

**Central Administrative Tribunal
Principal Bench
New Delhi**

TA No.47/2012
[WP (C) No.6151/2003)]

Order Reserved on :08.04.2016

Pronounced on:11.05.2016.

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Shri Paul Joseph
S/o Shri P.Joseph
R/o Quarter No.C-328
Staff Quarters
Ashoka Hotel
Chanakayapuri
New Delhi. Petitioner/Applicant

(Applicant in person)

Versus

- 1) Indian Tourist Development Corporation
Through its Chairman Cum Managing Director
Scope Complex, C.G.O.
Lodhi Road, New Delhi
- 2) The General Manager
Ashoka Hotel
Chanakyapuri
New Delhi. Respondents

(By Advocate: Shri Ujjwal Kumar Jha)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This is an Transferred Application (TA) from the Hon'ble High Court of Delhi. The applicant had filed Writ Petition (Civil) No.6151/2003, challenging Annexure A-14

termination order dated 19.05.2003 issued by respondent no.2 whereby the services of the applicant were terminated. The Hon'ble High Court vide order dated 10.10.2012 disposed of the said Writ Petition with the following order:

- “1. *Counsel for the petitioner has fairly conceded that petitioner is seeking relief against respondent no.1 and jurisdiction of the same is with Central Administrative Tribunal.*
2. *At his request instant petition is transferred to Central Administrative Tribunal.*
3. *Parties are directed to appear before Registrar, CAT on 30.10.2012 for direction.”*

2. The brief facts of this case are as under.

2.1 The applicant was working as a Commis-V in Ashok Hotel under respondent no.2 during the year 1999-2000. He remained unauthorisedly absent during the year 1999 for 143 days for which Annexure P-1 charge-sheet dated 13.06.2000 was issued to him, in which the following four charges were levelled against him:

“14.(I) *Wilful insubordination of disobedience of any lawful and reasonable order of a superior.*

14(VI) Habitual absence without leave or without sufficient cause;

14(IX) Commission of any act subversive of discipline or good behaviour within the establishment or outside.

14(XXXV) Breach of standing orders or any rules or instructions for the maintenance and working of any department.”

2.2 With the issue of the charge-sheet, the disciplinary enquiry (DE) were set in motion. An Enquiry Officer (EO) was appointed. The applicant participated in the enquiry. The EO submitted his Annexure R-7 report on 11.11.2002. His findings in respect of our charges were as under:

- i) Wilful insubordination or disobedience of any law or reasonable order of superior - Not proved.
- ii) Habitual absence without leave or without sufficient cause - Proved beyond doubt.
- iii) Commission of any act, sub-service of discipline or good behaviour - Proved.
- iv) Branch of standing order, any rules or instructions for the maintenance of any department - Not proved.

2.3 Acting on the EO's report, the DA, i.e., respondent no.2 issued Annexure R-3 Show Cause Notice (SCN) dated 20.12.2002. After receiving the reply of the applicant and giving his due consideration to the same, the respondent no.2 vide Annexure A-14 order dated 19.05.2003, terminated the services of the applicant with immediate effect.

2.4 Aggrieved by the Annexure A-14 termination order, the applicant filed the Writ Petition (Civil) No.6151/2003, before the Hon'ble High Court of Delhi. The applicant has made the following prayers in the Writ Petition:

“(i) issue an appropriate writ, order of direction for quashing of two impugned orders of termination of the petitioner from service of Respondent No.2 dated 19.5.2003 passed & issued by the concerned disciplinary authority under the Respondent No.2 against the petitioner &

(ii) Direct the respondent no.2 to re-instate the petitioner with continuity of service for the purposes of seniority & with all services benefits and award the back wages for the entire period from the date of termination of his service till the date of his re-instatement into service of the Respondent No.2 &

(iii) Pass such other order or orders as this Hon'ble Court deem fit& proper in the interest of Justice, fairplay & under the special facts & circumstances of this case.”

2.5 The High Court transferred the case to this Tribunal on the issue of jurisdiction vide order dated 10.10.2012.

3. After the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 08.04.2012. The applicant, party in person, and Shri Ujjawal Kuma Jha, learned counsel for the respondents argued the case.

4. The applicant submitted that he has already been punished for his unauthorized absence during the year 1999 by the respondents on 01.06.1999 by way of inflicting the punishment of stoppage of two increments

on him. He further stated that he had demanded certain documents from the EO during the course of enquiry, but the same were not provided to him, which has prejudiced his case. He further stated that the respondent no.2 has not followed the procedure laid down for issuing the charge-sheet; as a matter of fact the charge-sheet ought to have been issued by the HR department of the organization, whereas the same has been issued by the respondent no.2 directly. He further submitted that he has submitted his Mercy Petition before the respondents and the same has not been disposed of. He also submitted that some employees of the organization, on the similar charge of unauthorized absence were earlier terminated and later reinstated, whereas the same has not been done in his case. He said that he was having marital problems with his wife due to which he was mentally disturbed and because of which he was not able to come to the office regularly. Although he had brought this problem to the notice of the respondents and also mentioned during the course of enquiry but the same has not been considered and the impugned termination order has been passed. Concluding his arguments, the applicant submitted that in view of his personal circumstances and also in view of the fact that some other

employees of the organization have been reinstated in service after termination on similar charge, a direction may be issued to the respondents to re-instate him in service and the prayers made in the TA may be allowed.

5. Per contra, learned counsel for the respondents submitted that the applicant has been a habitual absentee. He said that in the year 1998 he absented for 198 days, in the year 1999 for 147 days and in the year 2000 for 144 days. Due to such behaviour of the applicant, the work of the organization was getting hampered and the respondents were left with no option except to start DE proceedings against him. He further submitted that the applicant has participated in the enquiry and he was provided the assistance of a Defence Assistant during the enquiry. He was given copies of all the relied upon documents by the Management and the enquiry proceedings were conducted in full compliance of the principles of natural justice. It was also submitted that the charge-sheet has been issued to the applicant in accordance with the extant procedures. The learned counsel vehemently controverted the submission of the applicant that he has been punished twice for the same offence. Regarding the marital problem of the applicant, the learned counsel submitted that the marital problem of

the applicant was adjudicated by the Hon'ble High Court on 16.10.1998 and the Hon'ble High Court was pleased to record the fact that the marital problem has been amicably settled between the petitioner-herein (applicant) and his ex-wife. As such the applicant has made a lame excuse for justifying his unauthorized absence and tried to invoke the sympathy of this Hon'ble Tribunal. Concluding his arguments, the learned counsel stated that the TA (W.P. (C) no.6151/2003) is devoid of any merit and as such it should be dismissed.

6. We have considered the arguments of the applicant and the learned counsel for the respondents. The unauthorized absence of the applicant for a prolonged period has been well established as per the EO's report. We find that the enquiry has been conducted as per the prescribed procedure and by following the principles of natural justice at every stage. It is settled law by the Hon'ble Supreme Court that the scope of judicial intervention in a departmental enquiry is highly limited. Judicial intervention can be done only in the following situations:

- i) If the enquiry has not been conducted as per the laid down procedures.

ii) If the principles of natural justice have not been followed in the conduct of the enquiry.

iii) If the punishment awarded is disproportionate to the offence committed so as to shock conscience.

7. We find that in the instant case the DE proceedings have been conducted as per the prescribed procedure. Principles of natural justice have been followed and the punishment inflicted is quite proportionate to the offence committed by the applicant. As such, we do not find any merit in the TA and the same is dismissed.

8. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

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