

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00083/2017

DATED THIS THE 11<sup>th</sup> DAY OF JULY, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

H.C.Vijaykeerthi  
S/o H.A.Calias Kumar  
Aged 46 years  
Residing at No.1201, E-23  
3<sup>rd</sup> Cross, 1<sup>st</sup> Block  
HAL 3<sup>rd</sup> Stage  
New Thippasandra Post  
Bangalore-560 075.

.....Applicant

(By Advocate Shri A.R.Holla)

Vs.

1. Union of India  
By Secretary  
Ministry of Information and Broadcasting  
Shastri Bhavan  
New Delhi-110 001.
2. The Chief Executive Officer  
Prasar Bharathi Broadcasting Corporation of India  
Copernicus Marg  
New Delhi-110 001.
3. The Director General  
Prasar Bharathi Broadcasting Corporation of India  
Doordarshan  
Doordarshan Bhavan  
Copernicus Marg  
New Delhi-110 001.

....Respondents

(By Advocate Sri M.Vasudeva Rao,Sr.CGSC)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- i. To quash the Order No.C-14012/11/1998-Vig. Dated 25.5.2016, issued by the respondent No.2, Annexure-A9.*

- ii. *Direct the respondents to reinstate the applicant in service with all consequential benefits including continuity of service with full back salary and allowances.*

2. There have been several rounds of litigation involving of departmental proceedings against the applicant on the same issue before this Tribunal and the Hon'ble High Court of Karnataka. The facts of this case are as follows:

The applicant while working as Cameraman Grade-II and posted to Doordarshan Kendra, Lucknow went on tour to Delhi for the coverage of Parliament proceedings. After his relief on 15.6.1995, he remained absent from duty unauthorisedly from 16.6.1995 to 25.4.2000 and did not respond to several telegrams to report back to duty. Thereafter a proceeding was initiated against him under Rule 14 of the CCS(CCA) rules alleging unauthorised absence. On completion of enquiry, the Chief Executive Officer & Disciplinary Authority vide order No.C-14012/11/98-Vig. Dated 8.10.2007 has imposed the penalty of dismissal from service on the applicant. Aggrieved by the said order of dismissal, the applicant approached this Tribunal in OA.No.435/2007 and the Tribunal vide order dated 23.1.2009 allowed the OA by setting aside the order of dismissal and directed the respondents to reinstate the applicant. When the matter is taken up before the Hon'ble High Court of Karnataka, the Hon'ble High Court vide judgment dated 12.6.2009 set aside the order of the Tribunal and observed that no opportunity was given to the applicant in the impugned disciplinary action to defend his case and directed the respondents to take further disciplinary action in the matter. Thereafter, further enquiry was held by the Inquiry Officer(IO) appointed vide order dated 6.10.2009. He submitted report on 6.1.2010 holding all the charges against the applicant as proved. Thereafter, the disciplinary authority vide order dated 9.9.2010 held that the applicant was not only unauthorized absent but also submitted fake medical certificates in his defence and again dismissed the applicant from service. An appeal

filed by the applicant on 29.3.2012 before the President was also rejected.

3. According to the applicant, thereafter he approached this Tribunal in OA.No.139/2013 and the Tribunal vide order dated 2.8.2013 quashed the order of disciplinary authority and appellate authority and directed to re-conduct the inquiry afresh by incorporating the list of witnesses. Thereafter fresh charge sheet was also issued pursuant to the order in OA.No.139/2013. Inquiry Officer and presenting officer were appointed. In the meanwhile, the Hon'ble High Court of Karnataka in WP.No.49152/2013(S-CAT) filed by the applicant ordered on 17.12.2013 clarifying that the applicant shall be deemed to have been under suspension from the original date of order of dismissal passed by disciplinary authority until further orders and he is entitled for subsistence allowance. Since there was a dispute regarding charge memo, the Tribunal vide order dated 7.3.2014 in OA.No.139/2013 clarified that the enquiry is to be conducted in respect of charge memo dated 25.10.2004 and the respondents are allowed 6 months' time to complete the same. Accordingly, the disciplinary authority enclosed a list of witnesses and informed that inquiry is conducted in respect of charge memorandum dated 5.9.2014. However, the applicant did not attend the hearings on the ground that he has not been paid arrears of subsistence of allowance. When the Tribunal gave a direction in MA.No.482/2014 to pay the arrears of subsistence allowance, the department paid the same on 23.3.2015. Again the applicant filed OA.No.1175/2013 and the Tribunal vide order dated 30.6.2015 upheld validity of both charge sheets and directed to complete the inquiries within 6 months. When the department filed another MA for extension of time, the Tribunal observed that the applicant had himself admitted that he had remained unauthorisedly absent for four and half years and hence there is no necessity of conducting disciplinary proceedings

