

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 22.04.2015

ORIGINAL APPLICATION NO. 060/00665/2014
Chandigarh, this the 24th day of April, 2015

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CORAM: HON'BLE MS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

...

Anokh Singh, MES No. 361394, aged 66 years, son of Shri Tara Singh, Ex-Painter (MCM), C/o Shri Ran Singh, House No. 318, Vashisht Nagar, P.O. Babyal, Ambala Cantt., Haryana.

...APPLICANT

BY ADVOCATE: SHRI R.K. SHARMA

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Defence, New Delhi.
2. Directorate General (Pers.), EIC, Engineer-in-Chief's Branch, Integrated HQ of MoD (Army), Kashmir House, Rajaji Marg, New Delhi-110011.
3. Chief Engineer, HQ Western Command, Chandimandir-908543.
4. Commander Works Engineer, Amritsar Cantt-900257 C/o 56 APO.
5. Garrison Engineer, PO Naraingarh, New Cantt. Amritsar.
6. Sh. Sukhdev Singh, Inquiry Officer, AE (Civil), New Amritsar Military Station, Amritsar, Punjab.

...RESPONDENTS

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BY ADVOCATE: SHRI SANJAY GOYAL

ORDER

HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J):-

This is the second round of litigation by the applicant against his removal from service.

2. The applicant had joined as a Painter on 06.05.1970 and was promoted as a Painter (MCM) w.e.f. 28.12.2004. He suffered disciplinary proceedings under the CCS (CCA) Rules 1965 for his unauthorised absence w.e.f. 23.04.2005, thereby failing to maintain absolute devotion to duty. He did not participate in the inquiry, which was concluded ex parte. On 29.05.2006, the order imposing punishment of removal from service was passed (vide Annexure A-11). His belated appeal was rejected (vide Annexure A-12) and revision petition remained undecided, whereupon he filed the O.A. No. 72/HR/2012. Meanwhile, the applicant superannuated on 30.09.2006. As the order dated 29.05.2006 (Annexure A-11) was found to have been passed by an incompetent authority, the same was set aside, vide this Tribunal's Order dated 23.09.2013 (Annexure A-18), the operative paragraphs whereof read as under:

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"7. In view of the above, the impugned order dated 29.05.2006 (Annexure A-3) is not sustainable in the eyes of law and is therefore set aside. Without looking into the other aspects of the matter, we remand back the case to the Disciplinary Authority to take a fresh view in the matter in the light of our above observations and pass appropriate orders. Since the applicant has rendered 35 years of service to the respondents and there is not even a whisper in the pleadings that he has ever been punished during his service career, we expect that the respondents will take into account this factor also while taking a view afresh.

8. Let the above exercise be carried out within a period of three months from the date of receipt of a copy of this order."

3. The impugned order dated 05.04.2014 (Annexure A-1) is the outcome, which has been challenged through the instant O.A. The said order reads as under:

"WHEREAS direction of Hon'ble CAT Chandigarh order dated 23 Sep 2013 and keeping in view of 35 years service of the individual in the department.

WHEREAS MES-361394 Sh Anokh Singh, Painter MCM while serving in GE NAMS absented from duty wef 23 Apr 2005 till the date of retirement i.e. 30 Sep 2006 without sanctioning the leave from competent authority.

AND WHEREAS the undersigned in exercise of the powers conferred under Sub Rule 4 of Rule 15 of CCS (CC&A) Rule 1965 being the competent appointing and disciplinary authority, after careful examination of the whole proceedings of the inquiry a good deal consideration to the matter, having come to the conclusion that the said Sh Anokh Singh, Painter MCM has committed an act of gross misconduct and lack of devotion to Govt duty which is unbecoming of a Govt servant and violation of Rule 3 (1) (ii) & (iii) of CCS (Conduct) Rules 1964, hereby impose on the said MES-361394 Sh Anokh Singh, Painter MCM the penalty of **"REMOVAL FROM**

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**SERVICE WHICH SHALL NOT BE DISQUALIFICATION
FOR FUTURE EMPLOYMENT UNDER THE GOVERNMENT.**

This order will take effect from the date of 29 May 2006 and receipt of this order be acknowledged."

4. We have heard the learned counsel for the parties, perused the pleadings and given our thoughtful consideration to the matter.
5. The learned counsel for the applicant assails the above order dated 05.04.2014 (Annexure A-1) mainly on two grounds: (i) this order of removal could not be given retrospective effect; and (ii) the punishment of removal from service, in the facts and circumstances of this case, is disproportionate. It is further submitted that the applicant did not file any appeal against this order, treating the same as void ab initio.
6. The aforesaid first ground seems unsustainable. The first order of removal from service was dated 29.05.2006, which was set aside by this Tribunal, as the same had been passed by an incompetent authority, and the disciplinary authority was directed "to take a fresh view in the matter". Now, after a fresh look at the matter, the disciplinary authority has again imposed the same punishment by its order dated 05.04.2014. Obviously, the punishment could be related to the first date, i.e., 29.05.2006. In

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this connection, we may refer to the judgment of the hon'ble Supreme Court in **Union of India and Others Vs. P. Gunasekaran** [2014 (13) SCALE 24].

7. The plea on behalf of the applicant that he did not file appeal against the impugned order, treating the same as void ab initio, is also without substance. It is not clear as to how the impugned order is void ab initio and even if it is so, why the appellate authority could not go into the same. The applicant could avail of the remedy of appeal. The appellate authority could also very well consider the aforesaid second ground relating to proportionality of the punishment. Therefore, the applicant's present O.A. is not maintainable, having been filed without exhausting statutory remedies provided under the CCA (CCA) Rules 1965.

8. Hence, the O.A. is dismissed. No order as to costs.

(DR. BRAHM A. AGRAWAL)
MEMBER(J)

(RAJWANT SANDHU)
MEMBER(A)

Dated: 24.4.2015
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