

original Application No. 954/2000

Jabalpur. this the 25<sup>th</sup> day of June, 2004

Hon'ble Shri M. P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Member (Judicial)

Charan Veer Singh  
s/o Sardar Surjit Singh,  
Aged 38 years,  
Junior Intelligence Officer-II,  
R/o 16, P.N.B. Colony,  
Idgaah Hills,  
Bhopal (Madhya Pradesh). ...Applicant

(By Advocate: Shri Manish Dutt through Sh. S.Pandit)

-versus-

1. Union of India through  
Secretary,  
Ministry of Home Affairs,  
New Delhi.
2. Director,  
Subsidiary Intelligence Bureau,  
Ministry of Home Affairs.  
Govt. of India, 16-A, Railhead Complex,  
Jammu.
3. Deputy Director,  
Subsidiary Intelligence Bureau,  
Ministry of Home Affairs,  
Govt. of India, 16-A, Railhead Complex,  
Jammu.
4. Joint Director,  
Subsidiary Intelligence Bureau,  
Ministry of Home Affairs,  
Govt. of India, Char Imli,  
Bhopal (Madhya Pradesh).
5. Deputy Central Intelligence Officer,  
Subsidiary Intelligence Bureau,  
Govt. of India, old Secretariat,  
Bhopal (Madhya Pradesh).
6. Assistant Director,  
Subsidiary Intelligence Bureau,  
Ministry of Home Affairs,  
Govt. of India,  
16-A, Railhead Complex,  
Jammu. ...Respondents.

(By Advocate: Sh. Pankaj Dubey for Sh. B.da.Silva)

O R D E R

By Madan Mohan, Member (Judicial)-

By filing this original application, the applicant  
has sought the following main reliefs:

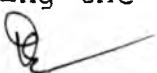


- i) to quash and set aside the order dated 6.8.1997 passed by the Joint Assistant Director imposing penalty against the petitioner under Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965;
- ii) to quash the order passed by the appellate authority dismissing the appeal filed by the petitioner.
- iii) to quash the order passed on 2.2.1998 by the Revisional Authority.
- iv) to direct the respondents to maintain seniority of the applicant/petitioner and also other benefits which this Hon'ble Court may deem fit, in the interest of justice.

2. Brief facts of the case are that the applicant, who is working as Joint Intelligence Officer-II, was initially appointed as Security Assistant on 25th March, 1985 at Bhopal. After being appointed on the post of Security Assistant in the year 1985 he continued to work at Bhopal and was transferred to Jammu in the year 1993 and pursuance to the order of transfer the applicant was relieved from his office on 8th July, 1992 and joined at Jammu. Thereafter, by hard work and passage of time, the applicant whose career was meritorious was promoted as Junior Intelligence Officer Gr.II w.e.f. August, 1994. In the year 1984, while the applicant was residing at Bhopal, had suffered the MTC Gas Leak and became gas effected person, and he was operated upon as he had developed a cyst in his abdomen. It is also submitted that his father was also suffering from paralysis. The applicant became sick from 19.9.1995 as he suffered stroke of acute bronchitis with streaky Haemoptysis and was being treated at C.D. Hospital, Jammu. He was posted with immediate effect to Bhimbergali which was at a distance of 250-300 kms. from Jammu, vide order dated 4.9.1995. Against the said order, the applicant preferred a representation stating that he is unable to proceed to Bhimbergali as his father is suffering from paralysis and he himself is also unwell and had undergone a surgical procedure and he requested for his transfer to any other place such as Ranjit Singh Pura or Sambha. The said representation was rejected

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by the respondents. On 16.9.1994 the applicant submitted an application for grant of leave and casual leave was sanctioned upto 18.9.1995. Thereafter the applicant had become sick and as such telegram was sent by the applicant for grant of leave. He subsequently submitted a representation for cancellation of his posting to the Assistant Director on 23.12.1995. The said representation was also rejected by the respondents. The applicant continued to remain on leave and thereafter on 26.6.1996, the applicant was transferred from STS, Jammu to SIB, Bhopal vide order dated 26.6.1996 (A/7). It is worth mentioning here that the Assistant Director issued a Memo of Charge proposing to hold a department enquiry for the alleged charges of alleged unauthorised absence and for disobeying the lawful orders of the competent authority. The applicant on 27.10.1996 submitted his joining after being duly certified his fitness to join duties. The applicant again became sick and was unable to join his duties and he submitted medical certificates. The applicant also submitted his reply to the chargesheet whereby denying the allegations made against him vide reply dated 26.4.1996 (A/12). On 26.6.1996 the applicant received a departmental Memo (A/13) informing him & dates about the appointment of enquiry officer and place/of enquiry. The applicant was himself defending his case as he could not get a defence assistant because he was not conversant with the enquiry procedure. The enquiry officer submitted his report on 11.6.1997. The disciplinary authority accepting the report of the enquiry officer and holding the applicant guilty imposed the impugned penalty. The applicant preferred an appeal against the said order of the disciplinary authority which was ~~xxx~~ dismissed by the appellate authority on 15th December, 1997 (A/29). Hence the orders passed by the authorities concerned are arbitrary, illegal as none of the authority had considered the contentions raised by the applicant while passing the said orders. Hence, this O.A. is filed seeking the above reliefs.



