

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/410/2011

Jabalpur, this Friday, the 03rd day of August, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ajay Kumar Yadav, S/o Late Shri Deen Dayal Yadav, aged about 45 years, Ex-Fireman, COD Jabalpur, R/o-Q.No.359/9, Type-II Parail Line, IG.C.F. Estate, Jabalpur (M.P.) 482001

-Applicant

(By Advocate – Shri Balwant Rai)

V e r s u s

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. The Director General Ordnance Services, DGOS Head Office, New Delhi.
3. The Commandant, Central Ordnance Depot, Jabalpur (M.P.).

- Respondents

(By Advocate – Shri D.S. Baghel)

(Date of reserving order : 31.01.2018)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by the order dated 21.09.2009 (Annexure A-1) whereby the penalty of compulsory retirement from service has been imposed on him. He is also aggrieved by the order dated 24.11.2010 (Annexure A-2) passed by the Appellate

Authority, whereby his appeal against the order of punishment, has been rejected.

2. The applicant has sought for the following reliefs:

- “(i) Issue a writ order or direction in nature of certiorial quashing the order dated 21.9.2009 passed by respondent No.3 Annexure A/1.*
- (ii) Issue any other writ order or direction which this Hon’ble Court may deem fit and proper under the circumstances of the case.*
- (iii) Any other order/orders, which this Hon’ble Court deems, fit proper.*
- (iv) Cost of the petition may also kindly be awarded.”*

3. Precisely, the case of the applicant is that he was appointed as Fireman on 28.03.19888 in the Central Ordinance Depot (COD), Jabalpur. A chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 was served to the applicant on 18.07.2007 (Annexure A-3) for his absent without leave.

3.1 The applicant submits that since he was suffering from chronic illness of Tuberculosis Bacterium (TB), regarding which he has submitted the medical certificates issued by the Doctors, however, the Inquiry Officer, did not give any cognizance to it and has proved the charges by proceeding ex-parte. The Disciplinary Authority, without application of mind, has passed the order dated 21.09.2009 (Annexure A-1) imposing the punishment of

compulsory retirement from service. The Appellate Authority, in its order dated 24.11.2010 (Annexure A-2) has also ignored this fact and has affirmed the order passed by the Disciplinary Authority.

4. In their reply, the respondents have submitted that the applicant was absent from duty without obtaining prior permission/sanction of leave from the competent authority w.e.f. 14.03.2006 to 03.02.2007. He was served with a notice advising him to report on duty or submit his leave application in case of being sick with medical supported documents. However, the applicant neither replied to the notice nor submitted any medical unfitness documents. Considering the misconduct of the applicant, a chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued against the applicant.

4.1 The respondents have further submitted that the applicant had never preferred any representation to the chargesheet nor submitted his reply. Therefore, an oral inquiry was instituted against the applicant to substantiate the charges. The applicant inspite of repeated reminder, did not present himself in the inquiry. The Inquiry Officer conducted the inquiry ex-parte and submitted his report on 22.08.2008 (Annexure R-10). The Disciplinary

Authority, after due application of mind and considering the relevant records, has passed the order dated 21.09.2009 imposing penalty of compulsory retirement from service. The Appellate Authority has considered the grounds raised by the applicant in his appeal and has passed a reasoned order dated 24.11.2010 affirming the order passed by the Disciplinary Authority.

4.2 It has also been submitted by the respondents that the applicant is a habitual absentee and remains absent from duty without prior permission from the competent authority. He was granted sufficient time for attending the inquiry proceedings, but he neither asked for any extension of inquiry period nor expressed his inability to attend the inquiry. Finally, he submitted his representation dated 04.03.2009, i.e. after completion of inquiry proceedings. The applicant should have submitted the application for leave along with medical certificates within three days from the date of his absence. Since he had failed to do so, the punishment of compulsory retirement from service, has been imposed on him, which is as per law.

5. We have heard the learned counsel for the parties and have gone through the pleadings and documents available on record.

