

**Reserved**

**Central Administrative Tribunal, Allahabad Bench,  
Allahabad**

**Original Application No.330/01358/2017**

**This the 31<sup>st</sup> day of October , 2018**

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)**  
**Hon'ble Mr. Gokul Chandra Pati, Member (A)**

Ex. T.No. 2930 Sanjay Kumar Singh Rank- Mazdoor s/o Sri Harbansh Singh r/o Village Fateh Sarai, Post Office and Police Station Renga, District- Ghazipur.

..... Applicant

By Advocate: Sri Vinod Kumar

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Director General of Ordnance (05-8C II) Master General of Ordnance Branch Integrated H.Q. MOD (Army) New Delhi.
3. The Major General Army Ordnance Corps Head Quarter Eastern Command, Fort William, Kolkata-15.
4. The Commandant 222 ADV Base Ordnance Depot, Pin-909222 c/o 99 APO.

..... Respondents.

By Advocate:-Sri D.C. Mishra proxy Counsel for  
Dr. Rajeshwar Tripathi

### **ORDER**

**HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)**

This Original Application(O.A) was filed by the applicant for directing the respondents to reinstate the applicant in service in view of the order dated 16.4.2016 passed by the disciplinary authority with all consequential benefits and permit the applicant to resume his duty and for payment the regular monthly salary as per rules.

2. The brief facts of the case are that applicant was initially appointed on the post of Mazdoor in the year 2002. Unfortunately, in the year 2004, he allegedly fell sick and remained under treatment from 20.5.2004 till 18.4.2011. When, declared fit, he approached the respondents to

permit him to resume his duty but the respondents did not pay any heed.

3. Disciplinary Authority had issued Memorandum of charge sheet dated 2.12.2011(Annexure A-1 to the O.A.) against the applicant leveling charge about unauthorized absence from 30.6.2006 to 26.4.2011. Inquiry Officer submitted its report on 1.5.2011. Applicant submitted defence reply on 18.5.2012 against the inquiry report. Thereafter, Disciplinary Authority passed punishment order dated 17.7.2012, dismissing the applicant from service from the date of order.

4. Applicant filed appeal before the Appellate Authority and Appellate authority vide order dated 19.3.2013 (Annexure A-3 to the O.A.) set- aside the punishment order dated 17.7.2012 and remitted the matter back to the Disciplinary Authority with certain instructions and by imposing terms and conditions as per Rule 27 of CCS (CCA) Rules, 1965 but in spite of the Appellate Authority order dated 19.3.2013, Disciplinary Authority did not act upon in compliance of the order passed by the Appellate Authority.

5. Applicant filed O.A. No. 1558/2015 before this Tribunal seeking relief to direct the respondents to reconsider the case of applicant in compliance of the order dated 19.3.2013 passed by Appellate Authority, which was disposed of by this Tribunal vide order dated 17.3.2015 (Annexure A-4 to the O.A.), directing the Disciplinary Authority to reconsider the case of applicant in view of order dated 19.3.2013 passed by Appellate Authority. In compliance of the order passed by this Tribunal, respondents have passed an order dated 16.4.2016 whereby reinstating the applicant in service.

6. Since in spite of order dated 16.4.2016 passed by the Disciplinary Authority, respondents did not issue joining letter, applicant has filed the present O.A. for directing the respondents to reinstate the applicant in service in view of the order dated 16.4.2016 passed by the disciplinary authority with all consequential benefits and permit the applicant to resume his duty and pay the regular monthly salary.

7. Respondents have filed counter reply wherein they have admitted most of the contentions of the applicant. They have admitted that two inquiries were conducted. First inquiry was conducted by one Major Ripan Jain. Thereafter, a further inquiry was conducted by Captain Shivani Juyal and the applicant was inflicted with the punishment of dismissal from service.

8. Respondents have stated that applicant had filed a departmental appeal. The appellate authority vide order dated 19.3.2013 remitted the matter back to the disciplinary authority with certain instructions in exercise of power under Rule 27 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCS (CCA) Rules, 1965. Disciplinary Authority after receiving direction dated 17.11.2015 in O.A. No. 1558/2015 and Contempt Petition No. 83/2016, passed the required final order whereby ordering the reinstatement of the applicant on 16.4.2016.

