

(28)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

31.08.2012

OA No. 311/2008

Since the advocates are abstaining from the work, the case be listed on 11.09.2012 for dictation of orders.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

ahq

11/09/2012

OA No. 311/2008

Mr. Virendra Lodha, st. counsel assisted by
Mr. P. N. Jatti along with Mr. Vinod Koyal,
Counsel for applicant.
Mr. D. C. Sharma, Counsel for respondents

Heard.

O.A. is disposed of by a
separate order on the separate
sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S.Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 11th day of September, 2012

ORIGINAL APPLICATION No.311/2008

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

A.N.Khan
s/o Dr. Abdul Haleem Khan,
last working as Asstt. Ore Dressing Officer,
Indian Bureau of Mines,
Ajmer, permanent resident of
131, Tarin Bahadur Ganj,
Shahjanpur (UP).

.. Applicant

(By Advocate: Shri Virendra Lodha, Sr. Advocate with Shri P.N.Jatti
and Shri Vinod Goyal)

Versus

1. Union of India
through the Secretary,
Department of Mines,
Shastri Bhawan,
R.P. Road, New Delhi.
2. The Controller General,
Indian Bureau of Mines,
Indira Bhawan,
Nagpur.
3. Superintending Officer,
Indian Bureau of Mines,
Ajmer.
4. Shri K.S.Bajwa,
Enquiry Officer,
House No. 114, (1st Floor),
Sector- 15A,
Chandigarh.

.. Respondents

(By Advocate: Shri D.C.Sharma)

ORDER (ORAL)

The present OA is directed against the order dated 19.7.2007 (Ann.A/1) passed by the Deputy Secretary to the Government of India by order and in the name of the President whereby penalty of dismissal from service has been imposed upon the applicant. Against this order, the applicant has filed appeal and the appeal was rejected on the ground that no appeal lies against any order made by the President which was communicated by the Dy. Secretary to the Govt. of India vide order dated 10.1.2008.

2. Aggrieved and dis-satisfied with the order dated 19.7.2007 and 10.1.2008, the applicant preferred this OA, claiming following reliefs:-

"In view of the facts mentioned above, humble applicant prays that the impugned orders dated 19.7.2007 (Annexure A/1) and 10.1.2008 (Annexure-A/2) may kindly be quashed and set aside and the applicant be exonerated and reinstated in service with all consequential benefits.

Any other relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances stated above may also kindly be granted in favour of your humble applicant."

3. Brief facts of the case are that the applicant initially joined the office of Indian Bureau of Mines (IBM) on 1.4.1980 on the post of JTA (Geology) and later joined the post of JTA (O.D.) on 15.2.1982 in the same department. Thereafter he was selected for the post of ARO in the year 1985 and he joined the said post on 29.4.1985.



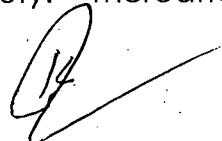
Subsequently, he was selected for the post of AODO through UPSC and joined on 7.6.88.

4. The applicant applied for leave from 21.6.99 to December, 1999 and the same was granted. From January, 2000, the applicant was not granted leave due to exigency of work in the department though there was sufficient leave in his account. The respondents sent letters at the residential address of the applicant to join duty.

5. When the applicant completed 20 years of service, he applied for voluntary retirement on 22.2.2011. However, the said application of the applicant for voluntary retirement was not accepted by the respondents. Subsequently, the applicant joined office on 20.6.2001 and continued till November, 2001.

6. The applicant again applied for Extra Ordinary leave without pay till 28.10.2002. Before that the applicant had applied for voluntary retirement and he had given three months notice wherein the applicant had categorically stated that due to the serious problems in his family, it is difficult to continue under IBM, Ajmer. The respondents vide letter dated 20.8.2002 informed the applicant that his application for voluntary retirement cannot be accepted in view of the continuous absence of the applicant from 1.1.2000. The applicant was further informed that since the intervening period has not been regularized, therefore, his request for voluntary retirement cannot be accepted.

7. The respondents also issued a Memorandum dated 1.10.2002 informing the applicant that his application for voluntary retirement can only be considered after joining duty. Thereafter a



Memorandum dated 3.6.2003 was issued whereby the applicant was informed to submit reply to certain allegations and articles of charge.

8. Despite joining the duty, the applicant sent telegram on 11.7.2000 to the Superintending Office, IBM, Ajmer to grant one month's leave without pay. Again, the applicant sent a telegram on 6.6.2001. Further, the applicant sent telegram on 11.6.2001 to the respondents to extend leave upto 18.6.2001. The applicant again applied on 9.11.2001 for grant of leave for 15th and 16th November, 2001 with further permission to leave headquarter. Request of granting leave time and against was repeatedly made and again vide letter dated 19.11.2001 requested for grant of 3 months leave without pay.

9. The applicant has repeatedly asked for extension of leave/grant of leave and ultimately sent letter dated 13.2.2002 that his mother's condition is deteriorating and therefore, he is not in a position to leave her alone. As such the he may be granted 3 months further leave without pay.