when the charged official has admitted the charge unequivocally. The Tribunal directed the disciplinary authority to pass an order without conducting any enquiry based on the charges. In compliance of the said order, the disciplinary authority gave personal hearing to the applicant and provided him opportunity to present before a medical board to establish the truth about his medical illness. However, the applicant did not agree to appear before the medical board.

4. When the applicant filed further OA.No.1604/2015 for the increasing rate of subsistence allowance, the matter has been examined by the Tribunal once again and examining various aspects an order was passed on 17.2.2016 by which the Tribunal recalled all its beneficial orders passed in favour of the applicant earlier on the fact that the applicant was unauthorisedly absent from the period 16.6.1995 to 25.4.2000. The Tribunal has ordered that all proceedings have been vitiated by active fraud practiced by the applicant and hence all the beneficial orders passed earlier shall be recalled. The OA was dismissed with the cost of Rs.1 lakh and the applicant was directed to refund the amount received as subsistence allowance. Thereafter the respondent authority passed an order on 25.5.2016 restoring the original order of dismissal dated 8.10.2007 in respect of the applicant and also directed the applicant to refund the subsistence allowance already paid. The applicant had approached the Hon'ble High Court of Karnataka against the order passed by the Tribunal earlier on 30.6.2015 in OA.No.1175/2013 in WP.No.19094/2016(S-CAT). In the said WP, the Hon'ble High Court of Karnataka vide its order dated 26.10.2016 observed that in view of the subsequent order passed by the Tribunal recalling all the earlier orders held that the present WP has become infructuous and gave liberty to the petitioner to raise all contentions available in law in WP.No.25519/2016(S-CAT) as well as to challenge the order of dismissal in accordance with law. The

WP.No.25519/2016(S-CAT) was allowed in part by the Hon'ble High Court of Karnataka vide order dated 10.11.2016 by setting aside the order dated 17.2.2016 passed by the Tribunal in OA.No.1604/2015 in regard to recovery of the subsistence allowance paid to the applicant and the cost of rupees 1 lac. Further the petitioner was granted liberty to challenge the order dated 25.2.2016 before the appropriate forum for appropriate relief and all grounds urged by the petitioner in OA.No.1604/2015 and also in the present writ petition were permitted to be urged in the proposed proceedings. Hence, the present OA has been filed by the applicant challenging the order issued by the respondents on 25.5.2016.

5. The applicant submits that he is a permanent Government servant and cannot be dismissed without framing a charge and after holding an enquiry as contemplated in Article 311 of the Constitution of India. The order of dismissal dated 8.10.2007 was earlier set aside by the Tribunal on 2.8.2013. Therefore restoration of the dismissal order is unjustified. In OA.No.1604/2015, the issue for consideration was as to whether the applicant is entitled for subsistence allowance at 75% of salary. However, the Tribunal dismissed the prayer of the applicant on extraneous considerations. The restoration of the dismissal of the applicant is arbitrary and not in accordance with law. Further the charges by which the applicant was dismissed from service on 8.10.2007 do not contain any allegation with regard to authenticity of medical certificates. Hence, finding of the Tribunal in regard to the authenticity of the medical certificate is also unjustified. Moreover when the applicant resumed his duty after the period of his absence, Director, Doordarshan Kendra had accepted the medical certificates and fitness certificate and allowed the applicant to continue in service. The respondents initiated the disciplinary proceedings against the

applicant based on the original charge as per charge memo dated 25.10.2004 relying on the evidences before them. The evidences cannot pertain to the subsequent period from the date of the charge memo. The disciplinary proceeding initiated against the applicant, resulting in the dismissal of the applicant has been set aside by this Tribunal twice and the Tribunal has given liberty to the respondents to hold a fresh inquiry in to the original charge. Hence, framing a different charge improving upon the earlier charge, that too relying on the documents which came in to existence subsequent to the two dismissal orders of the applicant, is contrary to law. Therefore, he submits that the applicant is entitled to the relief as sought for.

