

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.2074/2003

New Delhi, this the 8th day of December, 2004

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER(A)

Hawa Singh S/o Late Raghbir Singh,
R/o RZ-60, ...Block, Bagh Colony,
Dharampura, Najafgarh,
New Delhi

... Applicant

(By Advocate: Shri R.K. Shukla)

Versus

Union of India through Director General,
Indian Council of Medical Research,
Ansari Nagar,
New Delhi – 110 029

Senior Dy. Director general,
I.C.M.R., Ansari Nagar,
New Delhi

Shri S.C. Sharma, Inquiry Officer,
Malaria Research Centre,
Sham Nath Marg,
Delhi

Respondents

(By Advocate: Shri V.K. Rao)

O R D E R (Oral)

By Hon'ble Mr. S.K. Malhotra :

The applicant in this OA has prayed that the orders dated 14.1.1991 removing him from service and dated 3.3.2003, rejecting his appeal may be quashed and set aside.

2. The facts of the case, in brief, are that the applicant joined the service as Peon in the respondent's Department (ICMR) on 17.9.1985. He was issued a charge sheet on 7/18.9.1989. The main charge against him was that he remained absent unauthorizedly from 25.7.1989 to 28.8.1989 and again from 1.9.1989 to 25.10.1989 for which he submitted medical certificate and asked for commuted leave. When he was issued a memo, he entered in the room of his senior officer and tore the memo served on him and threw it on his table and shouted at him in the presence of two other officers stating that he would not spare him. An enquiry was conducted in which he did not participate, despite several opportunities having been given to him. The

enquiry officer found him guilty of all the charges. He was sent the copy of the enquiry report against which he made his submissions. He was also given personal hearing. After considering the enquiry report and his submissions, the disciplinary authority imposed the penalty of dismissal from service. His appeal was also rejected. The applicant had earlier approached the Tribunal, stating that the DG, ICMR acted both as disciplinary authority as well as appellate authority, which was against the rules. The Tribunal accepted his plea and ordered that the present incumbent holding the post of DG, who was successor to the earlier DG, should pass an order on his appeal afresh. The present DG has now passed a fresh, detailed and speaking order dated 3.3.2003, rejecting the appeal of the applicant (Annexure A/1). The applicant has again approached the Tribunal for quashing the order of dismissal and rejection of his appeal. He has contended that the enquiry was conducted ex-parte by the respondents and he did not receive any intimation about the same, as he was not available at his house as his father was seriously ill. He has also stated that the quantum of punishment is disproportionate to the charges leveled against him.

3. The respondents have filed their written reply in which they have stated that the applicant did not cooperate in the enquiry. He did not even submit the written statement of his defence. He deliberately did not appear during the enquiry proceedings despite notices having been sent to him. The respondents were constrained to conduct the enquiry ex-parte. Regarding his contention of disciplinary and appellate authority being the same, his grievance has already been redressed as explained above. It is also stated that the past conduct of the applicant has also been unsatisfactory. During the probation period itself, he was in the habit of frequently absenting himself, without permission or leave. Disciplinary proceedings were initiated against him for unauthorized absence, insubordination and misbehaviour with his senior officers. He deserved severe penalty but keeping in view his young age, a lenient view was taken and he was awarded the penalty of censure only. But still he did not improve his behaviour. When he was issued a memo for his unauthorized absence during July-November, 1989, he threatened the Senior Administrative Officer of dire consequences for which a complaint had to be lodged in the Police Station by the respondent-department (Annexure R/6). He was put under suspension. A complaint was also received from Shri Mehar Chand Sharma, regarding kidnapping of his widowed sister and her son by the applicant on 28.7.1989 and that probably explains the reason for his unauthorized absence during July-August, 1989. The enquiry had to be postponed a number of times to give an opportunity to the applicant to participate, but he deliberately avoided to attend it. He also left the station without permission, while he was under suspension. That is the reason that the intimations

sent to him to his known addresses were received back undelivered. However, after the enquiry, he was given all opportunities to explain his conduct, before imposing the penalty of dismissal from service. His appeal was also considered and rejected after considering all the points raised by him in his defence.

