

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 624 of 2003

New Delhi, this the 28th day of August, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. R.K. UPADHYAYA, MEMBER (A)

Rajendra Kumar Katarya
E-9, Chaankakya Place Part-I,
Opposite C-1 Janak Puri,
Uttam Nagar,
New Delhi-110 058.

.....Applicant

By Advocate: Shri G.K. Aggarwal.

Versus

1. Union of India Through
Secretary,
Ministry of External Affairs,
South Block,
New Delhi-110011.

2. Secretary,
Union Public Service Commission,
Shahjehan Road,
New Delhi-110 011. Respondents

By Advocate: Shri N.S. Mehta.

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant in this case impugns the memo of charge-sheet issued to him on 30.9.99, enquiry report dated 29.5.2000 which was held ex-parte and dismissal order dated 3.9.2001 and the review order dated 22.1.2003.

2. The facts in brief are that applicant was proceeded departmentally on the following Articles of Charge:-

" Article-I

That the said Shri R.K. Katarya, Assistant belonging to the Grade-IV of the General Cadre of Indian Foreign Service (B), while working in SE-II Section of the Ministry of External Affairs, New Delhi absented himself from duty in an unauthorised manner for 23 days

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with effect from 21.1.97 to 12.2.97.

Article-II

That the said Shri R.K. Katarya, Assistant belonging to the Grade-IV of General Cadre of Indian Foreign Service (B) while working in Diplomatic Bag Section of the Ministry of External Affairs, New Delhi, absented himself from duty in an unauthorised manner for 109 days w.e.f. 24.11.1997 to 15.3.98.

Article-III

That the said Shri R.K. Katarya, Assistant belong to the Grade-IV of General Cadre of Indian Foreign Service (B) has been on unauthorised absence since 13.7.98.

By the above act, Shri Katarya has exhibited lack of devotion to duty and conduct unbecoming of a Government servant thereby contravening Rule 3(1)(oii) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-IV

That the said Shri R.K. Katarya, Assistant belonging to the Grade-IV of General Cadre of Indian Foreign Service (B) has repeatedly defied Government orders directing him to report for duty at the Headquarters of the Ministry of External Affairs, in New Delhi.

By his above act, Shri Katarya has exhibited lack of devotion to duty and conduct unbecoming of a Government servant thereby contravening Rule 3(1)(ii) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964".

3. On the above charges an enquiry was held. The Inquiry Officer submitted his report holding charge under Article-1 that the applicant had been absenting himself from office from 21.1.1997 to 12.2.1997 in an unauthorised manner established. Similarly on Article No.11 it was mentioned that the applicant had been absenting himself from 24.11.1997 to 15.3.1998 in an unauthorised manner is also established and on the third charge it was also mentioned that he has been absenting himself from office from 13.7.98 till the date of statement of charges in an unauthorised manner is

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established. Similarly the charge under Article-IV that the applicant has defied Government orders directing him to report for duty and for this act of defiance the applicant exhibited lack of devotion to duty and conduct unbecoming of a Government servant is also stated to be established.

4. On the said report of the Inquiry Officer the disciplinary authority passed an order of dismissal from service.

5. Before passing the order by the disciplinary authority, an advice from the UPSC was also obtained who also advised penalty of dismissal from service to be imposed upon the applicant.

6. The applicant submitted a review petition also. In the review petition the applicant pleaded that since he had been suffering from Paranoid Schizophrenia and Alcohol dependence for 15 years so he was not in sound state of mind at the time of conducting of the proceedings so his case should be reviewed as he had gone unrepresented during the departmental proceedings.

7. Besides that the counsel for the applicant also pleaded that the medical certificates placed on record do show that the applicant was suffering from this medical disorder so on compassion within the framework of law should be applied and applicant should be reinstated in service and it was also suggested by the learned counsel for the applicant that penalty of dismissal may

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even be converted into the penalty of compulsory retirement so that the applicant may at least get a pension.

8. The OA is being contested by the respondents. The respondents pleaded that the charged-official did not reply to the charges at all. He was proceeded ex parte and the disciplinary authority after considering all the facts and circumstances of the case and after obtaining the advice of the UPSC decided to impose a minor penalty.

