

CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH

OA No.177/03

Jabalpur, this the 26<sup>th</sup> day of October, 2004.

CORAM

Hon'ble Mr.M.P.Singh, Vice Chairman  
Hon'ble Mr.Madan Mohan, Judicial Member

Ashok Kumar Sethi  
S/o Late Shri Ascharaj Lal Sethi  
Chargeman Grade I  
(Compulsorily Retired)  
R/o House No.271 to 273  
Near Bithari Post Office  
Mandla Road  
Jabalpur.

Applicant

(By advocate Shri S.Akhtar)

Versus

1. Union of India through  
The Secretary  
Ministry of Defence  
Department of Defence Production  
New Delhi.
2. The General Manager  
Ordnance Factory  
Varanasi.
3. The Deputy Director General  
Ordnance Factory Board  
10-A, Auckland Street  
Kolkata.

Respondents

(By advocate Shri K.N.Pethia)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) To quash memo of charge dated 28.5.01 (Annexure A1), the impugned order of penalty dated 25.7.02 (Annexure A9) and the order of appellate authority dated 17.2.03 (Annexure A10) as the same are bad in law.
  - (ii) To hold that the applicant is entitled to be reinstated in service with all consequential ~~benefits~~.
2. The brief facts of the case are that the applicant while working in Vehicle Factory, Jabalpur met with accident on

on 13.4.94 at Indore while he was on official duty. Consequent to the accident, the applicant has been suffering and undergoing medical treatment inspite of the fact that he was transferred from Vehicle Factory, Jabalpur to Ordnance Factory, Varangaon (Maharashtra). Vide memorandum dated 28.5.2001 the applicant was charged with gross misconduct, irregular attendance and unauthorised absence from duty without prior permission and sanction. The applicant submitted a detailed reply but without considering the contents of the reply, the respondents appointed an enquiry officer. The applicant requested the enquiry officer to keep the enquiry in abeyance as he was not able to attend the same being medically unfit. However, the enquiry was ordered to be proceeded ex-parte against the applicant. The disciplinary authority, accepting the findings of the enquiry officer imposed the penalty of compulsory retirement on the applicant vide order dated 25.7.02. The applicant preferred an appeal and the said appeal was not decided. The applicant filed an OA No.789/02 before the Tribunal and the Tribunal directed the appellate authority to decide the appeal within one month. The appellate authority rejected the appeal of the applicant vide order dated 17.2.03 (Annexure A10). Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that no opportunity of hearing was given to the applicant and the enquiry was conducted against him ex-parte while he made several requests to keep the enquiry in abeyance as he was not able to attend the same being medically unfit, and it was duly supported by medical certificate. As the applicant met with an accident on 13.4.94 at Indore while he was on official duty, he was undergoing medical treatment. No charge against the applicant is proved by any evidence. The applicant has never misbehaved any official and he was never absent unauthorisedly. Even then



the disciplinary authority had passed the impugned order of compulsory retirement without any basis. The applicant preferred an appeal which was also rejected and this appeal was even decided by the authorities concerned after a direction was issued by the Tribunal in OA 789/02 vide order dated 11.9.97. The impugned orders are illegal, and liable to be quashed and set aside.

4. In reply, learned counsel for the respondents argued that the applicant absented himself without any information from 26.12.2000 to 21.5.2001. This act of the applicant made him liable for initiation of disciplinary action against him and charge No.II was proved against the applicant, as is shown by Annexure R-3 dated 22.10.2001. The learned counsel further argued that the alleged period of unauthorised absence from 26.12.2000 to 21.5.2001 was not regularised by granting leave. However, this period was subsequently regularised as leave without pay vide order dated 26.8.02 (Annexure R-18) for the purpose of processing his terminal benefits. The applicant had been absent from duty earlier also. His long absence from duty has apparently and adversely affected the smooth functioning of the office. Hence departmental enquiry proceedings were initiated.

5. After hearing the learned counsel for both parties and careful perusal of the records, we find that proper opportunity of hearing was given to the applicant. The enquiry was conducted from 29.11.2001 to 11.4.2002. During this period various reminders/letters were issued to the applicant for attending the enquiry, but he failed to attend the same, therefore, an ex-parte enquiry was conducted against him. Hence it cannot be said that due opportunity was not given to the applicant for



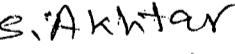
hearing. The applicant remained absent from 26.12.2000 to 21.5.2001 i.e. about 5 months, without prior permission of the respondents and charge No.II against the applicant is proved by the enquiry officer. This is not a case of no evidence and the Tribunal cannot re-apprise the evidence. We have perused the impugned orders dated 25.7.02 (Annexure A9) passed by the disciplinary authority and the order dated 17.2.2003 (Annexure A10) passed by the appellate authority. Both these orders are speaking orders having sound reasons. Continuous absence of the applicant for about 5 months apparently and adversely affected the smooth functioning of the office of the respondents. It is not expected from an employee to remain absent for such a long time without prior permission.

6. After considering all the facts and circumstances of the case, we are of the considered opinion that the OA has no merit. Accordingly the OA is dismissed. No costs.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

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प्राप्तिकर्ता सं. ओ/न्या.....जबलपुर, दि.....  
प्रिवेटिंगिं अचो शित:-  
(1) सचिव, उच्च व्यवसायात्मक नायर प्रबोधितान, जबलपुर  
(2) आवेदक एवं/वर्षीय/.....के काउंसल  
(3) प्रत्यर्थी श्री/स्त्री/.....के काउंसल  
(4) व्यवसाय, देशभाव, जबलपुर व्यवसाय  
सूचना एवं आवश्यक प्राप्तिकर्ता हेतु   
  
28-12-04  
उप रजिस्ट्रार

*I issued  
on 28.12.04  
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