6. The respondents have filed reply statement in which they submitted that on culmination of departmental proceedings initiated vide OM dated 25.10.2004, the applicant was dismissed from service as charges against him was held as proved. Moreover the conduct of the applicant was held as gross misconduct. The dereliction of duty and unauthorised absence for several years warranted harshest punishment. Subsequent enquiry held by the authorities pursuant to the order of the Tribunal also culminated in dismissal of the applicant. In terms of a further order of the Tribunal, further enquiry was held but the applicant did not cooperate and did not appear during the enquiry citing flimsy reasons. He refused to attend the inquiry on the ground that he did not receive any substance allowance. The applicant never attended the inquiry on one excuse or other. He was given subsistence allowance of Rs.17 lakhs without doing any public work. When the applicant was given personal hearing and was asked to appear before medical board, he should have appeared before the medical board so that the medical board could establish the truth about his medical illness. The doubts with regard to the authenticity of the medical certificates furnished by him would also have been cleared. Non-attendance in the enquiry on different grounds and refusal to appear

before medical board only indicates the guilt of the applicant. The Hon'ble High Court did not interfere in the matter pertaining to the dismissal of the applicant and it only set aside the order of the Tribunal dated 17.2.2016 to the extent of recovery of subsistence allowance and cost of litigation. Therefore, the original dismissal order dated 8.10.2007 should stand. The applicant never submitted medical bills, prescriptions to justify the medical claim. The authenticity of medical certificates was checked from the Health Department of Govt. of Karnataka and it was established that they were fake and were also undated. The applicant has not given any other proof viz medical prescription, medical purchase bill etc. Therefore, the Tribunal rightly held that the applicant has done fraud by submitting fake medical certificates and restored the original dismissal order. Hence the contention of the applicant does not merit any consideration.

7. We have heard the Learned Counsel for the parties. The Learned Counsel for the applicant while reiterating the submissions made in the OA gave a detailed chronological history of the case and emphasised on three aspects. He submits that the applicant cannot be dismissed from service from a retrospective date. Further a dismissal cannot be undertaken without holding a proper enquiry. For that reason only, the penalty order was set aside earlier and the respondents were given liberty to initiate the departmental proceedings. He has referred to a notification dated 9.1.2012 relating to Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 2011. He submits that the said amendment of the Act provides vide para 2(11)(4) that the power to impose major penalties of compulsory retirement, removal or dismissal from service shall be exercised by the Central Government. Hence the dismissal order October, 2007 passed by Prasar Bharati is wrong and cannot stand.

8. The Learned Counsel for the respondents referring to the reply statement mentioned that the fact of unauthorised absence of the applicant is never disputed. The matter came up several occasions before the Tribunal and High Court. On 9.10.2013 another departmental proceeding was initiated and the applicant was held guilty. When the matter was considered again, the applicant did not cooperate with the enquiry and did not attend citing different reasons. In one order the Tribunal held that no further enquiry is required as the applicant has admitted the charge unequivocally and the respondents may decide the matter, he was provided an opportunity to appear before medical board but still he declined to appear before any medical board. These facts make it clear that the applicant is not interested in taking the matter to its logical conclusion. The applicant has been receiving money for the last so many years without doing any work. The Tribunal rightly held that the applicant had committed an active fraud and recalled the earlier orders. Consequently the respondents restored the original order of dismissal dated 8.10.2007. There is no irregularity in the same. More over the Hon'ble High Court of Karnataka had not interfered in the order of the Tribunal recalling the earlier beneficial orders. It only set aside the refund of subsistence allowance and cost. Therefore, the action taken by the respondents is perfectly in order and there is no merit in the contention made by the applicant.