9. It is further stated that the elder brother of the applicant had sent a letter dated 10.9.2001 stating that the applicant was under treatment at RML Hospital and had been admitted in the psychiatric ward since 24.8.2001 and now since he had been treated upon he can resume duties so the elder brother of the applicant requested for reduction of penalty imposed upon the applicant. On the basis of this the Ministry decided to get the report from RML Hospital on the applicant. The doctors replied back that the applicant was undergoing treatment in the hospital since 14.7.2001 and since the OPD treatment was not successful so he was hospitalised on 24.8.2001 and discharged on 22.9.2001 and the applicant was diagnosed as suffering from Mania with alcohol abuse and pulmonary tuberculosis. The doctor advised that the applicant needed continuous treatment all through his life so as to prevent repeated exacerbations. It was also informed that the applicant was mentally fit to resume duties but he was mentally fit to resume duties as it was stated that the opinion of physician should also be obtained.

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10. In the meantime applicant submitted an appeal and he was advised that no appeal lies so he can file review. The review was also rejected on the ground that applicant had remained unauthorisedly absent for a period of 577 days from January, 1997 to September, 1999. But the documents produced by the applicant relate to a subsequent period from July, 2001 and not to the period referred to in the charge. Thus those documents were considered to be irrelevant so on that ground the review was rejected.

11. The respondents further stated that the applicant was given a proper opportunity and his case has been considered from all the aspects for which the applicant had preferred a review petition but since there was no evidence with regard to unauthorised absence covered under the charge, so review could not be accepted and was rejected.

12. I have heard the learned counsel for the parties and gone through the records of the case.

13. The learned counsel for the applicant referred to a certificate which has been annexed with the rejoinder issued by some doctor of Lady Hardinge Medical College and Smt. Sucheta Kripalani Hospital. This certificate, as placed on record, does not inspire any confidence rather this appears to have been procured only for the purpose of this case. The doctor who is supposed to have issued this certificate though has mentioned in the certificate that the applicant was suffering from

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Paranoid Schizophrenia and Alcohol dependence for 15 years but stated that the applicant was admitted in the hospital since 26.4.2003 but how the doctor had given the period of Alcohol dependence for 15 years and on what basis there is no record rather the applicant is stated to have been admitted on 26.4.2003.

14. As regards psychiatric treatment is concerned for that purpose also there is no detail as to say that for which intervals the applicant had gone in condition of unsound mind so this certificate does not establish at all that if the applicant had suffered from unsoundness of mind while he was suffering from Paranoid Schizophrenia Alcohol dependence at the time when the enquiry was held or at the time when he was absent. Thus on this medical ground we find that the applicant has no cause and even otherwise the reviewing authority has rightly rejected the case of the applicant.

15. Now coming to the ground of compassion and law the counsel for the applicant has referred to a judgment in the case of Narendra Pal Singh Vs. U.O.I. and Others.

16. In that case also the applicant therein had been under great tension due to marital discord and was suffering from paranoid schizophrenia and the applicant had been representing against his transfer on his medical grounds but he was orally advised to resign or ask for invalid pension. His case has been referred to Medical Board at Ram Manohar Lohia Hospital and Board opined that the applicant was a case of Schizophrenia which was in

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remission stage then and he was found fit to do simple jobs like recording of orders in the file and it was also recommended that the applicant should be allowed to continue in service in Delhi on compassionate grounds and in his case the transfer was directed to be cancelled and it was further directed that the applicant be allowed to continue in service till he serves minimum qualifying service for the purpose of voluntary retirement. It was also observed that on application of the applicant is allowed as a very special case and this will not form any precedent. But despite this the learned counsel for the applicant submitted that an order on similar lines should also be passed in this case also.

17. In our view the facts of both these cases differ because in that case it was only a case of transfer which was challenged but applicant was continuing in service. However, in this case the misconduct of the applicant is that was only of unauthorised absence as well as also of disobedience of the orders of the superior under Article IV of the charge which already stands proved and the applicant had been held guilty thereof and after considering those charges the applicant had been visited with the penalty of dismissal from service. So in these circumstances when the water has flown further it is not possible for us to give direction to the respondents to allow him voluntary retirement.

18. Besides that the disease of Paranoid Schizophrenia of which the applicant alleges that he is suffering from has not been proved for the relevant

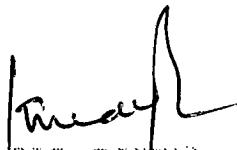
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period. The medical certificates placed on record relate to the subsequent period and for that reason the review petition has been dismissed and since we do not find any material on record which may show that for the period when the applicant remained absent or during the period when the enquiry was held that the applicant was of unsound mind because of the sound Paranoid Schizophrenia so we do not find that while exercising the power of judicial review which has a very limited power. We have to see whether there is any infirmity in the orders passed by the disciplinary authority or any principle of natural justice has been followed/violated or not and the applicant has not been able to point out any infirmity or violation of principles of natural justice, so no interference is called for.

19. In view of the above, OA has no merits and the same is dismissed. No costs.


(R.K. UPADHYAYAA)

MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

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