

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(s). 28 3 5 OF 20 0 6

GOV T. OF INDIA & ANR.

Appellant (s)

VER SUS

K. B. GOP A L A M
(With office report)

Respondent(s)

Date: 19/ 0 7 / 2 0 0 7 This Appeal was called on for hearing today.

CORAM :

HON' B L E MR. JUS T I C E A.K. MATHU R
HON' B L E MR. JUS T I C E MAR K A N D E Y KAT J U

For Appellant(s)

Mr. K. Radh a k r i sh n a n , Sr. Adv.
Mr. Tufail A. Kh an, adv.
Mr. V. K. Verma, Adv.

For Respondent(s)

Ms. K. Amaresw ar i, Sr. Adv.
Mr. K. Maruthi Rao, Adv.
Ms. K. Radhi, Adv.
Mrs. Anjani Aiyagari, Adv.

UPON hearing counsel the Court made the following
O R D E R

order The appeal is disposed of in terms of the signed order. No
as to costs.

(Ajay Kr. J ain) (Vijay Dhaw
an) Court Master Court Mas
ter

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2835 OF 2006

Government of India & Anr. Appellants
Versus
K.B. Gopalam Respondent

ORDER

- 1. Heard learned counsel for the parties.
- 2. This appeal by special leave is directed against the judgment and

order dated 14.12.2004 passed by the Division Bench of the Andhra Pradesh whereby the order dated 16.2.2004 passed by the Central Administrative Tribunal, Hyderabad in O.A. No. 517/2002 filed by the Applicant-Respondent who was dismissed from service on account of his long absence, i.e., more than 2 years, was affirmed. The respondent herein was subjected to a departmental inquiry in which he could not justify his absence nor could he produce any medical certificates to show that his absence from service was on medical ground. However, he filed some medical certificates before the Administrative Tribunal. The Administrative Tribunal came to the conclusion that having regard to the facts and circumstances of the case, the punishment imposed was disproportionate to the nature of delinquency and therefore set aside the order of dismissal from service and remanded the matter to the Disciplinary Authority to reconsider the matter for imposing lesser punishment. Aggrieved against the order of the Tribunal, a writ petition was filed before the High Court which came up before the Division Bench of the Andhra Pradesh High Court which affirmed the order passed by the Tribunal. Hence, the present appeal by special leave.

3. We have heard learned counsel for the parties. Having regard to the facts and circumstances of the case, we are of the opinion that this is a misplaced sympathy by the Tribunal as well as the High Court. The delinquent having been absent from service for more than 2 years, has no right to remain in service. During the departmental inquiry, if the delinquent had a genuine cause, he could have produced the medical certificates but no such attempt was made by the respondent to justify his absence.

4. Keeping in view the facts and circumstances of the case, that the incumbent has served for 20 years and due to family circumstances that his parents were ailing, then his wife and then himself contributed to his illegal abstention. Therefore, ends of justice will be met by reducing punishment from dismissal to compulsory retirement so that he can survive on some pension etc. Accordingly, we set aside the orders passed by the Central Administrative Tribunal dated 16.2.2004 and the Division Bench of the High Court dated 14.12.2004 and direct that instead of dismissal from service the respondent shall be compulsorily retired from service and all the consequential benefits shall be given to the respondent. This appeal is disposed in the above terms. No order as to costs.

.....J.
(A.K.MATHUR)

.....J.
(MARKANDEY KATJU)

New Delhi
July 19, 2007