

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01778/2016 & MAS 36/2017, 385/2017, 386/2017

Dated Friday the 9th day of November Two Thousand Eighteen

PRESENT

**HON'BLE MRS. JASMINE AHMED, Member (J)
&
HON'BLE MR. T. JACOB, Member (A)**

S. Harikrishnan
lastly employed as
CMD Driver
MT Section
Officers Training Academy (OTA)
St. Thomas Mount, Chennai 16.Applicant

By Advocate M/s M Gnanasekar

Vs

1. Union of India represented by
Lt. General
Dte Gen. of Military Training / MT-7
New Delhi – 110 011.
2. The Commandant
Officers Training Academy
St. Thomas Mount
Chennai 600016.Respondents

By Advocate Mr. Su. Srinivasan

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

Heard. The applicant has filed this OA seeking the following relief:

“i. To set aside the order in 4603/Disc/9607368/SH/22/Adm dated 11.05.2016 passed by the 2nd respondent and the order dated 03.11.2016 passed by the appellate authority rejecting the appeal petition of the applicant and

consequently direct the 2nd respondent to reinstate the applicant with all consequential monetary and other incidental service benefits and

- ii. Pass such further orders as are necessary to meet the ends of justice and
- iii. award costs and thus render justice.”

2. The facts of the case as stated by the applicant are as follows:-

The applicant was called for the post of Driver through employment exchange and he was appointed as Driver on 28.9.2001 and posted as CMD, MT Section, Officers Training Academy, St. Thomas Mount, Chennai. He was allotted quarters near the office by order dt. 2.7.2009. The applicant was sanctioned 17 days of Earned leave by competent authority w.e.f 2.6.2015 to 18.6.2015. When he was on leave, on 14.06.2015, he slipped down from the bathroom and sustained severe pain at his lower back. He took treatment at Government Peripheral Hospital, K.K.Nagar, Chennai. The Doctor, after careful; and elaborate diagnoses advised the applicant to take bed rest for 43 days initially from, 19.06.2015 to 31.07.2015 and since the applicant was not recovered fully, the Doctor further advised to take rest for another 56 days ie, from 01.08.2015 to 25.09.2015. In the meanwhile, the applicant was served with a show cause notice dated 13.08.2015 to report for duty within ten days. The applicant reported for duty on 25.09.2015. On 29.09.2015, the applicant was served with memorandum of charged dated 23.09.2015. He was called for an enquiry on 19.12.2015. The applicant gave reply along with medical certificates. The Inquiry Officer submitted the inquiry report dated 10.02.2016. The applicant sought time to give reply by letter dt. 09.03.2016. On 15.03.2016, he

gave the reply. On 11.05.2016, the 2nd respondent/disciplinary authority passed an order compulsorily retiring the applicant from service. The applicant filed OA 867/2016 in which this Tribunal by order dt. 25.05.2016 directed the applicant to file an appeal to the appellate authority and further directed the appellate authority to pass an order on the appeal petition within time frame. The appeal petition filed by the applicant on 17.06.2016 was rejected by the respondents by order dt. 03.11.2016 and the same was served on the applicant on 07.11.2016.

3. The grounds of challenge by the applicant are as under:-

- a. Past incidents were not subject matter of charges and the same cannot be acted by the Inquiry Officer or by the Disciplinary Authority without putting the applicant on notice.
- b. The absence from the duty per se is not a misconduct if it is on the ground of ill health.
- c. Both the Inquiry Authority as well as the Disciplinary Authority gave findings per verse and as such the order of the compulsory retirement should be treated as a per verse one.
- d. The Disciplinary Authority had mechanically accepted the findings of the Inquiry Officer without application of mind.
- e. The Inquiry Authority and the Disciplinary Authority pre determined the issues in hand and took victimisation violating all the canons of the principles of natural justice.
- f. The case of the applicant is not the case of unauthorised absence. It is only

over stayal of leave due to ill-health.

g. The imposition of punishment of compulsory retirement is disproportionate to the misconduct committed by the applicant.

i. The applicant had put in 14 years of service and it should have been taken into account while imposing the punishment.

j. The appellate order suffers from non-application of mind and the Appellate Authority had mechanically proceeded to reject the appeal.

Hence the applicant has filed this OA seeking the above relief.

