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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 483 of 2005

Jabalpur, this the 31<sup>st</sup> day of July, 2006  
Hon'ble Shri Justice B. Panigrahi, Chairman  
Hon'ble Dr. G.C. Srivastava, Vice Chairman  
Jagadeesh, S/o. Shri Chotelal Chouhan,  
aged about 39 years, Cook (Class IV),  
Military College of Telecommunication  
Engineering, Mhow (MP)-453 441. ... Applicant

(By Advocate - Shri I.H. Khan)

V e r s u s

1. Union of India, through  
the Secretary, Government of  
India, Ministry of Defence,  
New Delhi-110011.
2. The Dy. Director General of Signals,  
Sigs DTE.Army Hear Quarters,  
General Staff Branch,  
DHQ, PO., New Delhi.
3. The Commandant, Military College  
of Telecommunication Engg.  
Mhow (MP)-453 441. ... Respondents

(By Advocate - Shri Umesh Gajankush)

O R D E R

By Dr. G.C. Srivastava, Vice Chairman -

Through this Original Application, the applicant has challenged the order of disciplinary authority confirmed by the appellate authority imposing the penalty of removal from service. The order of the disciplinary authority was passed on 28.5.2004 (annexure A-1) and that of the appellate authority on 20.1.2005 (annexure A-7).

2. The ground for the disciplinary proceeding has been continued absence from duty without prior sanction of leave during the period 6th July 2003 to 10th November, 2003. Besides taking the plea that the departmental inquiry was not fair, the main plea of the applicant is that considering his long qualifying service of 21 years, "it would have been

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more appropriate to send him on voluntary/compulsory retirement rather than just throwing him out of employment".

3. The facts in <sup>nut</sup> ~~sheet~~ are that the applicant has been working as a Cook in Army Mess since 22.9.1983. He was found absent on various dates during the period 6th July to 10th <sup>November</sup> ~~July~~, 2003 without taking leave. In past also he has been absent without leave for different periods for which once he was awarded the penalty of stoppage of annual increment of two years with cumulative effect and another time with stoppage of annual increment for one year without cumulative effect. Despite these punishments, he has not shown any improvement in his punctuality and devotion to duty. In the inquiry that was held into these charges, the charged official appeared personally and admitted that he was absent from duty without leave and without informing his office. The inquiry officer held the charges as proved and the disciplinary authority imposed the penalty of removal from service, which shall not be a disqualification for future employment under the Government. The appeal filed against the penalty of removal from service was rejected by the appellate authority and penalty of removal from service was upheld.

4. The respondents in their reply have opposed the prayer of the applicant and submitted that the disciplinary proceedings right from initiation to the dismissal of appeal have been held strictly accordingly to the rules and in view of the fact that the applicant is a habitual absentee, the penalty of removal from service is just and adequate. The records of the inquiry proceedings were also produced before us for perusal.

5. We have heard the learned counsel for both the parties and seen the records of the case. We do not find any legal infirmity in the proceedings especially in view of the fact that the applicant appeared personally before the inquiry officer on 27.1.2004 and in his oral submission which was recorded by the inquiry officer in the presence of the

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presenting officer, admitted charges and signed the statement on 5.2.2004. This leaves us <sup>with</sup> no doubt that the applicant has been absenting himself from duty very frequently without prior sanction of leave. The inquiry/has, therefore, rightly held the charges proved.

6. It has time and again been ruled by the apex court that the Tribunals are not required to interfere with the quantum of punishment unless the penalty is found to be shockingly disproportionate to the guilt. In the instant case the penalty of removal from service has been imposed on the applicant who had served for 21 years as a cook in the army mess. Although the penalty does not disqualify the applicant from seeking another job under the Government, it is not only difficult but almost impossible for any person of his age to get another job. The learned counsel for the applicant has cited the case of V.R.Katarki Vs. State of Karnataka, AIR 1991 SC 1241 in which the penalty of dismissal from service was reduced to compulsory retirement keeping the residue of the charges in view. In the present case also keeping in view the fact that the applicant was working as a cook in Army mess and also that the charges relate to absence which as per the applicant was caused because of medical problems (some medical certificates have been attached by the applicant in his OA) and family circumstances, we are inclined to hold that removal of the applicant from service <sup>is</sup> out of proportion and compulsory retirement would meet the ends of justice. However, instead of passing any firm direction in this regard, we leave it to the respondents to take a final decision in the matter keeping our observations made above in view.

7. In the result, the OA is allowed in part. The order passed by the appellate authority is quashed and set aside. The matter is remitted back to the appellate authority

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to consider the quantum of punishment and pass a detailed and speaking order, keeping our observations made in para 6 above in view, within a period of two months from the date of receipt of a copy of this order. No costs.

General  
(Dr. G.C. Srivastava)  
Vice Chairman

*B. Panigrahi*  
(B. Panigrahi)  
Chairman

rkv.

प्रधानमंत्री राज्यपाल  
प्रतिनिधि अवैधिक:— जबलपुर, दि  
 (1) सादिय, उच्च न्यायालय दाय प्रमोटिशन, जबलपुर  
 (2) आकेश श्री/भीमही/द्व.  
 (3) प्रराजी श्री/भीमती/द्व.  
 (4) न्यायपाल, केप्रजा, जबलपुर व्या.द्व.  
 सूचना एवं आवश्यक कार्रवाई होता

का उत्तराल द्वे कार्रवाल

*H. Khan Dhankher*  
*H. Khan Dhankher*  
*Done*

२८/८/०६ उप रजिस्ट्रार

*Issued*  
2-8-06