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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 739 of 2005

Jabalpur, this the 24th day of April, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Shri K.B.S. Rajan, Judicial Member

Tejkunwar Chouhan, S/o. Late Shri
Balwant Chouhan, aged 34 years,
Occupation Unemployed, R/o. : 4,
Subhash Chowk, Mhow Gaon,
Teh. Mhow, Dist. Indore (MP). ... Applicant

(By Advocate - Shri S.P. Vakte)

V e r s u s

1. The Union of India, through
Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.

2. The Deputy Chief of Arby Staff
(Training & Coordination),
M.T.-7, Army Headquarters,
New Delhi.

3. The Commandant,
Army War College,
Mhow,
Teh. Mhow,
District Indore
(MP). ... Respondents

(By Advocate - Shri Umesh Gajankush)

**ORDER**

**By K.B.S. Rajan, Judicial Member** -

This is the second round of litigation. In the earlier round vide order dated 14th August, 2003 in OA No. 630/1998 this Tribunal held that it is mandatory upon the appellate authority to record a finding regarding proportionality of punishment and since in the earlier appellate order no finding, as such, were recorded the Tribunal quashed the appellate order and remanded the matter back to the appellate authority to consider the proportionality of the punishment and thereafter pass a reasoned and speaking order. By order dated 4th March, 2004, the appellate authority namely the Deputy Chief of Army Staff had upheld the penalty imposed upon the applicant by the disciplinary authority. The legal validity of this order is under challenge in this OA.

2. Briefly stated the applicant was proceeded against, under rule 14 of the CCS (CCA) Rules on account of unauthorized absence from 4.1.1995 till 16.3.1995, the date of issue of the charge sheet. As the applicant did not responded to the charge sheet, enquiry officer was appointed and enquiry was conducted. As per the enquiry officer's report communication about the date of hearing though sent to the applicant returned undelivered due to non availability of the individual and the enquiry officer had proceeded against the applicant ex-parte and held that the charge framed against the individual with regard to his being absentee without proper permission was sustained. A copy of the enquiry report was sent to the applicant vide covering letter dated 12th Mary, 1995. The applicant did not apparently make any

representation and the disciplinary authority by order dated 30.5.1995 imposed the penalty of dismissal from service against which the applicant had preferred an appeal dated 17.1.1997. By order dated 31.3.1998 the Deputy Chief of Army Staff, appellate authority rejected the appeal against which the applicant filed OA No. 630/1998 which was disposed of as stated above vide order dated 14th August, 2003. And the impugned order is in pursuance of the aforesaid order of the Tribunal.

3. The applicant has challenged the above order of the appellate authority on various grounds inter alia that the punishment awarded to the applicant is highly disproportionate and shocking the conscience. In addition he had challenged the said order as manifestly illegal grossly unjust and highly unreasonable and un-constitutional.

4. The respondents have contested the OA. According to them the applicant was habitual offender, insincere and careless worker as in the past he absented himself for 433 days during his total 6 years of service and as such the punishment awarded to the applicant was in the interest of the organization and not disproportionate to the amount of misconduct.

5. Arguments were heard and the documents perused.

6. The counsel for the applicant has vehemently argued that the appellate authority has committed a patent error in bringing in extraneous matter while passing the penalty order, in as much as, when the alleged habitual absenteeism was neither an article of charge nor formed part of the disciplinary authority's order, the appellate authority had specifically stated that the appellant's past record is clear dismal as in that he has absented

himself for 433 days during his total 6 years of service. It has been argued by the counsel that the past record has heavily ~~balled~~ weighed in the mind of the appellate authority to confirm the disciplinary authority's order of removal from service. This is clearly illegal. Again the counsel has submitted that the absence of the applicant was on account of serious illness of his mother and despite medical attention his mother unfortunately expired and when the applicant presented himself before the authorities on 4.4.1995 he was not allowed for joining his duties. The absence in all was only for a short span for which the penalty imposed is shocking and disproportionate. Even the extraneous matter having been taken into consideration, the same vitiates the entire order and for such unauthorized absence for a short duration the penalty of dismissal from service as, in many cases, held to be shocking disproportionate by the Courts.

