

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

O.A. No.493/2013

Wednesday, this the 12<sup>th</sup> day of September, 2018

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

Sube Ram II  
Ex Sanitary Attendant Gr. II  
s/o Shri Sunheri Lal  
r/o A/139, Ayurvigyan Nagar  
Near Ansal Plaza  
New Delhi – 110 029

..Applicant

(Mr. Pushpender Yadav, Advocate)

Versus

1. The Director  
All India Institute of Medical Sciences  
Ansari Nagar, New Delhi – 110 029
2. Deputy Director (Admn.)  
All India Institute of Medical Sciences  
29, Ansari Nagar, New Delhi – 110 029
3. Administrative Officer  
All India Institute of Medical Sciences  
29, Ansari Nagar, New Delhi – 110 029

..Respondents

(Mr. Nikhil Mehra, Advocate)

**O R D E R (ORAL)**

**Mr. K.N. Shrivastava:**

Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

“(1) Quash and set aside – (i) the impugned order dated 4-07-2012 imposing penalty of compulsory retirement; and (ii) Memorandum dated 17.01.2013 rejecting the statutory appeal at the level of

Administrative Officer instead of at the level of Appellate Authority who is above the Director, AIIMS, being the Disciplinary Authority;

(2) Direct respondents to consider reinstatement of applicant till superannuation or alternatively subjecting him to appear before the Medical Board for opinion and if found medically unfit owing to his chronic ailment of epilepsy, retire him on medical ground as per rules;

(3) Direct respondents to consider giving employment to eligible daughter / son on compassionate ground, in the event of applicant's retirement on medical ground.

(4) Direct respondents to make payment of his dues as per applicant's leave account (medical and EL) standing to his credit, as per service record, as also arrears of 6<sup>th</sup> C.P.C. recommendations, accruable to him."

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant joined All India Institute of Medical Sciences (AIIMS) as an Assistant Sanitary Attendant Grade – III in the year 1985. A charge memo came to be issued to him on 09.07.2011 for unauthorized absence of 386 days. Pursuant to the charge memo, enquiry was conducted. The enquiry officer, namely, Mr. H L Arora, submitted his report on 16.12.2011 to the disciplinary authority. A copy of the said report, together with a notice dated 30.08.2011 (Annexure A/3), was served to the applicant for his representation. In the 'findings' column of the report, the enquiry officer has noted as under:-

"Considering the oral and documentary evidences on record as discussed above, I find that the charge of unauthorized absence from duty by Shri Sube Ram-II, Sanitary Attendant Grade-III, as mentioned in the Article of Charge of the said charge sheet, stands proved beyond doubt."

2.2 The applicant submitted his Annexure A-5 representation dated 24.01.2012 against the enquiry officer's report. Not satisfied with the representation of the applicant and acting on the findings of the enquiry officer's report, the disciplinary authority, namely, the Director, AIIMS, vide his impugned Annexure A-1 order dated 04.07.2012 (p.14), imposed the penalty of compulsory retirement on the applicant.

2.3 An appeal preferred against the order of the disciplinary authority was rejected by the appellate authority vide order dated 16.08.2013 (Annexure AA-1 (colly.)) (p.102), *albeit* this order on behalf of the appellate authority has been signed by the disciplinary authority itself.

Aggrieved by the orders of disciplinary and appellate authorities, the applicant has approached this Tribunal in the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply.

4. With the completion of pleadings, the case was taken up for hearing the arguments of the parties today.

5. Mr. Pushpender Yadav, learned counsel for applicant submitted that although the applicant had participated in the enquiry proceedings, but could not submit his defence statement, as he was suffering with frequent epileptic attacks and also with mental depression due to the family problems. In support of it, the learned counsel today placed on record a disability certificate issued to him by G.B. Pant Hospital, New Delhi.

6. Mr. Yadav vehemently argued that the applicant is suffering with 87% disability and hence, in terms of Section 47 of Persons With Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995, he ought to have been given some alternate placement by the respondents, which has not been done.

