

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**O.A. No.682/2015**

**Reserved On:12.07.2018  
Pronounced on:21.08.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)  
Hon'ble Mr. A.K. Bishnoi, Member (A)**

P.C. Meena  
S/o Shri Mangla Ram  
Designation: Sr. Field Assistant (G)  
Age: 50 years  
R/o House No.P-3/61, Mangol Puri,  
Delhi-110083.

...Applicant

(By Advocate: Shri P.S. Ranga)

Vs.

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| <p>1. Union of India<br/>Through<br/>Cabinet Secretary,<br/>Rashtrapati Bhawan,<br/>New Delhi-110 001.</p>   | <p>Deleted vide order<br/>20.04.2018</p> |
| <p>2. Director General of Security,<br/>Aviation Research Centre,<br/>(Cabinet Secretariat),<br/>East Block-V,<br/>R.K. Puram,<br/>New Delhi-110066.</p> | <p>- Respondents</p>                     |

(By Advocate: Sh. R.K. Jain)

**ORDER**

**By Hon'ble Mr. V. Ajay Kumar, Member (J)**

The applicant, a Senior Field Assistant (G) in the second respondent-Director General of Security Aviation Research Centre, Cabinet Secretariat, New Delhi, filed the OA questioning the Annexure A-1 order dated 31.12.2012 whereunder a penalty of

compulsory retirement with all pensionary and gratuity benefits was imposed and the Annexure A-2 Appellate Order dated 05.12.2014 in dismissing the appeal preferred against the penalty order.

2. Brief facts, as narrated in the OA, are that while the applicant was working as Senior Field Assistant (G), he acquired a disability of mental illness at different intervals and he remained under treatment. Medical certificates for the periods from 06.03.2010 to 31.03.2010 and from 16.05.2013 to 18.09.2013 are filed as Annexures A-9. The illness was so serious that the applicant could not attend office from 09.09.2010 continuously for a long spell. In view of his illness, his family also got disturbed a lot and they were informing the respondents about the condition of the applicant. However, the respondents initiated disciplinary proceedings against the applicant and issued Charge Memorandum dated 15.12.2011 levelling the charge of unauthorised absence. Though the son of the applicant informed about the mental illness of the applicant and his inability to participate in the enquiry proceedings, the Inquiry Officer on the instructions of the Disciplinary Authority, held ex-parte enquiry and submitted his enquiry report dated 13.09.2012 (Annexure A-7) holding the charge of unauthorised absence from duty as proved and as per the said ex-parte enquiry report, the Disciplinary Authority vide the impugned Annexure A-1 order dated

31.12.2012 imposed the penalty of compulsory retirement with effect from 31.12.2012, with all pensionary and gratuity benefits, on the applicant.

3. OA No.3237/2014 filed by the applicant was disposed of on 22.09.2014 permitting the applicant to make an appeal against the penalty order with an observation to dispose of the same within 3 months. Accordingly, the applicant preferred his appeal on 05.11.2014 and the Appellate Authority dismissed the same vide order dated 05.12.2014.

4. The respondents in their counter affidavit stated that the applicant initially joined as Field Assistant ( G) on 30.06.1986 and was promoted to the post of SFA (G) w.e.f. 01.12.2008. The applicant was absent from duty with effect from 09.09.2010 and during his absence period, he asked for leave extensions on the ground of illness of close relative/emergency/illness of wife/emergent work at home vide his applications dated 29.09.2010, 12.10.2011, 05.01.2011 and 16.03.2011. The applicant was directed to report for duty vide Memorandums dated 24.03.2011, 24.05.2011, 15.06.2011 and 03.11.2011. Despite of the same, the applicant neither reported for duty nor sent any correspondence in response to the said memos. Thereafter, the Charge Memorandum dated 15.12.2011 was issued and though two

opportunities on 10.02.2012 and 06.03.2012 were given, the applicant did not submit his written statement of defence.

5. Thereafter, an Inquiry Officer and Presenting Officer were appointed and then, his son, namely, Shri Prakash submitted a letter on 12.04.2012 intimating that his father is mentally disturbed and that is why he is not able to attend office and further requested to extend the leave till his father is properly fit. No supporting document was enclosed to the said letter. After considering the said letter, the Disciplinary Authority decided to go ahead and thereafter letters dated 16.05.2012, 10.07.2012 and 14.09.2012 were also submitted by said Shri Prakash making the same request. Even after the Inquiry Officer submitted his report holding the charges proved, the applicant was given two more opportunities, i.e., on 11.10.2012 and 09.11.2012 to submit his reply but he has not submitted any reply. Accordingly, the penalty order dated 31.12.2012 imposing the penalty of compulsory retirement with pensionary and gratuity benefits were ordered. It was also ordered to treat his period of unauthorised absence from duty with effect from 09.09.2010 to 31.1.2012 as "dies non" for all purposes. Though the respondents requested the applicant continuously to submit his pension papers, but he has not done so. The Dealing Assistant visited the house of the applicant on 05.06.2014 for the purpose of obtaining Pension Papers, but the applicant refused to

sign the same. After this, Tribunal permitted the applicant to make the belated appeal. He submitted his appeal on 05.11.2014 and the same was duly considered, but was rejected by order dated 05.12.2014, on merits.