7. In the case of A.P. SRTC Vs. Narsagaud, 2003 (2) SCC 212 under similar circumstances, the Labour Court had ordered ~~in~~ reinstatement but without back-wages. In this regard the observation of the Apex Court in ***A.P. SRTC v. Abdul Kareem,(2005) 6 SCC 36,*** is as under:

"In the case of *A.P. SRTC* v. *S. Narsagoud* this Court had occasion to deal with the identical controversy and succinctly crystallised the point of law. In that case the respondent was a Conductor in the employment of the appellant A.P. SRTC. He remained absent from duty between 5-6-1982 and 8-8-1982 and again between 13-10-1992 and 1-11-1992. A departmental inquiry was initiated against him on the charges of unauthorised absence which ended in the punishment of removal from service and a dispute was raised before the Labour Court. The Labour Court upheld the departmental enquiry and the findings arrived thereat, but the respondent was directed to be reinstated with continuity of service but without back wages. The learned Single Judge, on being approached by the respondent, directed the appellants to fix the wages payable to him on his reinstatement by

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taking into account the increments that he would have earned had he been in service during the period of absence from duty. This finding of the learned Single Judge was affirmed in an appeal by the Division Bench. This Court allowed the appeal preferred by A.P. SRTC.

**10.** The principles of law on the point are no more *res integra*. This Court in *S. Narsagoud* succinctly crystallised principle of law in para 9 of the judgment on SCC p. 215:

"*9.* We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

Even in the case of Abdul Kareem identical decision was pronounced by the Apex Court.

8. The argument advanced by the counsel for the applicant that extraneous circumstances have ~~bailed~~ weighed the decision has merits. A three Judges Bench of the Apex Court in the case of State of AP Vs. S.M. Nizamuddin Ali Khan, 1976 (4) SCC 745 has held that when extraneous matters have been taken into consideration and no opportunity of rebuttal of such matter was given to the delinquent, the order of penalty gets vitiated. In the instant case the habitual absenteeism is neither a part of article of charge nor did the disciplinary authority itself take into account. For the first time without the knowledge of the applicant, much less no opportunity to rebut, the appellate authority based his decision inter alia on the alleged past conduct of 433 days of absence. This certainly vitiates the appellate order.

9. Consequently the order of the appellate authority is quashed and set aside being based on extraneous matter. The order of the disciplinary authority is also set aside as the same is shocking disproportionate, as held in the case of Narsagaund and Abdul Kareem (supra).

10. In view of the aforesaid facts once the penalty orders are set aside, the ~~legal~~ logical corollary is reinstatement of the applicant in service but under the facts and circumstances and as held by the Apex Court in Abdul Kareem and Narsagaud (supra) the applicant is not entitled to any back-wages.

11. The OA therefore, succeeds. The respondents are directed to reinstate the applicant in service within a period of one month from the date of communication of this order. The applicant however, is not entitled to any back-wages from the date of removal till the date of reinstatement. In case if there is any delay beyond one month in reinstatement then, the applicant is entitled to wages for the period beyond the said one month till the date of reinstatement. The period of absence shall not be considered as break in service for the purpose of pension and other terminal benefits. With regard to the quantum of punishment in the case of ***B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749,*** the Hon'ble Apex Court has held that High Court or Tribunals cannot normally substitute its own conclusion on penalty and impose some other penalty. The relevant para is also extracted below:

> **18.** A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other

penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

12. Since the findings of the enquiry officer have not been quashed or set aside, it is open to the disciplinary authority to pass appropriate orders of penalty other than removal, or compulsory retirement or dismissal from service as held by the Apex Court in the case of B.C. Chaturvedi Vs. Union of India (supra).

13. Under the above circumstances, there shall be no order as to costs.

**(K.B.S. Rajan)**
**Judicial Member**

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

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अग्रेषित :—
(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
(2) आवेदक श्री/श्रीमती/कु .....के काउंसल S.P. Vakte Adv Indore
(3) प्रत्यर्थी श्री/श्रीमती/कु .....के काउंसल L. Rajankumar Adv Indore
(4) ग्रंथपाल, के.प्र.अ., जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

24.4.06