

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1738/2003

New Delhi this the 7th day of May, 2004.

Hon'ble Sh. Shanker Raju, Member(J)
Hon'ble Sh. S.A. Singh, Member(A)

Sh. Mahender Singh,
Former Staff Car Driver
Grade-IV,
S/o Sh. Man Singh,
R/o F-138, Village Lado Sarai,
Gali Mirza Wali, New Delhi. Applicant

(through Sh. Sarvesh Bisaria, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Information & Technology,
6, CGO Complex,
New Delhi.
2. Joint Secretary,
Ministry of Information & Technology,
6, CGO Complex,
New Delhi. Respondents

(through Sh. R.N. Singh, Advocate)

ORDER (ORAL)

Hon'ble Sh. Shanker Raju, Member(J)

Applicant impugns respondents order dated 15.5.2000, compulsorily retiring him from service as well appellate order dated 28.3.2003 upholding the punishment.

2. The deceased was employed as Staff Car Driver and was proceeded against for a major penalty under Rule 14 of the CCS (CCA) Rules, 1965 that the allegations of damaging of government vehicle, disobeying the instructions for reporting for duty and remaining absent unauthorisedly w.e.f. 25.2.1999. On 23.12.1999 during the preliminary enquiry an

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unequivocal, absolute and unconditional admission has been made by the applicant to the charges levelled against him.

3. The Enquiry Officer submitted his finding of guilt to the Disciplinary Authority. After an opportunity to represent the Disciplinary Authority imposed the punishment.

4. Applicant preferred a statutory appeal against the penalty order and on rejection by an order dated 22.2.2001 approached the Tribunal in OA-1080/2001.

5. By an order dated 22.10.2002 appellate order was set aside and the case was remanded back to the Appellate Authority to pass a detailed order. Consequent upon, the detailed order passed on 28.3.2003 gives rise to the present O.A.

6. Learned counsel of the applicant Sh. Sarvesh Bisaria challenged the impugned order on the ground that the charges in the disciplinary proceeding have been accepted under the influence and pressure of the Enquiry Officer by the applicant which cannot be treated as an admission. Accordingly violation of procedure laid down under Rule 14 of the Rules ibid vitiates the order.

7. Sh. Bisaria further states that the punishment imposed is highly disproportionate.

8. Learned counsel states that the applicant has been subjected to double jeopardy as much as apart from compulsory retirement the period of absence from 25.2.1999 onwards has been treated as break in service forfeiting the right of pension which is a statutory penalty under CCS(Pension) Rules, 1972, imposition of any punishment on the same grounds cannot be sustained.

9. Lastly, it is stated that the applicant though appeared in the second medical examination in Ram Manohar Lohia hospital but was not examined without any fault of him and his absence was on account of his wife and son's illness does not constitute a misconduct.

10. On the other hand, respondents' counsel Sh. R.N. Singh vehemently opposed the contention and denies the ground of double jeopardy. According to him as a consequence of unauthorised absence the period has been treated as dies-non and as break in service as per Rule 27 of the CCS(Pension) Rules, 1972.

11. On merits as well it is stated that the enquiry has been proceeded in accordance with rules and failure of the applicant to produce medical record, his explanation in defence has not been found sufficient to take a lenient view.

12. It is stated that the admission was unequivocal, absolute made by the applicant on his own volition which is sufficient to hold him guilty.

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13. Lastly, it is contended that the punishment imposed is commensurate with the charge. The respondents' counsel has also produced record of the disciplinary proceedings.

14. We have carefully considered the rival contentions of the party and perused the material on record.

15. On perusal of the record, we find that during the preliminary hearing on 23.12.1999 when the applicant has been asked to reply to the charges being read over has without casting any doubt over the authenticated documents and evidence in absolute clear terms without any condition accepted the charges. The Enquiry Officer then submitted his report holding the applicant guilty on 29.12.1999. As per Rule 14 (10) on acceptance of the charges the enquiry authority shall write a finding of guilt and forward to the Disciplinary Authority who, after an opportunity to represent to the concerned pass an order under Rule 15 ibid. Applicant has been served a copy of the enquiry report but has chosen not to file any reply. Accordingly, Disciplinary Authority passed an order of compulsory retirement. The aforesaid has been held in accordance with the laid down procedure. In so far as contention of the applicant that the admission was taken under pressure or threat cannot countenanced. It is an after thought plea. After the admission was so taken applicant would have immediately responded but by way of a representation to the concerned authorities. Having failed to object in time, subsequent plea cannot be sustained. From the

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perusal of the admission it is found absolute, clear and unequivocal admitting the charges in clear terms is a valid admission and is admissible under law.

16. As regards second medical examination the applicant has been directed but has not responded to. Had he presented himself in Ram Manohar Lohia hospital he would have produced some evidence to establish it. Having failed to discharge the burden the plea cannot be countenanced.

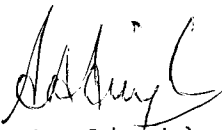
17. As regards proportionality is concerned this Court cannot assume the rule of the Appellate Authority and it is only when the conscience of the Court is shocked, there can be any interference in the punishment. Keeping in view the charge and its severity, the punishment imposed is harsh is commensurate with the misconduct.

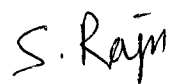
18. In so far as issue of double jeopardy is concerned, would be established when a penalty under Rule 11 of the Rules ibid is imposed upon the applicant and on the same charge he is punished again. Whereas the earlier punishment as alleged is only break in service under FR 17 which does not amount to punishment, forfeiture of qualifying service is a consequence of FR 17 under Rule 27 of the CCS(Pension) Rules, 1972 which also not a penalty.

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19. However, we find that the deceased had completed 16 years of service on 15.5.2000. As he has not assailed the order dated 24.2.1999 forfeiting his qualifying service in the present O.A., on equitable consideration liberty is accorded to the applicant to assail the same in an appropriate proceedings in accordance with law.

20. Having regard to the aforesaid, we do not find any merit in the O.A. reiterating the liberty accorded. The O.A. stands dismissed. No costs.


(S.A. Singh)
Member(A)


(Shanker Raju)
Member(J)

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