6. The respondents vide their counter further denied that the applicant was mentally ill. It was stated that the applicant failed to submit any proper medical certificate in respect of any period of his unauthorised absence.

7. Heard Shri P.S. Ranga, learned counsel for the applicant and Shri R.K. Jain, learned counsel for the respondents and perused the pleadings on record.

8. Shri P.S. Ranga, learned counsel appearing for the applicant, mainly, submitted that once the case of the applicant was that he was mentally ill with effect from the alleged date of unauthorised absence, the respondents instead of referring the applicant to a Competent Medical Board proceeded with an ex-parte enquiry and imposed the penalty of compulsory retirement. Hence, the ex-parte enquiry and the consequential penalty are illegal and arbitrary. He further submits that the respondents violated Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The said provision prescribes that “no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service”. As per

Section 2(i), the word “disability” under the Act means mental illness also, but the respondents in violation of the same, imposed the penalty of compulsory retirement on the applicant. The learned counsel further submitted that before punishing an employee for the charge of unauthorised absence, it must be proved that the alleged absence was wilful, but without any such finding either by the Inquiry Officer or by the Disciplinary and Appellate Authorities, the applicant was imposed with the penalty. The learned counsel placed reliance on **Krushnakant B. Parmar Vs. Union of India and Another, (2012) 3 SCC 178** and **Anil Kumar Mahajan Vs. Union of India - CA No.4944/2013** dated 02.07.2013.

9. Per contra, the learned counsel for the respondents would submit that the applicant unauthorisedly absented himself from duty with effect from 09.09.2010 onwards and during the said absence period, he made leave applications dated 29.09.2010, 12.10.2010, 05.01.2011 and 16.03.2011, but in none of those applications, he had stated that he was not well or mentally ill but all those applications which were made by the applicant himself had shown the reasons for extension of leave on the ground of illness of his close relative/emergency/illness of wife/emergent work at home etc. Further, in none of the documents/certificates/letters produced by the applicant, there was any specific mention that the applicant was suffering from any mental illness and that he was unfit for duty

or required rest etc. Some medical prescriptions referred by the applicant indicate that he was suffering from F/C Schizo depression and the same pertains to the period subsequent to the penalty order. Once during the relevant period of time, it was not proved that the applicant was suffering from any mental illness, the question of referring the applicant to any Medical Board and applying the provisions of the 1995 Act, does not arise at all.

10. We find force in the submission made on behalf of the respondents. Admittedly, the applicant was absent from duty w.e.f. 09.09.2010 and in the leave applications dated 29.09.2010, 12.10.2010, 05.01.2011 and 16.03.2011 submitted by the applicant himself he has not stated in any of the applications the reason for seeking extension of leave was his mental illness. The documents/medical record enclosed to the OA which show that the applicant was mentally ill are pertaining to the period subsequent to the penalty order.

11. It is true that the penalty and appellate orders nowhere gave a finding that the unauthorised absence of the applicant was wilful but once the applicant failed to produce any valid material justifying his unauthorised absence, non-recording of a finding by the disciplinary and appellate authorities that the said absence was wilful, is not fatal and cannot vitiate the disciplinary orders.

12. In **Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T. T. Murali Babu, (2014) 4 SCC 108**, the Hon'ble Apex Court distinguished **Krushnakant B. Parmar** (supra) and held as under:

“...On an apposite understanding of the judgment we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorized absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is willful even if the employee fails to show the compelling circumstances to remain absent”.

13. We also accept the submission of the learned counsel for the respondents that the facts in **Krushnakant B. Parmar** (supra) and **Anil Kumar** (supra) are different from that of the facts of the instant OA.

14. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. However, if the applicant has not submitted his pension papers, till date, he may do so and on submission of the same by the applicant, the respondents shall process the same and release the pensionary benefits as per rules, as early as possible. No costs.

**(A.K. BISHNOI)**  
**MEMBER (A)**

**(V. AJAY KUMAR)**  
**MEMBER (J)**

RKS