9. Heard Sri Vinod Kumar, learned counsel for applicant and Sri D.C. Mishra holding brief of Sri Rajeshwar Tripathi, learned counsel for respondents.

10. This is a strange, O.A. wherein most of the facts are admitted to rival parties. In compliance of the order of appellate authority dated 19.3.2003, the judgment dated

17.11.2015 of this Tribunal passed in O.A. No. 1558/2011 and Contempt Petition No 83/2016, the disciplinary authority has finally passed the order on 16.4.2016. Apparently, the applicant has been reinstated in service. The period of absence i.e. from 9.5.2004 to 26.4.2011 was ordered to be treated as EOL without pay. It was further ordered that period of absence and the period from the date of dismissal i.e. from 17<sup>th</sup> July 2012 to the date of reinstatement was to be treated as qualifying service for pension. The relevant portion of this order is reproduced below:-

- "3. AND WHEREAS, the indl has filed a court case O.A.No. 330/01558/2015 in Hon'ble CAT, Allahabad Bench, The Hon'ble Court disposed off the case on 17 Nov. 2015 in favour of applicant giving direction to take a decision as per para 9 of the Appellate Authority's order dated 19 Mar 2013 within a period of three months from the date of receipt of the instant court order.
4. NOW THEREFORE, the undersigned being the Disciplinary Authority, decided that the individual be reinstated in service as per verdict given on 17 Nov 2015 by Hon'ble CAT, Allahabad in instant court case as well as order of Appellate authority dated 19 Mar 2013.
5. The quantum proposed to regularize the period of absence and the period from the date of dismissal to the date of reinstatement are as under:-
  - (a) The period of absence i.e. from 09 May 2004 to 26 Apr 2011 be treated as EOL without pay. The ibid period of absence and the period from the date of dismissal i.e. from 17 Jul 2012 to the date of reinstatement will be treated as qualifying service for pension.
  - (b) Pay and allowances (not being the whole) to which he would have been entitled as per fR-54 (4) will be admissible during the period from date of dismissal to the date of reinstatement in the service.
6. It is requested to submit your representation, if any, to reach this office latest by 15 May 2016. Reinstatement order will be issued shortly on receipt of reply from you."

11. The aforesaid order indicates that applicant no longer has any grievance as far as his reinstatement is concerned. Yet he was compelled to file the present O.A. for the simple reason that the department has not actually allowed him to join the service. The counter reply indicates that after passing the order of reinstatement, the respondents are not allowing the applicant to join service on the few grounds delineated in para No. 12 of their counter reply. All these grounds are irrelevant and merely a pretences for not complying the order of disciplinary authority dated 16.4.2016. Once the reinstatement order has been passed, there is no requirement of seeking any clarification from any authority or hospital regarding the medical condition of applicant as well as authenticity of earlier medical certificate of applicant. It is pertinent to point out that no inquiry is now pending against the applicant. Therefore, to continue to seek information from Rajendra Institute of Medical Sciences, Ranchi is improper and irregular.

12. Any claim regarding suspicion or genuineness of the purported medical certificate issued by Rajendra Institute of Medical Sciences, Ranchi should have been looked into only during the disciplinary proceedings. Disciplinary proceedings have now been concluded after passing the order dated 16.4.2016 by the disciplinary authority.

13. Learned counsel for respondents has also stated that period of absence was more than 5 years which could have been regularized only by President of India. This in our opinion is merely red herring. The order of disciplinary authority is very clear in this regard. Even if, sanction of President of India is required for regularizing the period of

absence of service, that should not preclude the respondents from reinstating the applicant back into the service in compliance of order dated 16.4.2016 passed by disciplinary authority. The order of disciplinary authority dated 16.4.2016 is in existence. Respondents cannot stop the applicant from joining the service.

14. Considering all the facts and circumstances, O.A. is allowed with cost which is quantified as Rs.2000/-. Respondents/competent authorities are directed to reinstate the applicant Sanjay Kumar Singh back into the service immediately preferably within one month from the date of receipt of certified copy of this order. They are further directed to comply with the order dated 16.4.2016 passed by the disciplinary authority in letter and spirit.

**(GOKUL CHANDRA PATI) (JUSTICE BHARAT BHUSHAN)**  
**MEMBER (A) MEMBER (J)**

**HLS/-**