

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

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Original Application No.290/00244/2014

Pronounced on : 25.02.2020
(Reserved on : 12.02.2020)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Sunil Kumar Tripathi S/o Shri Vijay Narayan Tripathi, aged about 28 years, R/o Room No.6/2, Income Tax Colony, Chittorgarh, at present employed on the post of Tax Assistant in the office of Jt. Commissioner of Income Tax, Range, Chittorgarh-312001.

...APPLICANT

BY ADVOCATE: Mr. J.K. Mishra.

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Principal Chief Commissioner of Income Tax, C.R. Building, Statute Circle, B.D. Road, Jaipur.
3. Commissioner of Income Tax, 16, Mumal Tower, Saheli Marg, Udaipur.
4. The Income Tax Officer (DDO), Chittorgarh (Raj.).

RESPONDENTS

BY ADVOCATE: Mr. Sunil Bhandari.

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "(i) The impugned order dated 26.04.2014 (Annexure-A/1) may be declared illegal and the same may be quashed. The respondents may be directed to treat the complete period of his absence from 04.02.2013 to 24.05.2013 and 24.06.2013 to 02.09.2013 as extraordinary leave without pay with medical certificate and allow all consequential benefits.
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded."

2. The factual matrix of the present case as narrated by the applicant are the applicant qualified the selection held by SSC and he was offered the appointment to the post of Tax Assistant Vide OM dated 24.09.2012 (Annexure-A/2). He accepted the offer and joined at Jt. Commissioner, Chittorgarh Range, Kila Road, Chittorgarh (Rajasthan) vide dated 18.10.2012 (Annexure-A/3). The applicant vide dated 28.01.2013 submitted an application to his controlling authority requesting therein to grant him extra ordinary leave for 90 days from 04.02.2013 to 04.05.2013 (Annexure-A/4). The purpose of leave was to join coaching classes for Civil Services Examination. Incidentally, the father of the applicant remained sick and under constant treatment and therefore the applicant had to immediately rush up to attend his ailing father. However, the respondents vide letter dated 06.03.2013 (Annexure-A/6) asking the applicant to explain the reasons for remaining absent failing which disciplinary action shall be taken as per rules. He submitted his explanation vide letter dated 25.03.2013

(Annexure-A/7). Thereafter, the applicant joined his duties but he himself fell sick and doctor advised him 25 days treatment vide medical certificate dated 25.05.2013 (Annexure-A/8). He also submitted leave application on 27.05.2013 for granting of leave from 04.02.2013 to 30.04.2013 and from 01.05.2013 to 25.05.2013 (Annexure-A/9). The applicant had to again remain sick during the period from 24.06.2013 to 01.09.2013 and submitted the requisite medical certificate and leave application on 04.09.2013 (Annexure-10). On 07.01.2014, he again requested his controlling authority for granting him 180 days. Reminder application was also given by the applicant vide letter dated Annexure-A/12.

3. The respondent No.3 has issued an order dated 26.04.2014 (Annexure-A/1) in a stereotypes manner without disclosing any reasons and the applicant has been granted Extra-ordinary Leave without pay for the period from 04.02.2013 to 30.04.2013 and 01.05.2013 to 05.05.2013. However, the other period of absence, i.e. from 05.05.2013 to 24.05.2013 and 240.05.2013 to 02.09.2013 (91 days) has been considered as not worth of sanctioning leave under the leave rules. It is contention of the applicant that there was never any enquiry or disciplinary proceedings and the impugned order was passed with the penalty of forfeiture of past service without giving him an opportunity of hearing. Therefore, he has filed the present OA.

4. In reply, the respondents have submitted that mere submission of the applicant dated 28.01.2013 (Annexure-A/4) by the applicant, he was not entitled to Extraordinary Leave whereas the applicant absented himself from the duty without proper sanction of leave by the competent authority and thus the respondent No.4 had rightly issued

the letter dated 06.03.2013 (Annexure-A/6) asking the applicant to attend office and to explain reason for the absence. The submission of the belated explanation vide letter dated 25.03.2013 (Annexure-A/7) is nothing but an afterthought to overcome his absence from the duty without proper sanction of leave. From Sickness Certificate, it reveals that it is nothing but an afterthought and the reasons mentioned in the application dated 28.01.2013 and 25.03.2013 are altogether different and just to overcome the lapses of leaving the duty and remaining absent without proper sanction of leave and which stands admitted by the applicant vide letter dated 25.03.2013. Further the so called sickness certificate does not bear any date of its issue. It is quite obvious from perusal of Annexures-A/8 & A/9 that the applicant somehow or the other changed his stand for availing the leave without sanction and in violation of the leave rules. In the application dated 27.05.2013, the applicant had not mentioned the reason of sickness of his father whereas in his earlier dated 25.03.2013 he had pretended to proceed on leave on account of the sickness of his father and thus the contradictory change of stands by the applicant is nothing but a devise to avail leave without sanction and contrary to the leave rules.

