

**Central Administrative Tribunal
Principal Bench**

OA No.2718/2014

New Delhi, this the 1st day of May, 2019

**Hon'ble Sh. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Neeraj Sharma (Aged about 45 years),
S/o Late Shri Charanjit Sharma,
R/o M-101, Jagat Ram Park,
Street No.5, Laxmi Nagar,
Delhi-110092
Worked as PA.

...Applicant

(By Advocate : Shri T.D. Yadav)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Deputy Secretary of Establishment,
(Disciplinary Authority),
Ministry of Defence,
Sena Bhawan,
New Delhi.
3. UPSC,
Dholpur House,
Shahjahan Road,
New Delhi.

...Respondents

(By Advocae : Shri Satish Kumar)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

MA No.2313/2014 is filed with a prayer to condone the delay of 475 days in filing the OA. The applicant was working as Personal Assistant (for short, PA) in the Ministry of Defence. He was imposed the punishment of compulsory retirement through an order dated 15.04.2004. The appeal preferred by him was rejected through order dated 17.10.2009. The applicant contends that the order of the Reviewing Authority was communicated to him only in the year 2012 through covering letter dated 28.03.2012 and in that view of the matter, he could not file the OA immediately, challenging the order of compulsory retirement. Other facts narrating the developments that have taken place thereafter were also mentioned.

2. Respondents no doubt refuted the version of the applicant. The fact, however, remains that the applicant has been availing one, or the other remedy and it would not be difficult to imagine the condition of a person who has been compulsorily retired and is not getting any pay or pension. We accordingly, condone the delay.

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3. The applicant was employed as a Personal Assistant in the Ministry of Defence. He was issued a Memorandum dated 27.07.2000, alleging that he remained absent on several occasions, without any leave or prior permission. The applicant submitted representation stating that the absence was on account of the acute health problems suffered by him, his wife and their infant child. Not satisfied with the same, the Disciplinary Authority ordered inquiry. The applicant however, did not participate in the departmental inquiry. The Inquiry Officer submitted his report holding the articles of charge as proved. Taking the same into account, the Disciplinary Authority suggested the punishment of reduction of pay scale by four stages from Rs.6200/- to Rs.5500/- for a period of 3 years without cumulative effect and submitted a proposal to the UPSC for their advice.

4. On its part, the UPSC proposed the punishment of compulsory retirement. When the same was re-submitted by the Disciplinary Authority stating that the applicant did not have a pensionable service, the UPSC reiterated its earlier stand. Accordingly, through a fresh

order dated 15.04.2004, the Disciplinary Authority imposed the punishment of compulsory retirement. The appeal preferred by the applicant was rejected through order dated 07.10.2009.

5. In this OA, the applicant challenges the order of compulsory retirement dated 15.04.2004 and the order dated 07.10.2009, passed by the Reviewing Authority.

6. The applicant contends that the absence on certain occasions was on account of the acute health problems of himself, his wife and his infant child and that it was not deliberate at all. It is stated that though the Disciplinary Authority suggested the punishment, commensurate with the acts of misconduct, the UPSC advised imposition of a severe punishment which deprived him of the entire livelihood. Other grounds were also raised.

7. The respondents filed counter affidavit opposing the OA. It is stated that the applicant remained unauthorisedly absent on several occasions and despite being warned, he did not mend his behaviour. It is also stated that on account of his un-authorised absence, the concerned office has suffered a lot. In the counter

affidavit, it is stated that some prescriptions submitted by the applicant were sent for verification and that the prescribed procedure was followed in the entire proceedings. It is also stated that the punishment as suggested by the UPSC was imposed by the Disciplinary Authority.

8. We heard Shri T.D. Yadav, learned counsel for applicant and Shri Satish Kumar, learned counsel for respondents.

9. The applicant was issued a Charge Memo on 16.12.1999, alleging several misconducts, namely :-

“STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI NEERAJ SHARMA, PERSONAL ASSISTANT, MINISTRY OF DEFENCE.

ARTICLE-I

Shri Neeraj Sharma, Personal Assistant (PA), Ministry of Defence remained absent from duty unauthorisedly for the following periods :

- (i) with effect from 14th Oct., 1998 to 2nd Dec. 1998;
- (ii) with effect from 10th Dec., 1998 to 16th March, 1999 and
- (iii) with effect from 11th Aug., 1999 to 2nd Nov., 1999.

By his above conduct, Shri Neeraj Sharma, PA has shown lack of devotion to duty and depicted conduct unbecoming of a Government servant thereby violating Rules 3(1) (ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

Shri Neeraj Sharma, PA is in the habit of frequently absenting himself from duty without prior permission/sanction of leave.

