

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT BENCH AT INDORE

Original Application No. 462 of 2000

Indore, this the 13th day of January, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Ashok Kumar Bhatia, s/o. Shri
Rahandomal Bhatia, aged 43 years,
UDC (Ex), Office of the Regional
Provident Fund Commissioner, r/o 48/1
B.K. Sindhi Colony, Indore.

... Applicant

(By Advocate - Shri D.M. Kulkarni)

V e r s u s

1. Union of India through Secretary,
Central Provident Fund Commissioner,
14, Bhikaji Cama Place, New Delhi
110 066.

2. Addl Central Provident Fund Commi-
ssioner, (West Zone), Bhavishyanidhi
Bhavan, 341, Bandra (East), Mumbai-
51.

3. Regional Provident Fund Commissioner,
Madhya Pradesh, IDA Building, 7,
Race Course Road, Indore.

... Respondents

(By Advocate - Smt. S.R. waghmare)

O R D E R (Oral)

By G. Shanthappa, Judicial Member -

The said Original Application is filed seeking the relief to quash the impugned orders at Annexure A-1, Annexure A-2, Annexure A-3 and Annexure A-4 and for further direction to the respondents to allow the applicant to join his duties and to pay him arrears of salary and allowances with interest.

2. The brief facts of the case are that the applicant was appointed as IDC vide order dated 18.02.1978 and he was promoted as UDC vide order dated 20.02.1981. His services were regularised with effect from 19.12.1994. During the month of May 1994 the applicant fell ill and he availed leave

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from 02.05.1994 on the advice of the Doctor. The medical certificate was sent to the respondents. He was continued to be ill and he has availed half pay leave with effect from 03.06.1994 on the advice of the Doctor. The Doctor advised the applicant to take compulsory bed rest for the period from 03.07.1994 to 04.01.1995. He was suffering from tuberculosis and even after taking the treatment he was not well. The applicant has taken his treatment at Indore and on the ground of illness, he could not attend the office. The respondent No. 3 has published notice in the daily news paper Dainik Bhaskar dated 01.07.1997 mentioning that the departmental enquiry against the applicant was completed and the applicant may obtain the copy of the enquiry report from the office of the respondent No. 3 within 15 days from the publication of the notice. Immediately on 15.07.1997 the applicant went to the office of the respondent No. 3 and attended the office and obtaining the copy of enquiry report. Subsequently on the same day the applicant was given a show cause notice with the enquiry report vide order dated 16.07.1997. Thereafter the applicant submitted his objection to the enquiry report. The said enquiry was conducted for the unauthorised absence of the applicant from 03.07.1994 and no opportunity was given to the applicant to participate in the enquiry proceedings. The enquiry proceedings was conducted ex parte. The finding of the enquiry officer is that ~~since~~ the applicant did not appear in the enquiry proceedings, ^{on the ground} ~~the notice was served on him~~ ⁱⁿ the charges levelled against him was found correct.

3. The further case of the applicant is that his reply to the show cause notice was submitted with ⁱⁿ the prescribed time stating that without affording any opportunity the

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respondent No. 3 completed the departmental enquiry against him. The respondents ought to have given the copies of the charge sheet and other memos and proceedings of the enquiry to him. Since the respondents have not conducted the enquiry in a fair manner the entire enquiry proceedings stands vitiated.

4. The applicant has submitted his joining report on 01.08.1997 enclosing the fitness certificate. The applicant has also submitted an application with medical certificates on 04.08.1997. The applicant was not allowed to join for not duties and he was directed ^{not} to sign the attendance register. On the basis of the enquiry report and the submissions made by the applicant the disciplinary authority has passed the impugned order of punishment of removal from service which shall not be a disqualification for future employment under Central Board of Trustees, Employees Provident Fund Organisation, on the applicant. The further case of the applicant is that the respondents have not given the second show cause notice proposing any punishment and imposed the penalty of removal from service without considering the length of service of more than 16 years the applicant had already put in.

5. The applicant preferred an appeal challenging the order of the disciplinary authority. The appellate authority has not considered the case of the applicant and rejected the appeal without giving an opportunity of personal hearing. Against the order of the appellate authority the revision/mercy petition was filed before the respondent No. 1 on 12.10.1998. The said revision petition was also rejected confirming the orders of the disciplinary authority passed on 01.10.1997. The respondents have not

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considered the case of the applicant and without giving an opportunity and without following the principles of natural justice, the order of punishment of removal from service was imposed against the applicant. Hence the entire proceedings initiated by the respondents against the applicant is illegal and against the law and the same are liable to be quashed and the relief as prayed by the applicant in the Original Application is liable to be granted.

6. The applicant has filed MA No. 2056/2000 for condonation of delay in filing the Original Application. The reasons assigned in the MA are considered.

7. Per contra the respondents have filed the reply contending that the averments made in the Original Application are denied. The respondents have submitted that since the applicant did not come to attend his duties, they have initiated the disciplinary proceedings and published a notice in the daily news paper Danik Bhaskar dated 01.07.97 mentioning that the departmental enquiry against the applicant was completed and the applicant may obtain the copy of the enquiry report from the office of the respondents. The applicant has attended the office to collect the enquiry report on the basis of the paper publication. He has submitted his objections to the enquiry report and the disciplinary authority has passed a detailed and reasoned order, imposing the penalty of removal from service which shall not be a disqualification for future employment under Central Board of Trustees, Employees Provident Fund Organisation, on the applicant.