7. The next line of argument of learned counsel for applicant was that the applicant did not indulge in unauthorized absence wilfully, and that due to his medical condition, he was compelled to remain absent. Relying on the judgment of Hon'ble Apex Court in **Krushnakant B. Parmar v. Union of India & another** (2012) 3 SCC 178, he argued that all the absences cannot be termed as 'wilful', and that the authorities concerned were required to apply their mind to decide as to whether the absence was wilful or otherwise. The learned counsel particularly drew our attention to paragraphs 16, 17, 18 & 19 of the judgment, which read as under:-

“16. In the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant. The question whether “unauthorised absence from duty” amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to

prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.”

8. Concluding his arguments, the learned counsel submitted that the applicant has not wilfully indulged in unauthorized absence and that he has been suffering with frequent epileptic attacks and mental depression, and hence the punishment of compulsory retirement inflicted on the applicant was not justified, and therefore, the orders of the disciplinary and appellate authorities may be quashed and set aside.

9. The learned counsel also stated that in accordance with Section 47 of Persons With Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995, the respondents may be directed to post the applicant against a post where he can work with his medical condition.

10. *Per contra*, learned counsel for respondents argued that the applicant had participated in the enquiry proceedings but failed to submit his defence statements despite opportunities given to him. He further stated that the applicant had remained absent for as many as 386 days in 5 different spells; one of them of 218 days.

11. Referring to the disability certificate of the applicant, the learned counsel stated that it is evident from this certificate as well that the applicant has been suffering with *chronic alcoholism seizure disorder & dementia psychosis*. He particularly drew our attention to the fact that the

disability certificate has been issued by the G.B. Pant Hospital, New Delhi on 31.08.2017, whereas the disciplinary authority, vide impugned Annexure A-1 order, had imposed the penalty of compulsory retirement on him 5 years earlier on 04.07.2012. He, thus, argued that this disability certificate cannot be taken into consideration at this stage.

12. We have heard the learned counsel for parties and perused the pleadings.

13. It is now an admitted fact that the applicant indeed had remained unauthorizedly absent for 386 days and, therefore, the respondents were well justified to initiate disciplinary proceedings against him for it. The enquiry has been conducted, in which the applicant had participated. From the perusal of records, it is evident that principles of natural justice have been followed at every stage in the conduct of the disciplinary proceedings.

14. The Hon'ble Apex Court, defining the scope of judicial review in disciplinary proceedings, has laid down the following broad principles:

- (a) Principles of natural justice have not been followed in the conduct of disciplinary enquiry proceedings,
- (b) Incompetent authorities have issued the charge memorandum and passed the penalty orders,
- (c) The penalty orders have been passed in violation of relevant laws/rules; and
- (d) The punishment inflicted is disproportionate to the offence committed.

15. The above principles have been enshrined in the following judgments of Hon'ble Supreme Court:

- (i) **Union of India v. P. Gunasekaran**, (2015) 2 SCC 610
- (ii) **Ranjit Thakur v. Union of India & others**, (1987) 4 SCC 611; and
- (iii) **Kuldeep Singh v. Commissioner of Police & others**, JT 1998 (8) SC 603.

16. In the instant case, we find that the procedure laid down for conduct of enquiry has been followed and so also the principles of natural justice. As such, we do not consider it appropriate that the orders of disciplinary and appellate authorities be interfered with. We also note that the punishment of compulsory retirement is not disproportionate to the misdemeanour of the applicant.

17. We, however, note that the applicant has rendered about 26 years of service in AIIMS. In consideration of this, we feel that the respondents must consider grant of compassionate allowance to him, as mandated under Rule 41 of CCS (Pension) Rules, 1972, looking at his financial conditions and that of his family.

18. In the conspectus, we dispose of this O.A. in the following terms:-

- (i) ***The orders of disciplinary authority and appellate authority are upheld. The reliefs prayed for by the applicant are denied.***

*(ii) The respondents are directed to consider sanction of compassionate allowance to the applicant in terms of Rule 41 of CCS (Pension) Rules, 1972.*

*(iii) The applicant is directed to submit an application to the respondents for grant of compassionate allowance to him. This shall be done within a period of two weeks from the date of receipt of a copy of this order. The respondents, in turn, are directed to consider the representation of the applicant within two months from its receipt and decide it by passing a reasoned and speaking order, under intimation to the applicant.*

No order as to costs.

**( S.N. Terdal )**  
**Member (J)**

**( K.N. Shrivastava )**  
**Member (A)**

**September 12, 2018**

/sunil/