

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

Original Application No.770/2013

Date of C.A.V. :03.10.2018

Date of Order : 08.03.2019

Between :

V.V.Sagar, S/o V.Adinarayana Rao, 56 years,
Occ : Ex Fireman, in Command Transport Workshop,
R/o Door No.12-11-1, Flat No.B-1, II Floor,
Sagar Square Apartments, Near Judge Colony,
Visakhapatnam – 530002.

... Applicant.

And

1. The Union of India, Rep. by its Secretary,
Ministry of Defence, Sough Block,
New Delhi.
2. The Chief of Naval Staff, Naval Headquarters,
South Block, New Delhi.
3. Chief of Personnel, Integrated HQ of
Ministry of Defence (Navy),
'C' Wing, Sena Bhavan, New Delhi – 110011.
4. Flag Officer Commanding-in-Chief, Headquarters,
Eastern Naval Command, Visakhapatnam.
5. Officer-in-Charge, Command Transport Work Shop,
9-IRSD Area, Kancharpalem Post,
Visakhapatnam-530008.

... Respondents.

Counsel for the Applicant ... Dr.P.B.Vijaya Kumar, Advocate
Counsel for the Respondents ... Mr.A.VijayaBhaskar Babu, Addl.CGSC

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... **Member (Judl.)**
Hon'ble Mrs.Naini Jayaseelan ... **Member (Admn.)**

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

While the applicant was working as Fireman Gr-II in the office of the 5th respondent, a charge memo dated 06.02.2006 alleging unauthorized absence from duty was issued to him. The following are the article of charges :

Article – I :

The applicant while functioning as Fireman of Command Transport Workshop, Visakhapatnam did unauthorizedly absent from duty w.e.f. 25.01.2004 to 20.08.2004 without intimation and without prior approval of the leave sanctioning authority.

By the above said act the applicant exhibited an act unbecoming of Government servant and thereby violated Rule 3(1)(iii) of CCS (CC&A) Rules, 1964.

Article – II

The applicant is a habitual absentee in that he has been imposed six penalties for remaining unauthorizedly absent in the past.

By the above said act the applicant exhibited an act of unbecoming of Government servant and thereby violated Rule 3(1)(iii) of CCS (CC&A) Rules, 1964.

2. After receiving the charge memo dated 06.02.2006 the applicant submitted representation dated 15.02.2006 pleading that during the period of absence he was bed ridden and under medical treatment of Dr.M.Venkateswara Rao, K.G.H., Visakhapatnam. He also produced a sick certificate for the prolonged medical treatment and also further fitness certificate issued by the medical officer. In his reply he requested the 5th respondent to grant extra ordinary leave on

medical grounds. The request of the applicant was not accepted and a regular departmental inquiry was initiated against him. Notices were issued to the applicant to attend the inquiry, but he did not attend the inquiry on the ground of illness and the inquiry proceeded ex-parte. The inquiry officer submitted a report to the Disciplinary Authority finding the applicant guilty of the charges and the Disciplinary Authority removed the services of the applicant by proceedings dated 31.10..2008. Questioning the said proceedings the applicant filed the present OA along with a petition to condone the delay in filing the OA. The petition to condone the delay in filing the OA was allowed. Further the applicant did not file any appeal against the order of removal.

3. The version of the applicant in the OA is that since the applicant was undergoing medical treatment during the period of alleged unauthorized absence and he produced medical certificate to that effect, terminating him from service is illegal. It is also submitted by him that subsequent period of absence was also taken into consideration for passing the order of removal and the punishment of removal is grossly disproportionate. After filing of the OA the applicant attained the age of superannuation and retired from service on 31.03.2016.

4. In their reply statement the respondents contended as follows :

The applicant had indulged in the misconduct of remaining unauthorizedly absent from duty since 1993 onwards on various occasions. According to them

during the years 2005 to 2008 he remained unauthorizedly absent for 897 days. It is contended that since the applicant did not prefer any appeal / revision / review petition against the penalty imposed on him by the Disciplinary Authority, the OA is not maintainable for not exhausting the alternative remedies available to him under law. According to the respondents in case of sickness the applicant has to submit leave application enclosing a medical certificate from a nearest Government hospital duly indicating his sickness / illness. But the applicant without prior approval of leave sanctioning authority continued to remain absent from duty.

5. Nextly it is contended that letters dated 24.02.2004 and 20.03.2004 were sent to the applicant's permanent residential address directing him to report for duty, but the applicant did not respond. It is further submitted that in respect of the charge memo dated 06.02.2006 the applicant failed to reply either admitting or denying the charges unconditionally. As regards the submission made by the applicant that the inquiry was conducted ex-parte, it is contended by the respondents that the inquiry officer had also issued notices dated 11.12.2006, 02.01.2007 and 08.02.2007, on three occasions informing the schedule of the departmental inquiry affording opportunity to engage a defence assistant and also cautioning him that if he fails to attend the inquiry it would be conducted ex-parte. According to the respondents in spite of the said notices the applicant did not attend the inquiry and therefore the inquiry was conducted ex-parte.

