

**Central Administrative Tribunal
Principal Bench, New Delhi**

T.A. No.42/2015

Monday, this the 3rd day of July 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Brij Mohan Mittal
s/o (late) Mr. Rameshwar Dass Mittal
r/o 2404 Sector 16, Faridabad – 121002 (Haryana)

..Applicant

(Applicant in person)

Versus

Steel Authority of India Limited
(through the Chairman
Ispat Bhavan, Lodhi Road, New Delhi – 110 003

1. Mr. J Sobti
Assistant General Manager (C&IT)
Steel Authority of India Limited
19th Floor, Scope Minar, Laxmi Nagar District Centre
Laxmi Nagar, New Delhi – 110 091

2. Ms. Neelam
Senior Manager (Pers)
Steel Authority of India Limited
Ispat Bhavan, Lodhi Road, New Delhi – 110 003

..Respondents

(Mr. R N Singh, Advocate)

O R D E R (ORAL)

Mr. K.N. Shrivastava:

The applicant of this Transfer Application (T.A.) had originally filed Suit No.610/2008 in the Court of Civil Judge, Delhi. The suit was transferred to this Tribunal by the District & Sessions Judge, Delhi on the ground that the controversy involved is relating to service matter and the Tribunal is the competent jurisdictional court to adjudicate such matters.

Hence, this T.A. is considered to be an Application under Section 19 of the Administrative Tribunals Act, 1985.

2. The factual matrix of this case is as under:-

2.1 The applicant is working as as an Assistant Manager (Computer & Information Technology) (C&IT) in the respondent-organization – Steel Authority of India Limited (SAIL). He was reporting to Mr. J Sobti, Assistant General Manager (C&IT), SAIL while working as Junior Manager (CC&C) at Scope Minar renovation project of SAIL during the year 2002-03.

2.2 While the applicant was working as a Junior Manager (CC&C), SAIL, Scope Minar, New Delhi, a show cause notice (SCN) dated 10/25.03.2003 came to be issued to him, which is reproduced below:-

“Subject : Show-cause notice

It has been noticed that you were not present on duty and found missing from your work place during the office hours without prior intimation and permission of your reporting officer. The following are the specific instances of your not being present on duty even after marking your attendance:

Date	Period of Absence
27 th January, 2003	From 1400 Hrs to 1700 Hrs
28 th January, 2003	From 1030 Hrs to 1300 Hrs
29 th January, 2003	From 0915 Hrs to 1300 Hrs
30 th January, 2003	From 1400 Hrs to 1600 Hrs
31 st January, 2003	From 1100 Hrs to 1500 Hrs
6 th February, 2003	From 0900 Hrs to 1415 Hrs & from 1545 Hrs to 1645 Hrs
10 th February, 2003	From 1100 Hrs to 1500 Hrs
13 th February, 2003	Came to office only at 1515 Hrs
14 th February, 2003	Not present since 1100 Hrs
17 th February, 2003	Not present from 0930 Hrs to 1700 Hrs
18 th February, 2003	Not present for most part of the day

25 th 26 th Feb 2003	Not present for most part of the day
28 th February, 2003	Not present for most part of the day
3 rd March, 2003	Signed in the attendance register at 0830 Hrs and since then missing.

2. You have been counselled several times to be regular in office and not to leave the place of work without prior permission and intimation. You have further been advised to devote more attention on the jobs / task assigned to you at Scope Minar. However, there has not been any change in your behavior.

3. Further, you have misbehaved and threatened the undersigned on 15th February, 2003 at 1500 Hrs at the 18th Floor of the SAIL office at Scope Minar, when the undersigned refused to regularise the period of your absences from duty for the period prior to 27th January, 2003. This besides the fact that you were explained that you had not reported for duty at Scope Minar from November, 2002 without prior intimation, and had reported for duty at Scope Minar w.e.f. 27//1/2003.

4. The above acts are misconducts in terms of SAIL Conduct Discipline & Appeal Rules, 1977 and renders you liable for disciplinary action.

5. You are directed to show cause as to why disciplinary action should not be initiated against you for your above mentioned acts. Your reply must reach the undersigned within 48 hours from the date of receipt of this notice failing which it shall be presumed that you have no explanation to offer and further action shall be taken as per rules without further reference to you.

6. Please acknowledge receipt on the duplicate copy enclosed.”

2.3 The applicant did not reply to the said SCN. He was verbally counseled by his immediate superior Mr. Sobti. At the time when he was working as Junior Manager (CC&C), he was in the probation period of one year, i.e., from 11.07.2002 to 10.01.2003. His probation was extended by three months on the following grounds:

- (a) Unsatisfactory job performance; and
- (b) Unsatisfactory attendance / punctuality.