4. Per contra the respondents in their reply statement has stated that the charged officer has absented himself from the duty without prior permission or intimation w.e.f. 19th June to 25th September 2015 for 99 days. The charged official inspite of residing at a Government Accommodation in DGQA Complex, Pazhavanthangal which is near to the place of work and with such advanced communication system available in the city, he did not even bother to inform anyone in the MT Sec about his sickness which shows his lackadaisical attitude towards his profession and acted in a manner unbecoming of a Government servant. It is surprising that the charged official was under treatment from an Ortho Specialist for such a long period without having been hospitalised for even one day during the entire period of absence. Hence the charge has been proved beyond doubt. The respondents would further submit that the applicant was awarded two punishments a. Minor punishment b. Major punishment for Unauthorised absence of 145 days and 174 days respectively and the earlier

punishment awarded to the applicant was also pointed out in the Annexure II of memorandum of charges. It is submitted that the contention of the applicant that the Appellate Authority had mechanically rejected the appeal is baseless and incorrect. The respondent would further submit that the applicant was warned not to be absent from duty without prior permission while ordering the punishments earlier. After analysing the report submitted by the Enquiry Authority and the previous service records imposed a major penalty of compulsory retirement vide order dt. 11.05.2016. Hence the respondents pray for the dismissal of the OA.

5. The counsel for the parties had presented the case in tandem with respective pleadings.

6. Learned counsel for the applicant had submitted that initially the applicant filed OA 867/2016 challenging the order of the disciplinary authority dated 11.05.2016 without preferring an appeal. Accordingly this Tribunal disposed of the said OA by order dated 25.5.2016 giving liberty to the applicant to file an appeal to the appellate authority, who should dispose it of within a period of two months. It further directed the applicant to file a stay application for quarters before the appellate authority, who should consider and pass order at the first instant itself and till the stay application is disposed of, there should not be any eviction of the applicant from the quarters. Pursuant to the directions of the Tribunal, the appeal dated 17.06.2016 preferred by the applicant was rejected by the appellate authority by order dated 03.11.2016 which is under challenge in the

instant OA on the grounds that the past history shall not be taken as the sole reason for awarding punishment. Further the punishment imposed should not be disproportionate to the misconduct committed and it should not be a shocking one to the prudent man. The learned counsel for the applicant contended that the appellate authority ought to have independently applied its mind on the various issues raised by the applicant in the appeal. He has also relied on the decision on the Hon'ble High Court of Madras in the case of Shanmugarajan Vs State of Tamil Nadu in Writ Appeal No. 1608/2011.

7. On the other hand the learned counsel for the respondents has submitted that the applicant is a habitual absentee and he was previously imposed with punishments for unauthorized absenteeism and was charge sheeted for lapses which caused extra burden on the co-workers, subversion of the discipline of the organisation and interruption in the training of office cadets. The punishment was imposed based on the gravity of the charges on the applicant after following the due procedure as laid down in CCS(CCA) Rules.

8. We have heard learned counsel for the parties and perused the material brought on record.

9. The charge that was levelled against the applicant employee reads as follows:

That the said No 9607368 Shri S Harikrishnan, CMD, while functioning as a permanent employee in MT Section of OTA has acted in a manner unbecoming of a Govt Servant, in that, he was sanctioned 17 days Earned Leave with effect

from /02 June 2015 to 18 June 2015, but has not reported for duty till date and thus has contravened Rule 3(1) (i), (ii) & (iii) of Central Civil Service (Conduct) Rules 1964.

It is not in dispute that the Enquiry Officer found the charge has been proved. The Disciplinary Authority had ascribed reasons and passed an order of compulsory retirement from service and on a perusal of the order of compulsory retirement it is vivid that the medical certificate was belatedly submitted and he has remained unauthorisedly absent from 19.06.15 to 25.09.15 for 99 days without intimation. Though the applicant submitted the Medical Certificate at the time of conducting the inquiry, the Inquiring Authority concluded his report stating that "the Charged Official did not even bother to inform anyone in the MT Section about his sickness which shows the lackadaisical attitude towards his profession. The individual acknowledged the receipt of show cause notice but neither reported for duty nor the office received any communication from him. He had exhibited adamantine attitude in not responding to the communications from the employer while he was unauthorisedly absent. The Appellate authority rejected his appeal being devoid of any merit and substance. In the case of Chennai Metropolitan Water Supply and Sewerage Board and Others Vs T.T Murali Babu in CA No. 1941 of 2014 SLP C 15530/2013 dt. 10.2.2014 (2014 LLR 337) Hon'ble Supreme Court has cited the order in State of Punjab Vs. Dr. P.L. Singla which reads as under:

"Unauthorised absence (or overstaying leave), is an act of

indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct."

