

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.2468/2003

This the 13th day of July, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Tribhuwan Singh S/O Jang Bahadur Singh,
R/O P-3/364-65, Sultan Puri, w
New Delhi-110041.

... Applicant

(Ms. S. Janani, Advocate)

-Versus-

1. Defence Secretary,
Ministry of Defence,
New Delhi.
2. Director General of Ordnance Service,
MGO's Branch, Army Headquarter,
DHQ P.O. New Delhi-110011.
3. Commandant, C.V.D.,
C.V.D., Delhi Cantt, Delhi-10.
4. Administrative Officer,
CVD, Delhi Cantt., Delhi-10.
5. Personnel Officer,
C.V.D., Delhi Cantt., Delhi-10.
6. Inquiry Officer,
CVD, Delhi Cantt., Delhi-10.

... Respondents

(By Shri M.K.Bhardwaj, Advocate)

ORDER

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

Applicant, an Ex-Serviceman, had been appointed as a Gun Fitter on 19.5.1989 in CVD, Delhi Cantt. His services were terminated vide order dated 29.3.1990 for not producing discharge certificate from Army. He had assailed termination of his services through OA No.1166/1992. It was allowed on 25.7.1997 (Annexure-A) with the following observations/directions :

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"7. Accordingly, this OA is allowed. The order of termination dated 29.3.1990 as well as the appellate order dated 2.5.1991 are both quashed. We have further reverted to consider what further consequential relief can be granted to the petitioner since his removal from service was by an illegal order as stated above, and we are of the view that since the discharge certificate was available with the respondents at the time when the appellate order was passed, the reinstatement order shall be passed by the respondents from the date of appellate order namely w.e.f. 2.5.1991 and the petitioner will also be entitled to 50% of the salary payable to him from 2.5.1991 till the date of reinstatement. The payment of 50% of such salary is being awarded on an equitable consideration since the petitioner had been kept out of employment, not for any fault of the petitioner, on the other hand, the petitioner was already willing to work in the respondents office. In the circumstances we consider that payment of arrears from 2.5.1991 to the extent of 50% till the date of reinstatement is sufficient to meet the ends of justice.

8. The respondents shall pass appropriate orders of reinstatement within two months from the receipt of this order and thereafter all the dues granted by this order as consequential relief shall be paid to the petitioner within three months thereafter. With these, this OA is allowed."

2. Thereafter applicant filed a Writ Petition in the Hon'ble High Court of Delhi, which is stated to be still pending, praying that his reinstatement should be w.e.f. 29.3.1990 and for full backwages. Applicant was reinstated in service w.e.f. 6.2.1998.

3. Respondents issued a show cause notice (Annexure-C) to the applicant alleging that he had been employed as an agent by the Life Insurance Corporation of India (LIC) w.e.f. 15.7.1991 in violation of Rules 2 and 3 of CCS (Conduct) Rules, 1964. Applicant submitted his reply to the show cause notice on 10.4.2002 denying the

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charge (Annexure-D). However, respondents issued a chargesheet against the applicant on 8.5.2002 (Annexure-E) alleging the following :

"ARTICLE OF CHARGE-I

UNAUTHORISED DUAL EMPLOYMENT OF A GOVT
SERVANT

That the said Shri Tribhuwan Singh while functioning as Gun Fitter in CVD Delhi Cantt has been found to have been gainfully working as an Agent in Life Insurance Corporation of India (Agency Code No.64407-111 under D.O. Code 987-033) with effect from 15 Jul 1991. Said Shri Tribhuwan Singh has deliberately concealed this fact/information. Thus, said Shri Tribhuwan Singh engaged himself gainfully in trade/business in violation of Rule 15 of CCS (Conduct) Rules 1964 against having dual employment by a bonafide Government servant.

Shri Tribhuwan Singh by his above act has exhibited gross misconduct, unbecoming of a Govt servant in violation of sub rule (1) of Rule 15 of CCS (Conduct) Rules 1964."

