

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO.060/00018/2017 Date of order:- 5.9.2018.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

Karamjit Singh s/o Sh. Harchand Singh, permanent r/o village Kuhilkhurd, P.O. Lehal, Tehsil Payal, District Ludhiana, Punjab, presently r/o 193-32550, Maclure Road, Abbotsford, BC V2T4N3, Canada, through special power of attorney namely Balkar Singh s/o Sh Bhajan Singh, r/o village Lassara Pholewass, P.O. Nizampur, Tehsil Paya, District Ludhiana.

.....Applicant.

(By Advocate :- Shri H.S.Ghuman)

Versus

1. Union of India Ministry of Defence, South Block, New Delhi, through its Defence Secretary.
2. Chief Engineer, Headquarters Western Command, Chandimandir, c/o 56 Apo PIN 908 543.
3. Chief Engineer, Jalandhar Zone, Military Engineer Service, Jalandhar Cantonment, PIN 144 005.
4. Commander Works Engineer, Military Engineer Service, Ferozepur Cantonment, PIN 900 346.
5. Garrison Engineer, Military Engineer Service, Near Jagraon Bridge, Ludhiana, PIN 141 001.

...Respondents

(By Advocate : Shri Sanjay Goyal).

ORDER

Sanjeev Kaushik, Member (J):

Applicant has filed the present Original Application for quashing the impugned order-1, impugned order-2 and impugned order-3 passed under the CCS(CCA) Rules, 1965, with a further

prayer that the punishment of removal from service imposed upon him be modified to that of compulsory retirement keeping in view his 20 years of unblemished service.

2. Facts as projected by the applicant are that he was appointed as Motor vehicle mechanic on 24.7.1987 on probation for a period of two years and on completion of his probation period, he was promoted to skilled grade on 24.7.1989. Applicant has stated that he proceeded on leave from 23.10.2007 to 5.12.2007, but was unable to return as he had to leave for left abroad. Respondent no.5 vide letter dated 27.10.2008 directed the applicant to join duty or face disciplinary proceedings, but the same was received back with the postal remarks " individual is living in foreign". Thereafter, a charge-memo was issue on 19.6.2009 and ex.parte enquiry was held against the applicant. On the basis of the enquiry report, respondent no.4 vide order dated 28.5.2011 imposed major penalty of removal from service on the applicant.

3. Feeling aggrieved against the major penalty of removal from service, applicant filed an appeal under Rule 23 of the CCS(CCA) Rules, 1965 on 24.2.20012. When the said appeal was not decided, applicant approached this Tribunal by filing O.A.No.1005/PB/2012 which was disposed of vide order dated 7.9.2012 with a direction to competent authority to take a decision within a period of two months on the indicated appeal. Respondent no.3 rejected the appeal preferred by the applicant vide order dated 8.11.2012. Feeling dissatisfied with the order passed on appeal, applicant filed revision petition before respondent no.2 on 16.5.2013 which too was decided vide order dated 18.7.20016. Hence the present OA.

4. Pursuant to notice, respondents have contested the claim of the applicant by filing written statement, wherein they have submitted that the applicant was appointed in Military Engineer Service on 24.7.1987. While serving the department, he proceeded on leave from 23.10.2007 till 5.12.2007, but he never came back to attend duty inspite of various letters issued to him by the department. The said matter was also reported to SSP, Ludhiana, vide letter dated 21.6.2008 to investigate and ascertain the whereabouts of the applicant. But inspite of clear instructions, the applicant did not join duty nor replied to the said communications/letters addressed to him. The respondents have stated that applicant applied for leave from 23.10.2007 to 5.12.2007 on medical grounds, but instead of submitting medical fitness certificate, he proceeded abroad unauthorisedly without any information/permission of superior authority which is in violation of CCS(Conduct) Rules, 1964 by visiting abroad. They have further stated that applicant is well conversant with the rules that before proceeding abroad, prior permission is mandatory to be obtained from the department. There is no clause/rule to give liberty to a particular person for breaking the good rules. Thereafter, an oral enquiry was ordered to enquire into the charges framed against the applicant under Rule 14 of the CCS(CCA) Rules, 1965. Notice regarding holding of enquiry was also published in the prominent newspapers directing the applicant to attend the enquiry within ten days of publication of notice and finding no response Inquiry Officer finalized the enquiry ex.parte, as the applicant had neither rejoined duty nor attended the enquiry proceedings inspite of repeated reminders/correspondence. On the basis of the enquiry report,

disciplinary authority vide order dated 28.5.2011 awarded the penalty of removal from service which will not be a disqualification for future employment with the government upon the applicant. His appeal and revisions have rightly been rejected. They have thus prayed for dismissal of the OA.