10. After considering reply submitted by the applicant, the respondents issued charge sheet dated 3.6.2003 to the applicant under Rule 14 of the CCA (CCA) Rules. Enquiry Officer was appointed to enquire into the case of the applicant and the Enquiry Officer given opportunity to the applicant to defend his case and considering all aspects of the matter submitted his report on 11.12.2007 wherein the Enquiry Officer had held charge no.I, II, III and IV as proved against the applicant.



11. The matter was referred to the UPSC for their advice and the respondents have received the same on 29.11.2005. Opinion in the matter was also sought from the Department of Personnel and Training. Thereafter the Disciplinary Authority i.e. Dy. Secretary, Ministry of Mines, in the name of the President passed order dated 19.7.2007 whereby penalty of dismissal from service was imposed upon the applicant. Against the order dated 19.7.2007, the applicant submitted detailed appeal to the President of India on 18.11.2007 and the same was rejected as communicated vide order dated 10.1.2008. The order dated 19.7.2007 and 10.1.2008 are challenged by the applicant on the ground that the charges leveled against the applicant were not of serious nature for which the harsh penalty of dismissal from service could have been imposed.

12. During the course of arguments, the learned counsel appearing for the applicant only prayed that punishment of dismissal from service is harsh and same is shockingly disproportionate looking to the charges leveled against the applicant and therefore the order of dismissal be modified accordingly. Since the applicant has completed 20 years of service, he may be compulsorily retired from service.

13. We have heard the rival submissions of the respective parties and carefully perused of the memorandum of charge sheet as well as the material available on record. The learned counsel appearing for the respondents at the outset submitted that the charges leveled against the applicant were not of serious nature, therefore,



harsh punishment could not have been imposed upon the applicant.

14. Upon careful perusal of the material available on record, it reveals that the applicant has absented from duty unauthorisedly w.e.f. 21.6.99 due to domestic work/illness of his mother but went on extending his leave from time to time. He was advised through written instructions number of times to report for duty. The applicant joined duty on 5.7.2000. Again he left his headquarter w.e.f. 7.7.2000 by applying for two days C.L. on 10th and 11th July, 2000 prefixing closed holidays on 8th and 9th July but failed to report for duty after the said period. He was advised through office telegrams/letters to report for duty but the said letters were received back undelivered from postal department with remarks, which shows that he had either willfully submitted wrong postal address in order to misled the office or was not at all available in given addressed. Finally he joined his duty on 20.6.2001.

15. Again within a short spell of reporting duty, applied for three months leave without pay w.e.f. 15.11.2001 which was not granted due to administrative reason and advised to report for duty, however, the applicant reported for duty on 28.10.2002. The applicant from 11.11.2002 again absented from duty without prior approval. The applicant unauthorisedly remain absent from duty due to domestic work/illness of his months whereas as per the material available on record, he left the country without prior permission of the competent authority.



16. With regard to the submission of the learned counsel appearing for the applicant that there was no serious charge against the applicant, we have examined the enquiry report as well as the other relevant documents and it reveals that as per the information of the competent authority, the applicant was holding a valid Passport No.P-039063 and has left the country for Moscow as per the details given below:-

Passport details	Details of departure	Details of arrival
P-039063 issued from Jaipur on 5.7.1993	4.7.1999 by flight No. GF-133	24.6.2000 by flight no.GF-132
-do-	25.11.2001 by Flight no.SU-536	12.5.2001 by flight no. GF-134
-do-	1.7.2002 by flight no. SU-536	26.5.2002 by flight no. SU-535
-do-	2.12.2002 by flight no. SU-536	21.10.2002 by flight no. SU-535

The applicant had never intimated the office about his visit to abroad and had never taken permission for leaving India on the days referred to above.

17. Not only this, by bare perusal of the enquiry report and the question no.5 put up by the enquiry officer to the applicant – Did you leave the country with prior approval of your office or did you intimate your leaving the country ? The answer of the applicant is 'yes' I acquired passport in accordance with department permission but I am sorry to say that I had not taken permission



before leaving the country. The Enquiry Officer thoroughly examined the defence of the applicant, perused the material available on record and has given findings after analysis of facts/evaluation of evidence and found charge No. I, II, III and IV as proved against the applicant. Leaving country without permission not only once but on several occasions is a serious matter and we are not agree with the learned counsel appearing for the applicant that the charges leveled against the applicant were not of serious nature for which the harsh penalty of dismissal from service could have been imposed, but on the contrary, we are fully satisfied that the order dated 19.7.2007 (Ann.A/1) and dated 10.1.2008 (Ann.A/2) issued by the Disciplinary Authority and the Appellate Authority are in accordance with the provisions of law looking to the seriousness of the charges.

17. Accordingly, no interference requires in the impugned orders passed by the Disciplinary Authority and the Appellate Authority. Resultantly, the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/