By his above, conduct, Shri Neeraj Sharma, PA has shown lack of devotion to duty and depicted conduct unbecoming of a Government servant thereby violating Rules 3(1) (ii) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-III

Shri Neeraj Sharma, PA has disobeyed orders of the Government directing him to join his duties and submit explanation, if any, for his unauthorised absence. He has not only disobeyed the orders but also did not care to reply to the memoranda issued to him during the period of his unauthorised absence.

By his above conduct, Shri Neeraj Sharma, PA has shown lack of devotion to duty and depicted conduct unbecoming of a Government servant thereby violating Rules 3(1) (ii) & (iii) of CCS (Conduct) Rules, 1964.”

10. Article-I indicated the spells during which, the applicant was unauthorisedly absent. In the second charge, the allegation is that he frequently absented himself from duty unauthorisedly.

11. It is no doubt true that the work of the office suffered on account of the unauthorised absence of the applicant. However, if one takes into account, the facts stated by him or the extent of absence, it is not such a situation that warrants any severe punishment. An element of humanitarian approach was warranted even while taking steps to maintain discipline. Obviously for that reason, the Disciplinary Authority suggested the punishment of reduction of pay scale. However, the UPSC insisted on a harsher punishment. From the order of the Reviewing Authority, we notice certain important aspect. It reads :-

“AND WHEREAS on a careful consideration of the Report of Inquiring Authority and evidence available on record, the Disciplinary Authority came to the tentative view that it would justify imposition of penalty of ‘reduction of pay by 4 stages from Rs.6,200/- to Rs.5,500/- for a period of 3 years without cumulative effect’ on Shri Neeraj Sharma.

AND WHEREAS as required under the rules, the case records were referred to the Union Public Service Commission (UPSC) for their advice. The Union Public Service Commission had advised vide their letter No.F.3/281/2002 dated 27th February, 2003 that the ends of justice would be met in this case if the penalty of ‘Compulsory Retirement’ from service be imposed on Shri Neeraj Sharma.

AND WHEREAS on examining the case it came to the notice that Shri Neeraj Sharma had not completed 10 years qualifying service required for being eligible for pensionary benefits. It was, therefore, decided to bring this aspect to the notice of UPSC for their consideration and the case was referred back to UPSC to reconsider their advice. However, the UPSC reiterated their earlier advice vide their letter No.F.No.281/02-SI dated 5th November, 2003.

AND WHEREAS after carefully considering the records of the inquiry, the facts and circumstances of the case in its totality and also the advice tendered by UPSC, the Disciplinary Authority had imposed the penalty of 'Compulsory Retirement' from service on Shri Neeraj Sharma vide this Ministry's Order No.A-45012/01/2000-D(Est.I/Gp.I) dated 15th April, 2004."

12. On a perusal of this, it becomes clear that left to himself, the Disciplinary Authority was of the view that the imposition of penalty of reduction of pay scale by 4 stages from Rs.6200/- to Rs.5500/- for a period of three years without cumulative effect against the applicant would be adequate. However, through its advice, the UPSC proposed to impose the punishment of compulsory retirement. Even when the Disciplinary Authority re-sent the proposal stating that the applicant did not have a pensionary service, the UPSC reiterated its stand.

13. It is no doubt true that the UPSC takes into account, various aspects such as nature of misconduct and provisions of law before it suggests punishment. The fact, however, remains that the nature of allegation against the applicant is only of some unauthorised absence and the Disciplinary Authority has found it appropriate to resend the proposal to the UPSC. It is only when a solid and substantial basis existed for ignoring that suggestion, that the UPSC could have advised imposition of a higher punishment. The record does not disclose that the UPSC has assigned any specific reason for being even harsher to the applicant. Though the Disciplinary Authority has the discretion to take his own decision, he went by the advice of the UPSC out of sheer respect for it. The sufferer, however, is the applicant. We are of the view that the punishment as suggested by the Disciplinary Authority would be adequate and reasonable, if one takes into account, the nature of the charge held proved against the applicant.

14. We, therefore, partly allow the OA modifying the punishment to be the one of the reduction of pay scale of the applicant by four stages from Rs.6200/- to Rs.5500/- for a period of three years, without cumulative

effect. The applicant shall be reinstated into service within two months from the date of receipt of a certified copy of this order. However, we direct that in view of the delay in filing of the OA, the applicant shall not be entitled to be paid any arrears except for a period of three years preceding reinstatement, but the entire period shall be treated as holding good for continuing of service.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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