disposed of by the Appellate Authority confirming the punishment imposed by the Disciplinary Authority.

2. The present OA is against the orders passed by the Disciplinary as well as the Appellate Authority.

3. The case of the applicant is based on the following :

- 1) The Attendance Register of 1986 was not produced during the inquiry.
- 2) He had sent an intimation of sickness on 18-7-1986 conveying his inability to resume duties as directed by the authorities. The Certificate of Posting, produced by him in support of this plea was rejected by the Inquiry Officer

*Q/*  
*24/3*

..2.

for the reasons that it did not conclusively prove the actual despatch of the letter which is supposed to have contained the Medical Certificate in the envelope related to the Certificate of Posting.

iii) Although he had submitted a medical certificate indicating his sickness and his immobility during the period of his treatment, the Inquiry Officer rejected the same whereas he could have referred him for a second medical opinion.

iv) The evidence was 'construed'.

v) The Disciplinary Authority passed the orders of punishment with nearly a two-year delay.

vi) The orders passed by the Disciplinary authority was a result of non-application of the mind.

vii) The Appellate Authority disposed of the appeal without considering the various grounds and points of law raised by the applicant.

4. The grounds adduced by the applicant in support of his case are :

a) The punishment is not permissible and sustainable.

b) The finalisation of the Departmental case was unduly delayed.

c) The prosecution had failed to prove the charges.

d) Extraneous evidence was relied upon.

e) The inquiry officer's rejection of medical certificate, and then not sending him for second medical opinion, was incorrect.

f) The punishment was imposed mechanically.

g) The Appellate Authority delayed the disposal of the appeal, besides going well beyond his 'authority'.

h) The order of the Appellate Authority is non-speaking.

~~Tr  
m/s~~

5. The respondents in their counter-affidavit explain that the applicant had initially applied for leave for a very limited period, and, after the expiry of the leave granted to him, applied again for an extension. Domestic affairs were stated to be the reason for the leave applied for. He was informed that extension of leave applied for him was not approved. The applicant received the said communication but did not turn up for duty. He was, therefore, once again asked to resume duty. This letter too was received and acknowledged by the applicant, who <sup>thereupon</sup> submitted his resignation. It was not accepted. The non-acceptance of resignation was also conveyed to the applicant, and was received and acknowledged by him. Eventually, he reported for duty on 16-12-1989, having remained absent for more than three years. On return to duty he submitted a Medical Certificate, covering the entire period of unapproved absence, as also a Certificate of Fitness issued by a Physician in the local KGH Government Hospital.

proceedings, it is submitted by the respondents that before a final order was passed by the Disciplinary authority based on the inquiry report and applicant's defence statement, an opportunity was provided to the charged official to produce a reliable proof of his sickness, like for example, the record of admission to the hospital, his discharge therefrom, relevant medical investigation reports, X-rays, prescriptions, and cash bills. All that the applicant was, however, able to produce were some X-rays. They deny that any extraneous evidence was at all taken into account by either the Disciplinary Authority or the Appellate Authority and that the applicant had not in any case shown what this extraneous evidence was except making a bald assertion in this regard. They submit further that the

Attendance Register for 1986 was not traceable and the register for the years 1987, 1988, and 1989 did not, of course, contain his name apparently because he had not been attending his duties for a unconscionably long time. The mere fact that his name was not found entered in the Attendance Register during 1987, 1988 and 1989 did not absolve him of the charges of unauthorised absence specially when the applicant had himself submitted a Medical Certificate for the entire period of his absence from 31-3-1986 to 15-3-1989. No intimation of any kind was received from the applicant at any time during this period; the certificate (of Posting) projected as a positive proof of such intimation did not, however, conclusively establish that the purported letter was sent at all, or that it contained an intimation of his absence, as claimed by the applicant.

7. The respondents point out that the Medical Certificate indicated he was totally confined to bed for three years and could move around only with some help after a certain stage, ~~.....~~ throughout that period he was residing at Visakhapatnam. Surprisingly, however, the applicant, ~~.....~~ this period is said to have received at his leave address elsewhere and also acknowledged, as many as five communications sent to him by his official superiors. All of this is highly suspect and that he was not indeed residing in Visakhapatnam as claimed by him.

8. The question of the Inquiry Officer accepting, or rejecting, the Medical Certificate does not really arise in this case since it was not within his power to do so, since the said Medical Certificates were in any case sent not to the Inquiry Officer but to the leave sanctioning authority of the applicant. Any second Medical Opinion, if considered necessary, had therefore, to be sought for, not by the Inquiry Officer, but by the authority concerned.

8/13

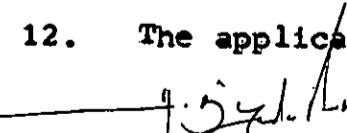
..5.

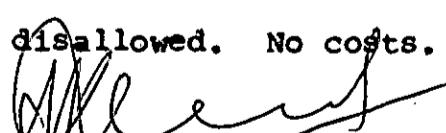
9. It is also pointed out that whereas the leave initially applied for was for the purpose of attending to domestic affairs, the absence was later sought to be covered by his sickness.

10. Finally, it is submitted that the Disciplinary Authority, having regard to all facts, the findings of the Inquiry Officer, the final representation of the applicant, and having given the applicant one last opportunity to produce relevant documents in support of his sickness (without any avail) ultimately passed the order on merits of the case on the basis of facts and record before him. It is added that the Appellate Authority had also considered all facts of the case before passing his orders in this case.

11. The facts of the case as borne out by the record, as also the submissions during the hearing, point clearly to the unrefuted lapse of the applicants. None of the grounds taken by the applicant, or those adduced in support of his case, make a convincing reading. The applicant has not been able to establish that he was genuinely sick or confined to bed and was therefore unable to move around without assistance. On the contrary his own conduct <sup>during this period</sup> belies his assertions. It is not known what extraneous evidence the applicant refers to as he has not spelt it out beyond <sup>making</sup> a bald unsupported statement to this effect. We do not find the orders passed by either the Disciplinary Authority or the Appellate Authority to be perverse or impermissible, on any count, or to be against any rule.

12. The application fails. The OA is disallowed. No costs.

  
(H. Rajendra Prasad)  
Member (Admn.)

  
(A.V. Haridasan)  
Vice Chairman (EB)

Dated : 24 MAR 98

sk

  
Deputy Registrar

O.A. 1373/95.

To

1. The Flag Officer, Commanding-in-Chief,  
Eastern Naval Command, Visakhapatnam-14.
2. The Chief Staff Officer(P&A),  
Eastern Naval Command, Naval Base,  
Visakhapatnam-14.
3. The General Manager, Naval Armament Depot,  
Visakhapatnam-9.
4. One copy to Mr.P.Bhaskar Advocate, CAT.Hyd.
5. One copy to Mr.V.Bhimanna, Addl.CGSC. CAT.Hyd.
6. One copy to HHRP.M.(A) CAT.Hyd.
7. One copy to DR(A) CAT.Hyd.
8. One spare copy.

pvm

31/3/98  
TYPED BY  
COMPARED BY

I Court  
CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE A V Hariharan  
VICE-CHAIRMAN (Emakulam Bench)  
AND  
THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

DATED: 26-3-1998

ORDER/JUDGMENT:

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

in  
O.A. No. 1373/95.

T.A. No.

(W.P.)

Admitted and Interim directions  
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