4. We have heard both the learned counsel and have also gone through the pleadings and other relevant records.

5. During the course of discussions, the main point brought out by the learned counsel for the applicant was that enquiry was held ex-parte and he was not given any opportunity to defend himself. Besides, the key witnesses were not produced and their statement was not recorded. Shri S.K. Gupta, who was the complainant of misbehaviour against the applicant, was not produced before the I.O. and thus it was a case of 'no evidence'. In support of his contention, he cited the judgement of the Hon'ble Supreme Court in case of **Ministry of Finance and Anr. Vs. S.B. Ramesh**, 1998 (1) SLJ 417 in which the decision of the Tribunal in setting aside the impugned order on the ground of 'no evidence' and non-compliance of Rule 14 (18) of the CCS (CCA) Rules was held justified.

6. After hearing the rival contentions of both the parties, it is observed that it will not be correct to say that the applicant was not given an opportunity to defend himself. The enquiry proceedings were deferred a number of times to give the applicant an opportunity to participate. Notices were sent to his known addresses but he was not available. Even if he had to go out of station due to some emergency, he should have left his address with the department, which he did not do. From the facts, it appears that he was avoiding to participate in the enquiry proceedings deliberately. The charge against him was of unauthorized absence, which he has not denied. In so far as the material witness Shri Gupta is concerned, he had made a written complaint about the misbehaviour of the applicant for which even a report was filed in the Police Station. Since the complaint was genuine, it was not necessary to call Shri Gupta as witness. Thus, this was not a case of "no evidence", as is being made out by the learned counsel for the applicant. The facts and circumstances of the case of **S.B. Ramesh** (supra) are quite different. That case was of adultery by the Govt. employee where the material witness (the lady in question) was not examined. The applicant cannot derive any benefit out of that judgement. In the instant case, the charges of unauthorized absence and his misbehaviour with his senior officer were proved beyond any doubt based on official records. The applicant was supplied with a copy of the enquiry report against which he made a representation, which was duly examined. Considering the fact and circumstances of the case and in the backdrop of his past conduct, the competent authority imposed a penalty of removal from service. In our view a Govt. employee who is indisciplined; who frequently absents himself unauthorisedly without any valid

reason and misbehaves with his senior officers does not deserve to be continued in Govt. service. The respondent-department had shown indulgence in the past but this did not improve his behaviour. On the other hand, it emboldened him to the extent that he started threatening his senior officers and the department had to file a complaint against him in the police. There was also an allegation of kidnapping against him, which of course, could not be a matter of investigation in a departmental proceedings but it does speak volumes about the conduct of the Govt. employee and would certainly be construed as a conduct unbecoming of a Govt. servant. Considering all these aspects, we are of the view that the penalty imposed on the applicant is not such as would shock the conscience of the Tribunal.

7. It is a well settled principle of law that the role of the Tribunal of judicial review in such disciplinary cases is very limited. We can intervene only if the enquiry has been conducted against the rules or the punishment has been awarded without any evidence. This case does not fall in the category of such cases, as explained above. The Apex Court has held in a series of decisions in the case of **B.C. Chaturvedi vs. Union of India** (1995 (8) J.T. S.C. 65; **State of Tamilnadu vs. T.V. Venugopalan** (1994 (6) S.C.C. 302); **Union of India vs. Upendra Singh** (1994 (3) S.C.C. 357); **Government of Tamilnadu vs. A. Rajapanndian** (1995 (1) S.C.C. 216); **Union of India vs. B.S. Chaturvedi** (1995 (6) S.C.C. 749); **Tamil Nadu & Another vs. S. Subramaniam** (A.I.R. 1996 S.C. 1232); **Director General of Police & Ors. vs. Jani Basha** (1999 A.I.R. SCW 4802); and **Syed Rahimuddin vs. Director General, C.S.I.R. & Ors.** (2001 AIR SCW 2388) that the disciplinary authority is the sole judge of facts and that this Tribunal has no jurisdiction to appraise or re-appreciate the evidence to substitute its own findings over the findings of the disciplinary authority as it is not supposed to act as an appellate authority. The Tribunal has no power to re-appreciate the evidence while exercising power of judicial review. We find that there is no legal flaw in the enquiry conducted against the applicant. The finding of guilt of the applicant reached by disciplinary authority cannot be faulted on any ground whatsoever.

8. As a result of the above discussion, the OA is considered to be without any merits and substance and deserves to be dismissed. It is accordingly dismissed. No costs.

Bonalu.
(S.K. Malhotra)
Member(A)

S. Raju
(Shanker Raju)
Member (J)