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8. Against the order of the disciplinary authority the applicant has preferred an appeal. The appellate authority has also considered all aspects of the case of the applicant and passed a considered and reasoned order on the basis of the contention taken by the applicant in his appeal. Against the order of the appellate authority the applicant has preferred ^{Revision} ~~an appeal~~ after lapse of the period of limitation. The revisional authority has considered the case of the applicant and passed a considered and reasoned order. There is no illegality or irregularities committed by the respondents while initiating the proceedings against the applicant.

9. It is further contended that the second show cause notice, as submitted by the applicant cannot be given to the applicant as there is no such procedure for issuing a second show cause notice. Hence the contention of the applicant shall be rejected. The specific case of the applicant ^{is} ~~that~~ show cause notice dated 07.09.1994 and ^{Gr.} 24.10.1994 were served on the applicant and for that they have produced the acknowledgement for having been served. The registered post acknowledgement due were signed by his family members living with him. The enquiry officer has issued the summons on 21.05.1996 to the applicant to appear before him on 12.06.1996. Though the notice was served the applicant, ^{he} ~~Gr.~~ remained absent. Hence the enquiry officer has no other way to conclude the enquiry by placing the applicant ex parte. Accordingly the respondents have requested for dismissal of the Original Application.

10. After filing the reply the applicant has submitted his rejoinder by clarifying the statement made in the reply.

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He denied, that the show cause notices ^{Vide acknowledgement} at Annexures R-6 and Annexure R-7 were received by the family members of the applicant. These notices were ^{never} received by the applicant or by any family member. The respondents have ^{not} filed ^{any} receipt/^{sp.} acknowledgment to prove their contention. The applicant had no knowledge of these show cause notices and therefore he could not appear or sent any representation in writing. There are many Bhatias residing in their locality. It is not known to whom these notices were served. There is one Ashok Bhatia in House No. 50 and the applicant's house No. is 48. Hence the respondents have served the notices on some other Ashok Bhatia and not to the applicant. The further objection is that the father of the applicant Shri Rahando-mal was ailing from partial paralysis and was unable to make any movement and his memory was also affected because of old age of 82 years. He has received the notice dated 27.10.96 but because of his failing memory, he did not intimate or gave the envelope to the applicant. Hence the applicant was not able to attend the enquiry.

11. After hearing the advocate for the applicant and the advocate for the respondents, after perusal of the pleadings and the documents submitted by the either sides, we decide the Original Application finally.

12. It is an admitted fact that the applicant was unauthorisedly absent from duty from 02.05.1994 to 04.01.1995 and he extended the leave subsequently. The applicant did not informed the Department about his illness. The applicant has also not produced any document to show that he has submitted his medical leave application and he has not taken permission from the respondents for sanctioning the leave. The respondents have initiated the proceedings by serving the notices

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on the applicant. The enquiry officer had issued the notices to the applicant. Since he did not appear, ex parte proceedings were conducted and detailed enquiry report was submitted to the disciplinary authority. This fact is admitted by the applicant that his father has received the notices and ^{in turn} he did not inform the applicant. The respondents have submitted that the acknowledgement receipts vide Annexure R-6 and Annexure R-7 clearly shows that the applicant has received the notices and he did not participated in the enquiry proceedings.

13. After concluding the enquiry proceedings the enquiry officer has issued notices through publication in daily news paper Dainik Bhaskar on 01.07.1997, mentioning that the departmental enquiry against the applicant was completed and the applicant may obtain the copy of the enquiry report from the office of the respondents. Immediately the applicant approached the respondents and obtained the copy of the enquiry report and submitted his objections.

14. After going through the enquiry report and the submission made by the applicant, the disciplinary authority has passed the order of the punishment by issuing a reasoned and detailed order, by removing the applicant from ^{and} service ^{of} which shall not be a disqualification for future employment under Central Board of Trustees, Employees Provident Fund Organisation, The applicant received the order of the disciplinary authority and preferred an appeal before the appellate authority. In the appeal the applicant has not raised the question of second show cause notice. On the basis of the grounds urged in the appeal memo, the appellate authority has decided the appeal by confirming the orders of the disciplinary authority. Both the disciplinary authority and the appellate authority have considered

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the case of the applicant and no principles of natural justice have been violated. There is no illegality or irregularity committed by the enquiry officer, the disciplinary authority and the appellate authority.

15. The applicant has also preferred a revision petition before the revisional authority challenging the orders of the appellate authority. The revisional authority has also considered all aspects of the case and he has passed a detailed and reasoned order/rejecting the revision petition of the applicant.

16. We also find that the advocate for the applicant has cited certain judgments ^{while} 1994 SC (L&S) 1134, 1998 MPLSR 725 and 1994 SC (L&S) 981. We have perused the said judgments and are of the view that the said judgments are not applicable to the facts of this case.

17. We do not find any judicial conscious for disproportionate of punishment imposed on the applicant, on the ground that the applicant was unauthorisedly absent from his duty without prior permission of the respondents and he had approached the respondents only after publishing of the notices in the daily news paper Dainik Bhaskar on 01.07.1997.

18. After considering the arguments of the applicant and the respondents and documents on record, we are of the considered view that the respondents have not violated the principles of natural justice while passing the impugned orders. Hence we do not find any illegality or irregularity while passing the impugned orders. The applicant has not made out any case for grant of any reliefs as claimed in the Original Application.

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19. Accordingly, the Original Application is dismissed.

No costs.


(G. Shanthappa)

Judicial Member


(M.P. Singh)

Vice Chairman

"SA"

Copy to:-

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on 2
28/04~~ 1. Shri D.M. Kulkarni Advocate
Indore for applicant

2. Mrs. S.R. Waghmare, Advocate
for respondents.