

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.297 of 1999.

DATE OF DECISION.

Between:

S.Jalender.

..Applicant

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1. The General Manager, Ordnance Factory Project, Medak at Yeddumailaram, Medak District, Andhra Pradesh-502 110.

2. The Additional Director General, Ordnance Factories and Appellate Authority, Armoured Vehicles Head Quarters, Avadi, Chennai, Tamilnadu State-600 002.

...Respondents

COUNSEL FOR THE APPLICANT :: Mr.D.Pandu Ranga Reddy

COUNSEL FOR THE RESPONDENTS:: Mr.B.Narsimha Sharma

CCRAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

THE HON'BLE SRI S.MANICKA VASAGAM, MEMBER (ADMN.)

: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

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1. The applicant in this OA claims to be entitled to reinstatement into service with all consequential benefits, ~~by which~~ ^(x) his services were terminated by Order dated 24-9-1993 by the General Manager, Ordnance Factory Project, Yeddumailaram, Medak, where he was working as Fitter (Genl.).
2. A Charge Memo dated 11-2-1992 under Rule 14 of the CCS(CCA) Rules, 1965 was served on the applicant alleging that he was irregular in attendance during the period from January, 1988 to October, 1988 and that he was unauthorisedly absent from duty from 31-8-1988 to 19-1-1989 and 10-2-1989 to 14-3-1989.
3. The applicant is assailing his termination mainly on the ground that he was not given the opportunity of being heard before passing his termination order. On his termination the applicant approached this Tribunal by filing OA.No.876 of 1989, which was disposed of on 20-6-1991, holding that the termination was bad in law and the applicant was entitled to be reinstated into service with all consequential benefits. The respondents therefore by letter dated 22-1-1992, granted all service benefits excluding backwages. The applicant sent a letter of explanation and requested for backwages. Oral representations were made by the applicant on several occasions and the respondents through letter No.1957, dated 22-10-1992, granted all service benefits including backwages after a lapse of one year.

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4. Subsequently the Disciplinary Proceedings were initiated by the Disciplinary Authority in accordance with the rules and after affording due opportunity to the applicant, penalty of removal from service was imposed against the applicant.

5. According to the respondents the main charge against the applicant was that of wilful neglect of duty and habitual irregular attendance during January, 1988 to October, 1988, and continued unauthorised absence from duty from 31-10-1988 to 19-1-1989 and from 10-2-1989 to 14-3-1989. It was also alleged against the applicant that he failed to maintain devotion to duty and his conduct was unbecoming of a Government Servant. The applicant denied the charges levelled against him, vide his written statement of defence dated 21-2-1992, and therefore a Court of enquiry was ordered, vide Order dated 17-3-1992 to enquire into the charges levelled against the applicant. A copy of the proceedings of the Court of enquiry was forwarded to the applicant at his recorded home address, vide Memorandum dated 18-6-1993, so as to enable the applicant to make his representation or submission, if any, on the same. The applicant submitted his representation dated 13-7-1993, which according to the respondents was carefully considered by the General Manager. In the impugned Order dated 24-9-1993, the General Manager observed that the statement made by the applicant that

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he met with some accident in 1988, which was the cause of his frequent absence from duty could not be accepted because, firstly, he did not submit any medical certificate to that effect and secondly because, he did not make any mention of an accident on an earlier occasion. The Disciplinary Authority in his impugned Order also observed that the cause of the death of his brother advanced by the applicant as well as his physical and mental problems were not convincing. The authority further observed that on careful consideration of all the documents relevant to the charges including the proceedings of the Court of enquiry and the representation dated 13-7-1993, submitted by the applicant, the Disciplinary Authority agreed with the findings of the Enquiry Officer and held that the ^{gross} charges of/misconduct, viz., i) wilful neglect of duty; ii) habitual irregular attendance during January, 1988 to October, 1988, and continued unauthorised absence from duty from 31-10-1988 to 19-1-1989 and from 10-2-1989 to 14-3-1989; iii) failure to maintain devotion to duty; and iv) Conduct unbecoming of a Government Servant, alleged against him, vide memorandum dated 11-2-1992 stood established beyond reasonable doubt, and therefore, the Disciplinary Authority in exercise of the powers conferred under Rule 15 of the CCS(CCA)Rules, 1965, imposed the penalty of the applicant's removal from service with effect from the After-noon of 24-9-1993.