3. On 21.6.2004, when the case was fixed for hearing, Shri S. Pandit, junior to Shri Manish Dutt, counsel for the applicant made a request for adjournment on the ground that his senior will argue the matter. Earlier on 14.5.2004, at the request of the /proxy to Shri Manis Dutt, counsel for the applicant, the case was adjourned for 14.6.2004 making it clear that no further adjournment will be granted and the matter will be decided on the basis of available material on record. We have also found that on 14.6.2004, the case was adjourned to 21.6.2004 at the request of the proxy counsel for Shri Manish Dutt, counsel for the applicant, on the ground that his senior will argue the matter. It was made clear that no further adjournment will be granted and the case will be decided on the next date of hearing on the basis of available material on record. Since it is an old matter of the year 2000, we are disposing of this O.A. after hearing the learned counsel for the respondents.

4. Learned counsel for the respondents argued that the applicant did not comply with the orders of the competent authority passed on 24.11.1995 directing him to present himself before the Medical Board for second medical opinion followed by a reminder dated 20.12.1995. But the applicant instead of reporting to the Medical authorities for medical examination extended leave again for ten days through a telegram dated 16.12.1995 with a request for change of place of posting. His request was considered but could not be acceded to and he was again directed to present himself before the Medical Board for medical examination as his absence was treated as unauthorised absence from duty. Instead of this, the applicant again extended leave for ten days vide telegram dated 13.1.1996. However, the applicant joined duties on 25.1.1996 without presenting himself before the Medical Board for medical examination and submitted two medical certificates from C.D. Hospital, Jammu. He was asked to explain the reasons for not presenting

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himself before the Medical Board for medical examination he did not bother to give any reply to this effect. The enquiry officer completed the proceedings and submitted its report to the disciplinary authority holding the charges proved beyond doubt. Thereafter the disciplinary authority after considering the report of the enquiry officer and other documents on record, imposed the penalty of reduction to lowest stage in the time scale for two years with cumulative effect vide its order dated 6.8.1997. The appeal preferred by the applicant against the order of the disciplinary authority was rejected by the appellate authority confirming the order of the disciplinary authority. It is further argued that the impugned orders passed by the concerned authorities are speaking orders and due opportunity of hearing was afforded to the applicant.

5. After hearing the learned counsel for the respondents and careful perusal of the material on record, we find that the applicant admittedly did not appear before the Medical Board as directed by the competent authority rather he had submitted ~~the~~ <sup>8</sup> medical certificates of a Doctor which ~~was~~ <sup>was not</sup> not considered to be sufficient by the respondents as the applicant was frequently seeking leave on the ground of sickness. It was the duty of the applicant to obey the order of the respondents by presenting himself before the Medical Board for second medical opinion so as to enable them to get correct information about his illness. But the applicant, on being asked about the explanation for not presenting/ <sup>himself</sup> before the Medical Board, did not bother to explain the said fact. The applicant was given due opportunity of hearing as he exhausted the remedies available to him. This is not a case of 'no evidence'. As the applicant remained absent from the duties and did not care to obey the orders of the competent authority for presenting himself before the Medical Board, the contention of the applicant that he was absent on the ground of illness cannot be accepted. It is further

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observed that absence of a public servant for a quite long time adversely affects the smooth functioning of the respondents' department. As the duties assigned to the applicant were of very important nature and he could not show any reason as to why he did not appear before the Medical Board for medical examination/second medical opinion, disobeying the orders of the competent authority, we do not find any infirmity in the orders passed by the respondents i.e. the disciplinary authority and the appellate authority as the applicant was given due opportunity of hearing. This is also not a case of 'no evidence'. The Tribunals/Courts, in view of the various pronouncements of the Hon'ble Supreme Court, cannot re-appraise the evidence and even cannot go into the quantum of punishment.

6. Having regard to the observations made above, we are of the considered view that the Original Application No. 954/2000 is bereft of merit and deserves to be dismissed which is accordingly dismissed without any order as to costs.

(Madan Mohan)  
Judicial Member

/na/

(M.P. Singh)  
Vice Chairman

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

प्रतिनिधि अर्को दिनांक:-

- (1) सचिव, उच्च न्यायालय एवं प्रशासनिक, जबलपुर
- (2) आदेशक श्री/श्रीमती/कु .....के कार्यालय M. P. Singh
- (3) प्रत्यक्षी श्री/श्रीमती/कु .....के कार्यालय B. Singh
- (4) वादक, केस, जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

Bajinder  
उप सचिव- 7. 14

Issued  
5/7/04