5. The applicant vide his letter dated 26.04.2013 sought permission to leave headquarter and proceed on leave for 30 more years from 05.05.2013 to 05.06.2013 without mentioning any reason in that behalf whereas the period of his leave as sought earlier vide letter dated 28.01.2013 (Annexure-A/4) was expire on 04.05.2013. The said letter dated 26.04.2013 has deliberately and intentionally not been placed on record by the applicant and a bare perusal of which shall reveal that the applicant was interested to remain on leave without permission. The

competent authority i.e. respondent No.2 had passed the order dated 26.05.2014 (Annexure-A/1) in accordance with the leave rules and sanctioned the leave admissible in accordance with the law. The applicant was entitled to be sanctioned only three months extraordinary leave in accordance with the provisions of the Rule32 (2) (a) and thus the competent authority had sanctioned the leave for the period from 04.02.2013 to 04.05.2013 i.e. 90 days EOL without pay and for the remaining period of 91 days from 05.05.2013 to 24.05.2013 and 24.06.2013 to 02.09.2013 since the applicant was not entitled to the leave not due in terms of Rule 31 (1) (a) and 31 (1) (c) of the Leave Rules, the said period has been ordered to be treated as Break in service without pay.

6. Even though the applicant proceeded to go on leave without sanction, the competent authority had sanctioned him 90 days EOL without pay in accordance with the law. EOL beyond the period of three months can only be sanctioned under Rule 32 (2) (b) where the Government servant has completed one year continuous service on the date of expiry of leave of the kind due and admissible under the Rules. The applicant had joined the office 1.102.2012 and thus has not completed one year's continuous service as on the date of expiry of leave. Thus, the applicant is entitled to EOL beyond the period of three months contrary to the provisions for Rule 32 (2) (b) of leave rules. None of the fundamental rights of the applicant have been infringed and there is no question of alleged violation of principles of natural justice.

7. The short point that arises for adjudication as per the learned counsel for the applicant is that admittedly there was unauthorized absence for which he states that the applicant had already given his

explanation and it is his case in such a situation relief should have been granted. If, on the other hand, the explanation submitted by the applicant is not accepted then the applicant should have been proceeded against in a disciplinary case and enquiry for misconduct should have been held as per prescribed procedure. He has stated that there was never any enquiry and there was no order passed after prior notice to him or giving him any predecisional hearing, visiting him with the penalty of forfeiture of past service. The applicant is being made to suffer in multiple ways and his service career is going to be jeopardized for none of his faults. He is left with no option except to approach this Tribunal for redressal of his grievances.

8. It is observed that the applicant vide his application dated 28th January 2013 (Annexure-A/4) has requested for grant of extra ordinary leave for 90 days from 04th February, 2013 to 04th May, 2013 as he does not have any other leave to enable him to go to his native place for coaching for the Civil Services. The respondent department vide order dated 26th May, 2014 (Annexure-A/1) have sanctioned extra ordinary leave without pay from 04.02.2013 to 30.04.2013 and 01.05.2013 to 04.05.2013. It has been stated that balance 91 days of leave cannot be sanctioned under the rule 31-1 (a) and 31-1 (c) of FRSR Leave Rules, as the applicant does not have any further leave to his credit. In view of this, the respondents have treated the spell from 05th May 2013 to 24th May, 2013 and 24th June 2013 to 2nd September, 2013 (total 91 days) as break in service.

9. To adjudicate the matter, it is worthwhile to examine the provisions of extra ordinary leave which are as follows:-

"32. Extraordinary leave:

(1) Extraordinary leave may be granted to a Government servant (other than a military officer) in special circumstances-

(a) when no other leave is admissible;

(b) when other leave is admissible, but the Government servant applies in writing for the grant of extraordinary leave.

(2) Unless the President in view of the exceptional circumstances of the case otherwise determines, no Government servant, who is not in permanent employ or quasi-permanent employ, shall be granted extraordinary leave on any one occasion in excess of the following limits:

(a) three months;

(b) six months, where the Government servant has completed one year's continuous service on the date of expiry of leave of the kind due and admissible under these rules, including three months' extraordinary leave under Clause (a) and his request for such leave is supported by a medical certificate as required by these rules;

10. In view of the above provisions, it is apparent that the action of the respondent department declaring the services of the applicant break in service is justified and the same has been correctly applied in this case. There are catena of judgments in which it has been held extraordinary leave is not a matter of right, the Delhi High Court has held that the "*grant of extraordinary leave is not a matter of legal right and every employer, before granting extraordinary leave, has to balance various aspects, including the working requirement of the employer not being affected on account of leave sought by an employee*". Further in the case of *Smt. Mitali Chakrabarty Dutta vs Chairman, Rajya Sabha & Ors.*, the Hon'ble Delhi High Court in writ petition No.1503/2017 decided on 20 February, 2017 has held as under:-

"8. Finally, at the risk of repetition, it is required to be stated that in the enquiry proceedings when an employee does not appear and accordingly is proceeded ex-parte and where the charges against the employee are proved,

the scope of this Court for hearing of a writ petition under Article 226 of the Constitution of India to challenge such an Enquiry Report and the consequent order of the disciplinary authority is extremely constricted to examine whether there are such issues which are fundamental issues going to root of the matter, and only which issues have to be examined and not factual issues of merits which are decided as per the Enquiry Report. Therefore, this is another reason for this Court to accept the Enquiry Officer's Report as also the impugned order passed by the disciplinary authority.

9. To complete the narration of the claim of the petitioner for grant of extraordinary leave, it is noted that petitioner claimed that she suffered from hyper-tension and hence could not join duties, but, this plea is completely misconceived because to substantiate this plea petitioner has not filed any medical certificate of being medically unfit for performing duties, and all that the petitioner has filed is just one prescription of some medicines for hyper-tension."

11. In view of the provisions of rules 31-1(a) and 31-1 (c) of FRSR Leave Rules and the judgment cited above, the present OA has no merit and the same deserves to be dismissed. Accordingly, the OA is dismissed with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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