4. Applicant submitted his reply to the chargesheet vide Annexure-F. Respondents proceeded to conduct disciplinary proceedings against the applicant. The enquiry officer found that applicant had engaged himself as an LIC agent w.e.f. 15.7.1991 and as such indulged in trade/business in violation of Rule 15 of the CCS (Conduct) Rules, 1964 against having dual employment by a bonafide Government servant. Copy of enquiry report was forwarded to applicant on 20.1.2003 and he was asked to make representation/submission against the enquiry report. He did not submit any representation against the enquiry report. Applicant also refused to accept the memorandum dated 25.3.2003 proposing penalty of dismissal from service. Thereafter the same was published as a

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notice in newspapers. Considering applicant's representation dated 10.4.2003 after publication of the notice in newspapers and granting him opportunity of hearing, the disciplinary authority dismissed the applicant from service vide order dated 19.4.2003. Applicant's appeal thereagainst was rejected.

5. The learned counsel of applicant contended that the applicant had taken an LIC agency after termination of his services and as such there is no question of dual employment and the chargesheet itself is bad in law; the agency lapsed in June, 2003 and that he was not an employee of LIC at any point of time. The learned counsel also contended that applicant has been meted out a disproportionate punishment of dismissal from service. She thereafter took exception to non-supply of documents to the applicant as described in the list of documents (Annexure-III to the charge memo).

6. The learned counsel of respondents stated that respondents have not committed any irregularity or violation of the prescribed procedure for conducting disciplinary enquiry. He stated that applicant had been provided full opportunity of defence and has been awarded proper punishment in proportion to the seriousness of the charge against the applicant which was fully established by the enquiry officer.

7. We have considered the rival contentions and the material on record.


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8. It has not been disputed on behalf of the respondents that the applicant had been charged for taking an LIC agency w.e.f. 15.7.1991. Admittedly, applicant's services had been terminated prior to that, i.e., on 29.3.1990. When the services of the applicant had been terminated on 29.3.1990, he was no longer a Government servant as defined in Rule 2 of the Conduct Rules. A Government servant is defined in these Rules as "any person appointed by Government to any Civil Service or post in connection with the affairs of the Union and includes a Civilian in the Defence Service." Applicant was not in employ of ^b the Government on ^b any Civil Service or post in connection with the affairs of the Union. As a matter of fact, his appointment had been terminated by order dated 29.3.1990 and he did not remain a Government servant any longer. Even if he took an LIC agency for his survival after severance of his connection with the Government on termination of his services, that, by no stretch of imagination could bring him within the ambit ^b of the Conduct Rules. No misconduct could have been alleged against applicant for acts committed by him after termination of his service. Applicant had by his reply dated 10.4.2002 (Annexure-D) to the show cause notice dated 25.3.2002 stated that the charges pertained to the period after termination of his service w.e.f. 29.3.1990. The very foundation of the chargesheet pertains to an act of the applicant which occurred after termination of his services. Obviously the foundation of the charge as a Government servant is missing in the case. With the absence of the foundation for the allegations, misconduct could not be established and no

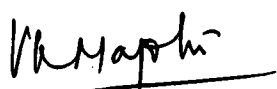
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punishment could be awarded to the applicant. While we are not dwelling on other objections raised on behalf of the applicant, we have to observe that even the published notification (Annexure-K) is defective inasmuch as that the disciplinary authority has concluded that applicant was guilty of the charge and that decision of dismissal from service had been taken but the applicant could represent against the same. This post-decisional opportunity of defence is illegal. When the disciplinary authority had already made up its mind to punish the applicant with the severest penalty, provision of an opportunity of representation etc. was meaningless.

9. Keeping in view the reasons stated above and the facts of relating the charge against the applicant to an event after termination of his services and also resorting to provision of post-decisional opportunity of representation, respondents have committed gross illegalities and irregularities. Accordingly, the OA is allowed and orders dated 19.4.2003 and 22.7.2003 imposing punishment of dismissal from service are quashed and set aside with consequential benefits. No costs.


(Shanker Raju)
Member (J)

/as/


(V. K. Majotra)
Vice-Chairman (A)
13.7.04