

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 202 of 1999

Jabalpur, this the 21<sup>st</sup> day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.  
Hon'ble Shri A.K. Bhatnagar - Judicial Member.

Umrao Singh, s/o. Bhilaji,  
aged about 28 years, working  
as Fatiguman, No. CC-763,  
College of Combat, Mhow,  
Address for service of Notice ;  
Umrao Singh, Vill. Kanariya, Teh.  
Mhow-453441, District Indore (MP) ... Applicant

(By Advocate - Shri I.H. Khan)

V e r s u s

1. The Secretary to the  
Government of India, Ministry  
of Defence, New Delhi.

2. The Director General of  
Military Trg. (MT-7), Army  
Head Quarters, DHQ., PO.,  
New Delhi.

3. The Commandant, College of  
Combat, Mhow (MP)-453441.

... Respondents

(By Advocate - Shri V. Saran)

O R D E R

By R.K. Upadhyaya, Administrative Member :-

The applicant has claimed the following reliefs:

- "(a) Original order of punishment may please be quashed.
- (b) Sick Leave for the period of 4 years may please be sanctioned under the provision of Rule 12 of Leave Rules.
- (c) Delay in submission of departmental application on 24/04/1998, may please be condoned as it is with reasonable cause.
- (d) Applicant may please be re-instated on his original Job/Post.
- (e) Any other relief which your Honour may like to grant."

2. It is stated that the applicant was posted as Fatiguman under the respondent No. 3, The Commandant.

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College of Combat, Mhow. It is further claimed that the applicant fell sick and was mentally upset with effect from 07/05/1994. He claimed to be taking treatment and after having been declared fit on 18/04/1998, the applicant submitted his petition to respondent No. 3 on 24/04/1998 for grant of sick leave and permission to join his duties. The applicant vide letter dated 12/05/1998 (Annexure A/1) was informed that respondent No. 3 was a disciplinary authority and therefore not empowered to revise his own punishment order. Therefore, the applicant was advised to file appeal to the next higher authority, i.e., DGMT, Army HQ. However the appeal could have been filed within 45 days only. Therefore the appeal had already become time barred. It is claimed by the applicant that as per advise of respondent No. 3, he filed an appeal on 28/05/1998 but no decision on that appeal has been received by the applicant so far. The learned counsel stated that the entire period of absence from 07/05/1994 onwards is supported by a certificate issued by a Medical Officer vide certificate dated 23/05/1994 (Annexure A/2-a) and 18/4/1998 (Annexure A/2-b). On the facts of this case, the learned counsel stated that the applicant should be allowed to join his duties and the appellate authority be directed to dispose of the pending appeal without raising any ground for delay.

3. The respondents in their reply have stated that the applicant was appointed on the post of Fatiguan on 27/12/1989. The applicant was habitual offender of absence without leave during his short service of 4 1/2 years as he had absented himself from duty for 290 days prior to issue of the charge sheet by virtue of which he was removed from the service. The learned counsel stated that the Department have been very lenient to the applicant as he

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was continued in service by regularising his absence by granting him EOL (Extra Ordinary Leave). The applicant on earlier occasion was also awarded with a minor penalty of "withholding of increment of pay for a period of one year on 03/03/1994 for being absent without leave". The respondents have further stated that because of continuous absence from duty from 07/05/1994 to 31/01/1995 without any reason, the applicant was issued a charge sheet on 29/07/1994 (Annexure R/2). A departmental enquiry<sup>was</sup> ordered in and the applicant was called to appear<sup>in</sup> the enquiry on 03/10/1994, but he did not report. After several opportunities granted to the applicant, the enquiry proceedings were finalised as the charges stood proved. In view of the fact that there was no compliance from the applicant, major penalty of removal from service vide order dated 31/01/1995 (Annexure R/5) was imposed. After absence of more than 4 years from the date of passing of the order of punishment, the applicant preferred an appeal to regularise the period of absence by granting him sick leave and thereby to revoke the punishment order and to reinstate him. The learned counsel stated that leave is not a right and can only be availed when it is sanctioned by the competent authority. According to the learned counsel, there was no justification to keep the applicant in service. He also stated that the appeal filed is much after the prescribed period and deserves to be dismissed. The same has not yet been disposed of and the applicant has not also been informed. The respondents have further stated that even the punishment awarded is justified considering the gravity of the offence committed by him. Therefore, the reliefs claimed should not be allowed to him at this stage.

4. We have heard the learned counsel of the parties and have also perused the material available on record

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carefully.

5. It is not a case that the applicant suddenly became ill and could not inform the authorities. As has been pointed out by the respondents, the applicant has been taking leave without prior approval even before. Even the certificate dated 18/04/1998 states that the applicant was under treatment from 24/05/1994 to 18/04/1998 and the patient was regularly brought by his cousin brother. It means that there was someone else who could assist the applicant if the applicant was not well during the entire period. However we find that no steps were taken to inform the authorities about the reasons for absence. The applicant has not challenged the disciplinary proceedings as such in as much as there is no denial of the opportunities allowed by the respondents. A Department in the work, Ministry of Defence cannot afford to ~~to~~ if the people simply vanish from their post and later on request for being taken back on duty. If it is allowed, the Government machinery cannot be run. So far <sup>as</sup> the facts of this case are concerned, there were persons who were taking care of the applicant as well as his affairs. We do not find any intimation given to the respondents in response to the various notices and opportunities allowed by the respondents to the applicant. In this view of the matter, we do not find any justification to interfere with the orders of the respondents in this case. So far as the appeal filed by the applicant is concerned, we find that the same has not been moved within time. Therefore, we cannot ask the appellate authority to entertain the same now, after such an in-ordinate delay.

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6. For the reasons mentioned in the preceding paragraph this original application is dismissed without any order as to costs.

*A.K.*  
(A.K. BHATNAGAR)  
JUDICIAL MEMBER

*R.K. Upadhyaya*  
(R.K. UPADHYAYA)  
ADMINISTRATIVE MEMBER

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....  
पटिलिपि अग्रे दित -

- (1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल *M. Khan, Adv. IAD*
- (3) प्रत्यर्पी श्री/श्रीमती/कु.....के काउंसल *V. Sarwan, Adv. IAD*
- (4) मध्यपाल, के.प्र.अ., जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

*J. Singh*  
उप सचिव  
23/10/03

*Issued.  
26/5/04*

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