2.4 The applicant requested the respondent to withdraw the impugned SCN vide his letter dated 26.07.2003, which was followed by reminders dated 01.07.2008 and 22.07.2008. Since no action was taken on his letter/representation dated 26.07.2003 by the respondents, the applicant filed the civil suit before the Civil Judge, Delhi, which is now T.A. before this Tribunal, with the following prayers:-

“a. Pass a decree of declaration together with cost in favour of the plaintiff and against the defendants, its officials, agents etc. thereby declaring that the impugned office order dated January 22, 2003 & Show Cause notice dated 10/25th March, 2003 as illegal, hence null and void abinitio. Show cause page 7 & 8, Order 15.

b. Any other or further orders, which this Hon’ble Court deems fit and proper may also be passed in favour of the plaintiff and against the defendants.

3. Pursuant to the notice issued, the respondent-SAIL filed its reply in the Civil Court. The case was taken up for hearing the arguments today.

4. Arguments of the applicant as party in person and that of Mr. R N Singh, learned counsel for respondents were heard.

5. The applicant, reiterating his pleadings, stated that the impugned SCN has been issued to him by the respondents without any rhyme and reason. He stated that his promotion has been extended by three months on false, frivolous and baseless grounds of attendance / punctuality, but as a matter of fact, the applicant never remained unauthorizedly absent and his pay was not deducted even for a day for that reason. He said that as a Junior Manager (CC&C), he was the only officer from C&IT Department of the respondents looking after the technical part of the Turnkey Project in Scope Miner office of the respondent. The project was completed well in

time as per the satisfaction of the respondent. He said that during the course of execution of project, he was continued in the project throughout and no other technical manpower was deputed in addition to him for the project. As such the allegation of the respondents that his job was unsatisfactory is absolutely baseless and meaningless.

6. The applicant further submitted that the impugned SCN has been issued to him just to harass him. He said that never any adverse remark was given to him in the ACR, which is a testimony of his good and satisfactory performance. Since his repeated request for withdrawal of the SCN was not considered by the respondents, he had no option except to take legal recourse. Thus the applicant pleaded for grant of the prayers.

8. *Per contra*, Mr. R N Singh, learned counsel for respondents submitted that the applicant was not present on duty on several occasions, as has been indicated in the impugned SCN. He said that there are documentary proofs to the effect that the applicant, in fact, had remained unauthorized absent during the periods indicated in the SCN on several dates. Mr. Singh submitted that the applicant was verbally counseled by Mr. Sobti, together with the Personal Officer of the respondent-SAIL. Considering the fact that the applicant was young officer and still under probation, it was consciously decided not to take any punitive action against him and only his probation was extended by three months.

9. Mr. Singh, while acknowledging that the project of Scope Minar was completed in time, submitted that the applicant cannot take fully credit for the timely completion of the project. As a matter of fact, Mr. Sobti, his

immediate superior as well as another officer Mr. Shanker Lal, were also closely associated with the project and Mr. Sobti was, in fact, the senior-most officer. Mr. Singh further submitted that undoubtedly no adverse remark was entered in the ACR of the applicant for the period in question, but that does not go to prove that the impugned SCN issued as well as order extending his probation were meaningless. Non-recording of adverse remark in the ACR does not indicate that applicant's performance was indeed satisfactory.

10. Concluding his arguments, Mr. Singh said that the request of the applicant for withdrawal of SCN could not have been acceded to by the respondents for the aforementioned reasons, and he thus pleaded for the dismissal of the T.A.

11. We have considered the rival arguments of the parties and have also perused the pleadings and documents annexed thereto.

12. The respondents have placed on record the attendance records of the applicant during the period in question. The impugned SCN has specifically indicated the unauthorized absence of the applicant from duty and he was called upon to submit his explanation. He was thus duty bound to reply to the impugned SCN explaining his position with documentary proof. The applicant instead of replying to the SCN chose to take legal recourse, which indeed was unwarranted. Pertinent to observe that all the officials of SAIL are required to conform to the Conduct, Discipline & Appeal Rules, 1977 (updated as on October 2013). The applicant was also required to follow these Rules. If an SCN was issued to him, he ought to have replied to the

same, but he chose not to do so. The respondents, on the other hand, instead of taking any punitive action against the applicant, showed mercy and gave quietus to the issue by just giving him an oral counseling.

13. Considering the fact that the applicant has earned satisfactory ACR for the period in question and the project, on which he was deployed, got completed as per schedule, and he has also been promoted thereafter, we are of the view that the ends of justice would meet by asking the respondents to withdraw the impugned SCN dated 10/25.03.2003 and so also the order dated 20.01.2003 (p. 163 of the paper book) extending the probation of the applicant for three months.

14. In the conspectus of discussions in the pre-paragraphs, the T.A. is allowed. The respondents are directed to withdraw the SCN issued to the applicant. They are further directed to withdraw the order dated 20.01.2003 whereby the probation of the applicant was extended by three months. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

July 03, 2017
/sunil/