5. Applicant has also filed rejoinder to the written statement by generally reiterating the averments made in the OA.

6. We have heard the learned counsel for the parties and have perused the material placed on record.

7. Learned counsel for the applicant has argued that due to unforeseen and pressing family circumstances of the applicant, he had to proceed abroad and could not come back before the expiry of leave period. Had the applicant been aware that he could not come back from abroad, he would have sought premature retirement from the department. He further argued that the respondents have not taken into account the 20 years unblemished service before passing the impugned order imposing harshest penalty of removal from service ignoring previous service, which is illegal. To buttress his plea, the learned counsel for the applicant has relied upon the following judgments :-

i) Krushnakant B.Parmar versus Union of India & Another (2012(2) S.C.T. Page 572);

ii) Gurmit Singh versus State of Punjab & Another (P&H) 2010(17) S.C.T. Page 802);

iii) Rani versus Guru Nanak Dev University & Another (C.W.P.No.9948 of 2009) decided on 14.12.2010 (P&H);

iv) Sheel Kr. Roy versus Secretary Ministry of Defence & Ors. (2007(7) J.T. Page 485);

v) Secretary to Government Information Public Relation Department & Ors. versus John Maria Jesudoss (2015(2) S.C.T. Page 834); and

vi) Kanailal Bera versus Union of India & Ors. (2007(4) S.C.T. Page 569).

8. Learned counsel for the respondents has argued what has been stated in the written statement.

9. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

10. We are not inclined to accept the contention of the applicant that he was forced to proceed abroad and could not join back, rather, it can safely be inferred from the sequence of events that he must have gone abroad on some assignment, which he had not disclosed to the department, while proceeding on leave. Even the respondent department also reported the matter to SSP Ludhiana, to investigate and ascertain the whereabouts of the applicant. Efforts were made to persuade the applicant to join his duties, but neither he joined the duties nor replied to the letters. In these circumstances, the judgments cited by the applicant are not helpful to him and are clearly distinguishable on facts and law. In fact, the power of the Courts in such matters are very limited.

11. The Hon'ble Apex Court in the case of **S.R.Tewari** versus **Union of India** (2013(7) Scale Page 417) has reiterated that "The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the

conscience of the court, cannot be subjected to judicial review. Again, the Hon'ble Apex Court in the case of **Deputy Commissioner, Kendriya Vidyalaya Sangthan & Ors. vs. J.Hussain** (2013 (10) S.C.C. Page 106) has held that the Courts should not be guided by misplaced sympathy or continuity ground, as a factor in judicial review while examining the quantum of punishment.

12. Again the Hon'ble Apex Court in the case of **Chennai Metropolitan Water Supply & Sewerage Board & Ors.** versus **T.T.Murali Babu** (2014(4) S.C.C. Page 108) has held that "Learned counsel for the respondent has endeavoured hard to impress upon us that he had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of "habitual absenteeism" is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate."

13. Not only that, the jurisdictional High Court in the case of **Union of India versus Raghubir Singh** (CWP No.1154 of 2014) decided on 6.5.2014 has held that "the relationship between an

employer and employee is of utmost vital importance and where an employer loses confidence and faith in such an employee and awarding punishment of dismissal/ removal/termination is the very prerogative of the concerned Disciplinary Authority and there is no place for generosity or misplaced sympathy and, therefore, judicial authorities needs to be cautious in their approach towards such infringement over the powers of Disciplinary Authority". Considering the peculiar facts of this case and conduct of the applicant himself, we do not find any grounds made out to interfere with the penalty imposed upon the applicant as he has intentionally chosen to be absent from service and such kind of conduct in view of law laid down in the case of T.T.Murali Babu(supra).

14. In view of above discussion, we find that no interference is called for and present OA is accordingly dismissed, leaving the parties to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P.GOPINATH)
MEMBER (A).

Dated:- 5.9.2018.

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