10. The applicant was a Driver in the Officers Training Academy, a defence related organisation where Discipline is of predominant priority and though the applicant is a Civilian Motor Driver, he is also expected to adopt that kind of discipline which others in the organised institutions are expected as his failure to perform his duty would telescopically affect the priorities and plans of other officers. Thus, regard being had to his official position, it was expected of him to maintain discipline, act with responsibility, perform his duty with sincerity and serve the institution with utmost dedication, devotion and honesty. The period of absence is also substantial. Not informing the Mechanical Transport (MT) Section of OTA where he works or Officer-in-Charge of MT Section about his reasons for prolonged absence is definitely a case of misconduct, unbecoming of a Govt Servant. This kind of conduct cannot be countenanced as it creates a concavity in the work culture and ushers in indiscipline in an organisation. In CA No. 1941 of 2014 Hon'ble Supreme Court has quoted a passage from Government of India and another Vs. George Philip which is as under:

"In a case involving overstaying of leave and absence from duty, granting six months' time to join duty amounts to not

only giving premium to indiscipline but is wholly subversive of the work culture in the organisation. Article 51-A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution have the tendency to negate or destroy the same."

11. As already stated, the organisation where the applicant was serving is defence related. In the case of Rajinder Kumar vs State of Haryana (2016) 15 SCC 693, the Apex Court considered the case of a constable whose unauthorised absence was cumulatively 37 days on three occasions and he was on account of the misconduct of unauthorised absence awarded the penalty of Dismissal from Service. When this was agitated before the Apex Court, the Court while softening the penalty from dismissal to Compulsory Retirement, had made the following observations:-

6. It is not in serious dispute that the appellant is a serious patient of tuberculosis. According to the disciplinary authority as well as the appellate authority, the appellant became completely unfit for service in view of the background of the unauthorised absence on many occasions. Once a person is found unfit for service on account of intermittent and unauthorised absence for which the delinquent though has a reasonable explanation, no doubt, there is no point in continuing him in service either by reverting him or by imposing punishments like stoppage of increment, etc. But the question is, whether dismissal is the only option in such situations where an employee is found unfit for service. We have no doubt in our mind that indiscipline of any sort cannot be tolerated at all in a disciplined force. However, in the

factual background of the appellant which we have referred to above, the disciplinary authority or at least the appellate authority, should have considered whether a punishment other than dismissal would have been appropriate and whether dismissal is the only punishment available and appropriate in the circumstances. The fact that different punishments are prescribed under the Rules shows that there is a discretion vested on the competent authority to decide what should be the proper punishment taking note of the nature of misconduct, its gravity and its impact on the service. Having regard to the facts and circumstances of each case, the disciplinary authority has to take a proper decision on punishment.

When for an absence of 37 days cumulatively on three occasions in respect of a police constable the penalty awarded was compulsory retirement, in the case of the applicant who is serving in a more disciplined organisation, albeit as CMD, unauthorised absence/overstayal of 99 days on a single occasion the penalty of compulsory retirement awarded cannot be considered as disproportionate.

12. It is trite law that the scope of interference of this Tribunal with the punishment imposed in a disciplinary case is very limited. It is not the decision but the decision making process that has to be subjected to judicial scrutiny. In the instant case, no fault could be found on the decision making process. The applicant has been given due opportunity to explain his case. Thus, principles of natural justice has been fully complied with. In so far as quantum of penalty is concerned, the Hon'ble Apex Court has time and again directed that the Tribunals/Courts should not interfere with the punishment imposed by the disciplinary authority unless the punishment so imposed is "shockingly

disproportionate" to the charges proved against the delinquent. It is settled legal preposition that habitual absenteesim means gross violation of discipline [vide Burn &Co. Ltd. v. Wormess AIR 1959 SC529; AND l&t kOMASTSU lTD. V. n. uDAYAKUMAR (2008) 1 scc 224]. Here on a comparison with the extent of punishment imposed is concerned the major penalty of compulsory retirement is imposed on the charged officer and considering the length of service and pecuniary position of the individual sanction is also accorded to grant pension and gratuity as admissible to him. The case cited by the applicant's counsel is not relevant to the facts of the instant case.

13. Reference to the past misconduct was only with reference to decide the extent of penalty to be imposed and not to arrive at the finding of fact. Thus, taking into account the conduct of the past is not fatal to the decision. Thus we do not find any illegality or irregularity in the enquiry proceedings nor is there any ground warranting interference of this Tribunal with the imposition of penalty by the respondents.

14. In the result, the OA is liable to be dismissed and it is accordingly dismissed. In view of the dismissal of the OA, no order is required to be passed in the M.A.s filed by the applicant. No costs.

(T.Jacob)
Member(A)

(Jasmine Ahmed)
Member(J)

09.11.2018

SKSI