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Central Administrative Tribunal  
Jabalpur Bench

OA No. 79/05

Jabalpur, this the 27<sup>th</sup> day of October 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman  
Hon'ble Mr.A.K.Gaur, Judicial Member

K.S.Duggal  
S/o Shri Jaswant Singh Duggal  
Assistant Foreman (Retd.)  
Sr.Quality Assistant Establishment  
(ARMTS), G.C.F., Jabalpur  
R/o MIG 40, Govind Bhavan  
South Civil Lines  
Jabalpur.

Applicant

(By advocate Shri Manoj Sharma)

Versus

1. Union of India  
Ministry of Defence  
Department of Defence Production  
Raksha Utpadan Vibhag  
Nirman Bhawan  
New Delhi through its Secretary.
  2. Director General, Quality Assurance  
Directorate General of Quality Assurance  
South Block  
New Delhi.
  3. The Director, Quality Assurance  
(Vehicle), G.Block  
D.H.Q., P.O.  
New Delhi.
  4. The Sr.Inspector  
Sr.Quality Assurance Establishment  
(ARMTS)  
GCF, Jabalpur.
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5. The Controller of Quality Assurance  
 Controllerate of Quality Assurance  
 (OFV), Vehicle Factory  
 Jabalpur.

Respondents.

(By advocate Shri S.A.Dharmadhikari)

ORDER

By A.K.Gaur, Judicial Member

By means of this OA, the applicant has prayed for following main reliefs:

- (i) Quash the impugned order dated 24.12.2004 (A-1) and the entire departmental inquiry in question.
- (ii) Direct the respondents not to take any coercive action with regard to curtailment of pensionary benefits of applicant.
- (iii) Direct the respondents to treat the entire period from October 1995 till joining as duty period, with all consequential benefits.

2. The applicant has already been superannuated from G.C.F, Jabalpur on 31.12.03. On 2.11.92, he was posted as Assistant Foreman in Controllerate of Quality Assurance, Vehicle Factory, Jabalpur. The wife of the applicant is a State Government employee presently posted at Jabalpur.

3. While working at Jabalpur, the applicant was transferred to Medak (A.P.) (A-2). A representation was made by the applicant against aforesaid transfer, but having no fruitful result, approached this Tribunal by filing OA No.341/95 and the same was disposed of with a direction to consider the case of the applicant, keeping in mind the delicate physical condition of his wife, who had suffered serious injuries in an accident and was under the treatment of a neuro surgeon.

4. Against the order dated 4.3.95, the applicant filed a review application No.47 of 95. This Tribunal issued interim direction on 19.9.95, not to relive the applicant (A-4), but on 12.10.95, the aforesaid review application was dismissed (A-5).

5. According to the applicant, he proceeded on medical leave w.e.f. 14.10.95. After having recovered partially from the ailment, he

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went to join his duties but was prevented from entering into the factory premises.

6. The case of the applicant is that he learnt from reliable sources that the superior authorities had instructed the security chageman, Gate No.6, Vehicle Factory, not to permit the applicant to enter into Factory premises, until further directions received from CQA (OFV), Jabalpur. This action of the respondents caused serious mental torture to the applicant and his condition further deteriorated and he went on leave (A-6). It is pertinent to note that the applicant was transferred on 29.5.95 but not paid salary upto April 1996 (A-7). The applicant totally broke down financially as he was not getting salary since October 1995. The applicant again filed OA No.568 of 99 which was finally disposed of by this Tribunal on 8.10.99 with a direction to the respondents to pass a fresh order of transfer and the period of the absence was directed to be treated as per Rules (A-10).

6. Against order dated 8.10.99, review filed by the applicant was also dismissed vide order dated 20.1.2000 (A-11). As directions passed by this Tribunal in OA were not implemented, the applicant was constrained to file contempt petition No.7 of 2000 and ultimately the same was dismissed.

7. In the meantime, the respondents challenged the validity of the order passed in the above OA and review application by way of filing writ petitions in High Court. Vide order dated 9.10.2000, the High Court issued notices to the applicant and directed the respondents that "subject to ultimate decision in W.P, the applicant be allowed to join at Jabalpur as per order of the Tribunal (A-12). Vide order dated 19.3.03, the Hon'ble High Court while finally deciding the writ petition modified the order dated 8.10.99 passed in the OA in part and directed the respondents that the absence from duty of the applicant must be computed only for the purposes of pension and Hon'ble High Court also hoped and trusted the department to behave like a model employer (A-13). The respondents went in appeal (CA No.22068/03) before the Apex Court. In the meantime, the respondents published a notice in the local newspaper "Nav Bharat", Jabalpur on 26.4.2000

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indicating that departmental inquiry has been initiated against the applicant under Rule 14 of CCS (CCA) Conduct Rules for remaining unauthorized absence from 20.10.95 and for which a charge sheet dated 4.3.99 was issued to him. In the notice, it was clearly enumerated that a copy of inquiry report dated 27.10.99 was sent to the applicant at his residence, but the same was returned with the postal endorsement "refused to accept".

