

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O. A. No. 791/2002

New Delhi, this the 1st day of October, 2002

Hon'ble Shri Justice V. S. Aggarwal, Chairman
Hon'ble Shri M. P. Singh, Member (A)

Banarsi Lal
E-5/35, DDA Flats
Nand Nagri, Delhi-110093

.. Applicant

(Shri S. N. Anand, Advocate)

Versus

Govt. of NCT of Delhi, through

1. Chief Secretary
Delhi Secretariat
IP Estate, New Delhi

2. Secretary-cum-Director (Employment)
2, Battery Lane
Delhi

3. Mrs. Manju Karmeshu
Employment Market Information Office
Pusa
New Delhi-110012

.. Respondents

(Shri Ajesh Luthra, Advocate)

ORDER (oral)

Shri M. P. Singh, Member (A)

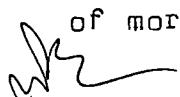
The applicant while working as LDC with the respondent-department was served with Memorandum dated 10.3.1997 asking him to explain for the unauthorised absence for the periods from 31.1.95 to 8.2.95, 10.2.96 to 21.2.96 and again from 7.3.1995 to 31.3.1995. He submitted his reply on 12.4.1997 stating reasons for his absence. Another Memo dated 17.7.1997 was served upon him stating that his reply was vague, to which applicant replied on 11.8.1997. Thereafter, Memo dated 24.11.97 containing Articles of Charge was served upon him, inasmuch as applicant had submitted a false and bogus medical certificate in support of his unauthorised absence from 30.1.95 to 8.2.95 and that

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he had not submitted any intimation or application for leave to cover up his unauthorised absence from 10.2.95 to 21.2.95 and 7.3.95 to 31.3.95. The Enquiry Officer (EO) after conducting an enquiry into the charges against the applicant submitted his report on 29.9.1999 holding both the charges levelled against the applicant as proved. Thereafter, the disciplinary authority (DA) after examining the circumstances of the case and agreeing with the findings of EO and adjusting that the applicant was unfit to be retained in service, imposed upon the applicant penalty of removal from service, vide its order dated 30.6.2000. Applicant preferred an appeal on 4.5.2001 which was rejected by the appellate authority vide its order dated 14.1.2002. Aggrieved by this, applicant has filed this OA challenging the orders dated 30.6.2000 and 14.1.2002 with a prayer to reinstate him in service with all consequential benefits or alternatively remand the case to DA for imposing lesser punishment.

2. We have heard the learned counsel for the parties and perused the records.

3. The main grounds taken by the learned counsel for the applicant during the course of the arguments are that the IO neither cared to consult the brief submitted by Presenting Officer who had stated that leave applications were already on record, nor cared to examine the doctor who had issued the medical-cum-fitness certificate for the leave availed by the applicant; DA and appellate authority have passed the impugned orders without application of mind that removal from service for unauthorised absence is excessive inasmuch as the family of the applicant has been denied pensionary benefits despite applicant's continuous regular service of more than 35 years.



4. On the other hand, the learned counsel for the respondents has submitted that the applicant could not produce any leave applications during the course of inquiry; there was no need of examining the doctor by IO as the applicant himself in his letter dated 12.4.97 stated the medical certificate for the period from 30.1.95 to 8.2.95 was issued by a Nursing Assistant as the doctor was not present on that particular day and both DA and appellate authority have passed reasoned and speaking orders after examining the circumstances of the case. He also denied that the penalty imposed is excessive and that the same is not a disqualification for future employment.

5. We have carefully considered the above averments. We are aware of the legal position that Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. However, if the punishment imposed shocks the conscience of the Tribunal, it would appropriately mould the relief either directing the DA/appellate authority to consider the penalty imposed or to shorten the limitation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

6. In the instant case, we do not find any illegality in the procedure followed in conducting the enquiry, nor the impugned orders suffer from any infirmity. For that matter, there is no merit in the present DA. However, we are of the considered view that keeping in view the

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long service of 35 years put in by the applicant and that the period of unauthorised absence is only 8 days for which the applicant has given medical certificate from the nursing assistant instead of the doctor, the penalty awarded is too harsh. It is therefore directed that respondents shall consider imposing punishment of compulsory retirement on the applicant instead of removal from service.

OA disposed of accordingly. No costs.
Announced.


(M.P. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/gtv/