6. The version of the respondents is that the past good or bad conduct of a Government servant can be taken into consideration while awarding penalty and in the instant case in the second charge it is indicated that the applicant had been indulging in habitual absenteeism and therefore it is not open for the applicant to contend that the factum of habitual absenteeism cannot be taken into consideration for the purpose of imposing penalty.

7. We have heard Dr.P.B.Vijaya Kumar, learned counsel for the applicant and Mr.A.Vijaya Bhaskar Babu, learned standing counsel for the respondents.

8. One of the grounds urged by the respondents in regard to the maintainability of the OA on the ground that it was filed without exhausting the alternative remedy available to the applicant under law, it is true that the respondents in the counter itself took the plea that the OA is not maintainable for not availing the alternative remedies such as appeal / revision / review petition by the applicant. The OA was filed with an application to condone the delay. The delay was condoned and the OA was admitted. The OA was filed in the year 2013 and it came up for final hearing in the year 2018. At this distance of time the Tribunal is not supposed to dismiss the OA without considering the same on merits. On this issue the applicant relied on a decision rendered by the **Allahabad High Court in SLP No.1301 of 2012 in Dhani Ram Vs. Chief Engineer**, wherein the Hon'ble High Court of Allahabad held that ___

"When the matter is admitted and pending for years, it is not appropriate to throw the petition on the ground of alternative remedy

and the matter is required to be decided on merits.”

Therefore, we are not inclined to dismiss the OA without examining the merits of the case.

9. It is contended by the learned counsel appearing for the applicant that at the time of joining duty after the period of absence the applicant submitted medical certificate issued by a competent doctor. The genuineness of the certificate issued was not denied by the respondents and the unauthorized absence is due to genuine medical reasons and therefore the order of removal is not proper and it is disproportionate.

10. In support, he relied on **(2014) 13 SCC 166 Chhel Singh Vs. MGB Gramin Bank, Pali and others**. In the said case before the Hon’ble Supreme Court in terms of circular dated 22.06.1978 the employees were instructed to submit medical certificate on joining. The applicant submitted medical certificate after about 24 days of joining. The respondents have not raised the plea that the medical certificate submitted by the applicant was forged or fabricated. It was held by the Hon’ble Supreme Court in such circumstances that it is not open to the authorities to disbelieve the medical certificate without any valid reasons on the ground of 24 days delay. It was further held by the Hon’ble Supreme Court that since the absence was not willful or deliberate and it was due to genuine medical reasons the termination order is liable to be quashed.

11. The facts before the Hon’ble Supreme Court and the instant case are not exactly identical. In the instant case service rules pertaining to the applicant mandate submission of leave application along with a medical certificate in

advance. Further against the applicant there is a charge of habitual absenteeism. After initiating disciplinary inquiry also the applicant became absent and did not attend the inquiry at all. Whether the act of an employee amounts to misconduct or not has to be examined with reference to the facts of each case. In the instant case whether the absence of the applicant is unauthorized and amounts to misconduct has to be examined having regard to the totality of circumstances and also with reference to Charge No.2.

12. In this context it would be relevant to peruse the following judgements rendered by the Hon'ble Supreme Court to arrive at an appropriate decision.

In ***AIR 1982 SC 854 L.Robert D'Souza Vs. The Executive Engineer, Southern Railway and another***, the Hon'ble Supreme Court held as follows :

"Absence without leave constitutes misconduct. However, it is not open to the employer to terminate services without notice and inquiry or any at rate without complying with the minimum principle of natural justice."

In the instant case the inquiry was held against the applicant affording him full opportunity to defend the charges, but he did not avail the said opportunity. Therefore, it cannot be said that either the inquiry or the removal order is vitiated.

In ***(2008) 1 SCC 224, L&T Komatsu Ltd. Vs. N.Udaya Kumar***, the Hon'ble Supreme Court held as follows :

"Habitual absenteeism amounts to gross violation of discipline. Where the workman who had been in the past found guilty of unauthorized absenteeism several times (15 times in this case) was in a properly conducted departmental enquiry once again found guilty of unauthorized absence for a long period (105 days in this case) his

consequential dismissal from service ought not to have been treated as harsh and interfered with by Labour Court / High Court.”

13. Coming to the facts of the present case the second charge is to the effect that the applicant is a habitual absentee and he has been imposed six penalties for remaining unauthorizedly absent in the past. The inquiry officer after verifying the records in the course of inquiry found that during the year 2004 to 2008 the applicant absented for 897 days. There is no specific denial by the applicant against Charge No.2. In the course of inquiry which was held ex-parte, evidence was recorded, the records were perused and the inquiry officer arrived at a specific conclusion that the applicant is a habitual absentee. Therefore, the findings of the inquiry officer do not call for any interference in the present OA. Considering the fact that the applicant is a habitual absentee the punishment of removal from service imposed on him cannot be regarded as shockingly disproportionate requiring interference by the Tribunal.

14. Consequently, we absolutely see no merit in this OA and accordingly dismiss the same without any order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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