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6. With regard to the alleged irregularity in attendance, the following particulars are stated in Paragraph 2 of the counter affidavit:-

Year	No. of working days	No. of days present	No. of days absent
1987 (from 4/87)	219	189	30
1988	298	122	176
1989 (upto date of termination on 14/03/89)	59	16	43
1990	-	-	-
1991 (from 8/11/91 onwards on re-instatement in service)	-	-	- 13
1992	-	-	294
1993 (upto Aug '93)	-	-	240

It is further pointed out by the respondents that in OA.No.876 of 1989, the direction with regard to reinstatement was given mainly on the ground that the opportunity of hearing was not extended to the applicant before issuing the termination order. Even after his reinstatement, according to the respondents, the applicant continued to remain absent from duty and therefore he was served with a memorandum of charges under Rule 14 of the CCS(CCA) Rules on 11-2-1992 and a departmental enquiry was instituted. However, the

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applicant did not attend the enquiry inspite of sending intimations to him with regard to the enquiry on three occasions at his leave address. The enquiry was therefore conducted ex parte. On the basis of the evidence adduced during the enquiry, the Enquiry Officer came to the conclusion that the charges levelled against the applicant had been established beyond reasonable doubt. The Enquiry Report was thereafter forwarded to the applicant on 18-6-1993 at his residential address with a view to enable him to make his submission or representation. In his reply dated 13-7-1993 to the Enquiry Report, he assured that he would perform his duties more faithfully in future. However, after considering the evidence on record, the Disciplinary Authority imposed the penalty of removal from service with effect from 24-9-1993.

7. Against the penalty order, the applicant filed OA. No.426 of 1994 before this Tribunal, which was disposed of on 12-3-1997 with a directive to exhaust the departmental remedy by filing an appeal before the Appellate Authority. Accordingly, an appeal dated 25-4-1997 was preferred by the applicant to the Appellate Authority. The Appellate Authority by passing a Speaking Order dated 23-2-1998, dismissed the applicant's appeal and confirmed the penalty on him.

8. The respondents seem to have been mainly influenced by the fact that the chronic absence of the applicant

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on flimsy grounds during 1992-1993 showed that he lacked interest in his work and was unfit for continued retention in Government service, and therefore, according to the respondents, there was no other alternative but to remove him from service.

9. After closely examining the above facts and the conduct of the applicant, we believe that nothing extraordinary emerges from the material on record, which could warrant interference with the order of termination passed by the respondents. The Tribunal has to be slow in ~~meddling~~⁽¹⁾ with the executive decision terminating the services of a delinquent, who is found to be a habitual offender with regard to his attendance. Keeping also in view the fact that inspite of opportunity of hearing having been granted to the applicant at the instances of the order passed by the Tribunal in OA.No.876 of 1989, the applicant did not show any respect for the orders of the Tribunal, which was moved at the instances of the applicant himself for securing the relief with regard to giving him the opportunity of hearing. We cannot go to the rescue of such recalcitrant employees and we also do not find that any fact has come on record which could persuade us to give a second look at the order of termination passed by the respondents.

10. Under the given facts and circumstances, we can also not give the benefit of the principle of the "punishment being disproportionate to the misconduct".

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alleged and proved, no malice is also alleged against the authorities, who were associated with the Disciplinary Proceedings and on that account also the impugned order does not warrant either being quashed or set aside or to mitigate the gravity of the order by converting it to any lessor punishment. The applicant, in our view, has miserably failed to make out any case for interference with the impugned order of the respondents.

11. In the result, we find no merit in the OA and the OA is dismissed; however, with no order as to costs.

S. Manicka Vasagam
(S. MANICKA VASAGAM)
MEMBER (ADMN.)

D. H. Nasir
(D. H. NASIR)
VICE CHAIRMAN

DATED: this the 2nd day of January, 2000

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