9. We have carefully considered the facts of the case and the submissions made by either side. As already mentioned in preceding paras, the departmental proceeding has been initiated nearly 13 years back but it has not attended finality as yet. On two earlier occasions the final order of dismissal issued by the respondents was set aside by the Tribunal with liberty to the respondents to proceed with the enquiry within a time frame. The OA filed subsequently against the charge memo was also dismissed. We note



that the applicant has been constantly avoiding the enquiry proceedings. When the Tribunal had earlier given a direction for completing the enquiry within a specific time frame, the applicant ought to have cooperated with the enquiry but he did not attend the same citing that he has not got subsistence allowance. He could have participated in the enquiry and simultaneously agitated the issue of subsistence allowance since they are two different matters but did not choose to do so. We also note that when the enquiry could not be completed, the Tribunal held that since the issue of unauthorised absence has been admitted by the applicant, there is no necessity for conducting a fresh enquiry to the same admitted issue and the respondents are directed to decide the matter. The respondents then called the applicant for a hearing and asked him to appear before a medical board since the issue of unauthorised absence primarily revolved around his medical illness. The correctness of the ailments i.e. TB highlighted by the applicant could have been easily ascertained if he had appeared before the medical board. But the applicant refused to appear before the medical board. Normally, a Govt. servant, if he is out of duty, would express keenness to complete the proceedings and take it into its logical conclusion so that he can resume duties rather than dragging the matter on different pretexts. During the hearing, we enquired from the Learned Counsel for the applicant as to whether the applicant is sitting idle or is doing any other job as he is a senior cameraman and have many opportunities, the Counsel submits that he has no knowledge of it. It may be possible that the applicant is doing some private work and hence has no interest for concluding the proceedings as he continued to draw subsistence allowance. His refusal to attend the enquiry and to appear before medical board clearly points to the fact that he is not at all keen on conclusion of departmental proceedings.

10. The present order of the authority dated 25.5.2016 restoring the original order of dismissal in respect of the applicant vide order dated 8.10.2007 is in pursuance to the order dated 17.02.2016 passed by the Tribunal in OA.No.1604/2015. Since the part of the said order dtd.17.2.2016 relating to refund of the subsistence allowance has been set aside by the Hon'ble High Court of Karnataka, the issue is only whether the restoration of the dismissal order is justified or not.
11. The Learned Counsel for the applicant, during the hearing submitted that the dismissal of an employee from retrospective date is illegal and moreover he cannot be dismissed without a formal enquiry. It is clear to us from the facts mentioned earlier that the applicant is not interested in participating the inquiry proceedings. The fact of unauthorised absence of the applicant is an established one and nothing further will come up on that issue by holding any fresh enquiry. It is also not a question of dismissal of a person from a retrospective date. It only involves restoration of the order of dismissal passed earlier.
12. The applicant had also raised that in terms of the Prasar Bharati Amendment Act 2011 which came into effect from 9.1.2012, the power to impose major penalty shall be exercised by the Central Government. Hence, the earlier order of dismissal dated 8.10.2007 passed by the Prasar Bharati cannot be sustained as the Prasar Bharati is not competent authority to impose the penalty of dismissal on an employee. We note that the order of 2007 was passed by the authority competent to pass such order at that point of time. The present action is only to restore the said order. Hence the contention of the applicant that the order of October 2007 was not passed by a competent authority is not correct.

13. Judging by the fact that the unauthorised absence of the applicant for which the departmental proceeding was initiated is an established fact and the conduct of the applicant i.e. his refusal to attend the enquiry proceedings citing different reasons and refusal to appear before medical board in spite of the fact that he had cited medical reasons for his unauthorised absence, we are of the view that there is nothing wrong in the action taken by the respondents in imposing the penalty of dismissal from service. The dismissal from service in 2007 or now will not have any further adverse impact on the applicant as he will not be entitled to any further benefits on his dismissal from service. In any case, he has received subsistence allowance for all the period since 2007 which are not to be refunded in terms of the order of the Hon'ble High Court of Karnataka. In the light of this, the action taken by the respondents vide order dated 25.5.2016 to restore the original order of dismissal dated 8.10.2007 pursuant to the order of the Tribunal in OA.No.1604/2015 appears to us as justified.

14. Therefore, on considering all the facts and circumstances of the case and in the light of the observation in preceding paras, we are clearly of the view that the contention of the applicant does not merit any consideration. Therefore, we hold that the present OA is devoid of any merit and accordingly the OA is dismissed. No order as to costs.

(P.K.PRADHAN)  
MEMBER (A)

(JUSICE HARUN UL RASHID)  
MEMBER (J)

/ps/