8. The notice, inter-alia, directed the applicant to furnish a representation within 15 days from the publication of notice (A-14). The applicant promptly submitted a representation dated 28.4.2000 to the respondents (A-15). Against ex-parte departmental inquiry, the applicant approached this Tribunal by way of filing OA No.516/2000 and vide order dated 21.6.2000, this Tribunal stayed the departmental inquiry (A-16). Ultimately, the aforesaid OA was dismissed by this Tribunal on 31.7.03, in terms of direction given by Hon'ble High Court in W.P. No.2242/2000 (A-17). Against the order of High court, Special Leave Petition No.2206 of 2003 was filed before Hon'ble Supreme Court. In the meantime, vide order dated 13.8.03, respondents directed the applicant to furnish his representation, if any, with regard to pending departmental inquiry within 15 days, failing which it would be presumed that the applicant had nothing to say in the matter and the case would be proceeded further (A-19). The applicant accordingly, replied vide representation dated 28.8.03 (A-20). Vide order dated 24.12.04, the respondents imposed penalty of 5% permanent reduction in pension of the applicant and the entire intervening period was treated as unauthorized (A-1).

9. According to applicant, the impugned order suffers from malafides and arbitrariness as he was never served with the charge sheet or any document pertaining to the enquiry and the entire inquiry proceedings suffer from violation of principles of natural justice and fair play.

10. Respondents have filed a short reply as well as detailed reply and denied the allegations contained in the OA. It has been stated on behalf of the respondents that after rejection of review by Tribunal

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vide order dated 12.10.95, movement order dated 19.10.2005 was issued, whereby the applicant was relieved to join the new establishment w.e.f. 19.10.05 (AN). The movement order was pasted on the main door of applicant's residence on 16.10.95 itself. However, the movement order sent twice by registered post was received back undelivered, with the postal endorsement "refused to accept".

11. As the applicant failed to join the new establishment and continued to remain absent unauthorizedly, major penalty proceedings were initiated against him on the charge of unauthorized absence w.e.f. 20.10.95 onward, vide charge sheet dated 4.3.99. The applicant was granted adequate opportunity to participate in the inquiry but he failed to appear in the inquiry and hence the inquiry was held ex-parte. All the communications issued to the charged officer were returned by the postal authorities undelivered with the postal remarks "refused to accept". Copy of enquiry report was also sent to the applicant. The inquiry officer also furnished his representation to the enquiry report and the same was considered by the disciplinary authority. The competent authority after considering the case of the applicant in the light of decisions rendered by Hon'ble High Court, Hon'ble Supreme Court and in the facts and circumstances of the case, held that applicant guilty of charges and misconduct and awarded penalty of 5% permanent cut in pension with the approval of the President.

12. The contention of the respondents in the detailed reply is that the applicant has shown a total disrespect to the laid down service norms since inception of inquiry by not cooperating with the same and failed to attend the enquiry intentionally. The applicant always kept on dragging the issue to the court without adhering to rules and that is why Hon'ble Apex Court in its order dated 12.7.04 had clearly observed that "if in the disciplinary proceedings it is held that the respondent was absent from duty without sufficient cause then the direction regarding regularization of the period during which the applicant was absent, will no longer apply even for the purpose of pension".

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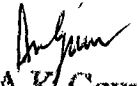
13. In the detailed reply the respondents have also stated that the penalty imposed upon the applicant is not only just but also in consonance with the proven grave misconduct, which was established after a departmental inquiry, initiated in accordance with CCS (CCA) Rules 1965.

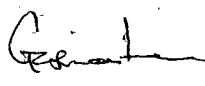
14. In reply to Para 4 (10) & 4 (11) of the OA, the respondents have denied that the applicant was ever prohibited from entering into the factory premises as alleged.

15. We have heard Shri S.Ganguly, holding brief of Shri M.K.Sharma, learned counsel for the applicant and Shri S.K.Dharmadhikari, learned counsel for the respondents at length.

16. In our considered view, the inquiry officer has rightly held the charges of absence from duty as proved and passed the penalty of 5% permanent cut in pension. We have also seen the directions and observations of the Hon'ble Apex Court and come to definite conclusion that the SLP was not out rightly dismissed by Hon'ble Supreme Court without any interference as alleged by the applicant. The Hon'ble Supreme Court has clearly observed that "neither the order of Tribunal nor the order of High Court shall prejudice the disciplinary proceedings pending against the respondents. In the disciplinary proceedings, if it is held that the respondent was absent from duty without sufficient cause, then the direction regarding regularization of the period during which the applicant was absent will no long apply even for the purposes of computation of pension". The disciplinary authority has specifically observed that the applicant was absent without sufficient cause. In the peculiar facts and circumstances of the case, the applicant has failed to make out any grounds so as to call for interference by this Tribunal. The OA being bereft of merit and substance, deserves to be dismissed.

7. We accordingly dismiss the OA. Parties to bear costs.

  
(A.K. Gaur)  
Judicial Member

  
(Dr. G.C. Srivastava)  
Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अद्यो गित:-

- (1) सचिव, उच्च न्यायालय का प्रबन्धिकालय, जबलपुर
- (2) आदेश श्री/श्रीमती, ..... के काउंसल
- (3) प्रत्यक्ष श्री/श्रीमती, ..... के काउंसल
- (4) बंधुपाल, बंधुपाल, जबलपुर काउंसल

सूचना एवं आवश्यक कार्यवाही हेतु  
उप रजिस्ट्रार

M. V. G. Sharma  
D. N. 188  
S. A. Sharma & Co.  
D. N. 188

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1-11-06