6. The learned counsel for the applicant submitted that merely the fact that the applicant has not participated in the inquiry, is not indicative of proving the charges. The basic principle is that it is for the prosecution to prove its case. The findings in an ex-parte proceedings, should be based on due consideration of evidence. However, all these factors have not been taken into consideration by the Inquiry Officer. In this regard, he has placed reliance on the judgment of Hon'ble Apex Court in the case of **Modula India v. Kamakshya Singh Deo**, (1988) SCC 4 619.

7. The point for our consideration is whether the findings of the Inquiry Officer are proved by the evidence on record and the penalty imposed by the Disciplinary Authority is adequate or not. Further, whether there were any procedural irregularities in conducting the inquiry or there is violation of principles of natural justice or not.

8. Admittedly, the applicant remained absent from duty w.e.f. 14.03.2006 to 03.02.2007, i.e. for a period of 327 days. It is his contention that he was suffering from chronic illness of TB and was under continuous treatment at Hospital. He submitted the copies of medical certificate issued by the Doctor on resuming the

duty i.e. on 05.02.2007. A chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued against the applicant to substantiate the charge of his absence w.e.f. 14.03.2006 till 03.02.2007.

9. It is undisputed that an ex-parte inquiry was conducted against the applicant and the Inquiry Officer has come to the conclusion that the charge of applicant's absence during the aforesaid period has been proved. It has been submitted by the respondents that since the applicant was not associated in the inquiry proceedings despite repeated reminder, therefore, the Inquiry Officer proceeded ex-parte and has proved the charges based on the documents placed before it.

10. Sub rule (14) of Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 says that:-

“On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.”

11. The Hon'ble Apex Court in the matters of **Roop Singh Negi vs. Punjab National Bank and others**, 2009 (2) SCC 570 has held that:-

“10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof.”

12. The main allegation against the applicant is regarding his absence from duty from 14.03.2006 to 03.02.2007, for which no prior permission was obtained from the competent authority. In the O.A, the applicant has taken the specific plea that he was seriously ill between 14.03.2006 to 03.02.2007, which was beyond his control; he never intended to contravene any of the provisions of the service Regulations. He submitted copies of medical certificates issued by Doctors in support of his claim after rejoining the post i.e. on 05.02.2007. However, the Inquiry Officer in his report did not mention that applicant's absence from duty was willful and deliberate. Every unauthorized absence from duty

cannot be held to be misconduct. The Hon'ble Apex Court in the case of **Krushnakant B. Parmar vs. Union of India and another**, (2012) 3 SCC 178 has held that if absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be willful. It was observed in Para 17 & 18 as under:

“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 willful. 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 the absence of such finding, the absence will not amount to misconduct.”

Thus, while coming to a conclusion the disciplinary authorities should have considered whether the absence was willful or was due to circumstances beyond the control of the person. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the

medical reports submitted by the applicant were forged or fabricated or obtained for any other consideration. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the Doctors without any valid reason. Moreover, the Appellate Authority, while deciding the appeal, has acted in an arbitrary manner, as it never ensured whether the medical certificate submitted by the applicant were taken into consideration by the Disciplinary Authority while passing the order.

13. The Apex Court in its various decisions has taken the view that departmental enquiry cannot be conducted in a vague fashion and procedure laid down in the Service Rules need to be followed with utmost faith and care keeping the Principles of Natural Justice in mind. In **State of Uttar Pradesh and Others v. Saroj Kumar Sinha** (2010) 2 SCC 772, the Hon'ble Supreme Court explained the importance of Principles of Natural Justice in departmental enquiry. The relevant part of the judgment is as under:

"30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is

treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

14. Having regard to the law laid down by Hon'ble Supreme Court of India and after considering the facts and circumstances of the present case, we feel that the Original Application is liable to be allowed. Accordingly, the O.A is allowed. The impugned orders dated 21.09.2009 (Annexure A-1) passed by the Disciplinary Authority; affirmed by the Appellate Authority dated 24.11.2010 (Annexure A-2), are quashed and set aside with all consequential benefits.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member