

CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, INDORE

O.A.NO.591/1999

Wednesday, this the 19<sup>th</sup> day of February, 2003

***Hon'ble Shri Justice N.N. Singh, Vice Chairman (J)***  
***Hon'ble Shri Govindan S. Tampi, Member (A)***

Bhagwal Prasad s/o Mahadev Prasad  
Designation : MT Driver  
Office address c/o Commandant, College of Combat,  
MHOW (MP), Address for service of notice: H.No.83, Dhar Naka  
MHOW (MP)

(By Advocate: Shri I.H.Khan) ..Applicant

Versus

1. The Secretary  
Govt. of India, Ministry of Defence  
New Delhi
2. The Director General of Military Training  
(MT-7) Army Head Quarters, New Delhi
3. The Commandant  
College of Combat, MHOW (MP) 453 441

(By Advocate: Shri Vivek Saran) ..Respondents

**ORDER (ORAL)**

***Shri Govindan S. Tampi:***

This OA filed by Shri Bhagwal Prasad challenges the order dated 1.11.1997 passed by the respondents removing the applicant from service.

2. Heard Shri I.H.Khan, learned counsel for applicant and Shri Vivek Saran, learned counsel for respondents

3. The applicant in this case, who joined as MT Driver on 5.12.1987 was proceeded under the charge sheet on 7.3.1997 for absence of about one month. In the disciplinary inquiry proceedings, no mention was made about the appointment of Defence Assistant and after going through the mere formality, the inquiry was completed, which showed the charge as proved, whereupon, the disciplinary authority passed the impugned order of removal from service. According to the applicant, the proceedings were vitiated as he was not provided a Defence Assistant and opportunity for proper defence was denied. The order, according to him, was illegal and invalid and also totally harsh keeping in mind the applicant's age and general service record.

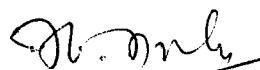
4. In the reply filed on behalf of the respondents, it is pointed out that the applicant had absented unauthorisedly for a period of 34 days from 11.1.1997 to 15.2.1997, which was a grave misconduct. Besides, he had, during his earlier nine years of service, remained absent for a period of 710 days which had subsequently been regularised by the grant of extra-ordinary leave. This harsh punishment had to be imposed as the applicant had to be properly displayed.

5. We have carefully considered the matter. In this OA for the absence of 34 days in January and February, 1997, the extreme penalty of removal from service has been imposed on the applicant. The respondents' explanation is that in addition to the impugned period of 34 days, he had been absent earlier for 714 days, which showed that he was an incorrigible person. The above, any way, was not part of the charge but as it would appear from the

respondents' explanation, this fact had gone in the mind of the respondents while arriving at the quantum of penalty to be imposed on the applicant. We find that this is a wrong reasoning. The imposition of the extreme penalty of removal for absence of 34 days was, in our view, disproportionate to the gravity of the misconduct and was harsh. The said penalty would fall in the category of those, which would shock the judicial conscience, as pointed out by the Hon'ble Supreme Court in the case of B.C. Chaturvedi Versus Union of India & Others. Therefore, while upholding the procedure adopted by the respondents in dealing with the applicant in this case, we are convinced that the OA deserves to be interfered with, on account of the harshness of the penalty.

6. In the above circumstances, the OA succeeds to substantial extent and is accordingly disposed of. The impugned order dated 1.11.1997 removing the applicant from service is quashed and set aside and the matter is remanded to the disciplinary authority for imposing a penalty less harsh than removal. The applicant may be reinstated in service but the period between the date of his removal and reinstatement shall be determined by the disciplinary authority in accordance with law. No costs.

(Govindan S. Tampi)  
Member (A)  
/sunil/

  
(N.N. Singh)  
Vice Chairman (J)

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

ना निर्विविद ना निर्विविद

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सूचना एव आदेशक उपर्याही हेतु

निर्विविद

उपर्याही

28/2/03

Received  
On 28.2.03