

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 3030 of 2001

New Delhi, this the 5th day of May, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDIC)

(19)

J.P. Mishra  
S/o Shri R.R. Mishra  
Programme Adviser  
Health and Family Welfare Sector  
Development Programme in India,  
D-127, Panchsheel Enclave,  
New Delhi-110 017.

APPLICANT

(By Advocate: Shri Anukul Raj, proxy counsel for Ms.  
Sharmilla Upadhyay, Counsel)

Versus

Union of India  
Through Secretary,  
Ministry of Statistics and Programme Implementation,  
Sardar Patel Bhawan,  
New Delhi-110 001.

RESPONDENTS

(By Advocate: Shri K.C.D. Gangwani)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judic)

1. The applicant has impugned orders of Ministry of Statistics and Programme Implementation dated 19.1.2000 whereby the penalty of withholding of increments of pay for a period of three years without cumulative effect has been passed upon the applicant vide Annexure A-1. The applicant had also filed a review which had also been rejected vide Annexure A-2.

2. The facts in brief are that the applicant was proceeded departmentally on the following charges:-

"That Shri J.P. Mishra, a Junior Administrative Grade (JAG) Officer of the Indian Statistical Service (IS) was relieved from O/o Economic Adviser on 3.3.97 (AN) with directions to report to the Cadre Controlling Authority, i.e., Department of Statistics on 4.3.97 (FN). The said Shri Mishra, however, joined FOD (Hq) New Delhi where he had been posted by Department of Statistics order dated 25.10.1996, only on 8.7.97. Thus the said Shri Mishra

*[Signature]*

absented himself from duty unauthorisedly from 4.3.97 to 7.7.97.

The said conduct of Shri Mishra, apart from displaying gross indiscipline and utter lack of devotion to duty was also highly unbecoming of a Government servant. The said Shri J.P. Mishra has thus rendered himself liable for disciplinary action for violation of Rule 3(1)(ii) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964".

3. An enquiry was held. The Inquiry Officer returned the finding holding the applicant guilty. Copy of the enquiry report was sent to the applicant and after consulting the UPSC it was found that the charge of unauthorised absence from 4.3.97 to 7.7.97 has been fully proved against the applicant so the President after consulting the advice of the UPSC imposed the penalty of withholding of increments for a period of 3 years without cumulative effect.

4. In the grounds to challenge the same the applicant has submitted that if the Government servant absents himself abruptly or applies for leave which is refused in the exigencies of service and since he happens to be absent from duty he should be told of consequences that the entire period of absence will be treated as unauthorised absence entailing loss of pay in question and since in this case the applicant has not been told so the disciplinary proceedings could not have been initiated.

5. The applicant further submits that he was able to join the duty on 12.5.97 so the period after 12.5.97 the applicant was available for posting.

6. It is further submitted that the imputations do not indicate that the leave was denied to the applicant.

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7. The applicant has also stated that the Inquiry Officer was biased and thus it is pleaded that the enquiry report was defective so the same is liable to be quashed. Thus it is submitted that the final order is not a speaking order and the same is liable to be quashed.

8. The OA is being contested by the respondents. The respondents in their reply submitted that the applicant was working as Deputy Director in the office of the Economic Adviser, Ministry of Industry, was sponsored for a period of one year training under Colombo Plan to UK and he was supposed to return on 30.9.96 after the completion of training. It is further stated that the applicant on return from foreign training reported for duty in the office of Economic Adviser on 15.9.96 and when he learnt that another person had been appointed in his place so he submitted an application for grant of Earned Leave from 16.9.96 to 18.10.1996 which was granted vide Economic Adviser's Office Order dated 4.10.1996. The leave was further extended upto 15.11.1996 and it was made clear that after the leave period the applicant would report for duty in the department of statistics as the respondents had posted the applicant against a vacancy available in the department of statistics. The applicant instead of joining the FOD Headquarters in the department of statistics again approached the office of the Economic Adviser and applied for EL for different period and in the meanwhile the respondents circulated a vacancy for recruitment to the post of Director, Plan Evaluation and Monitoring Shillong. The applicant also applied through the office of Economic Adviser and was selected for the said post, a North Eastern Council



Secretariat. The applicant was advised accordingly not to extend his leave and join FOD (Headquarters) immediately. The Office of Economic Adviser was also advised not to extend his leave but despite the instructions from the Cadre Controlling Authority, the applicant submitted another application for grant of 75 days Earned Leave w.e.f. 24.2.97 to 9.5.97 though it was initially sanctioned but the leave was subsequently revised vide order dated 3.3.97 and the leave granted was curtailed and he was sanctioned leave from 24.2.97 to 3.3.97 with the directions to report to the cadre controlling authority on 4.3.97. But the applicant did not report and again submitted his application for leave for 75 days which was not allowed.

9. But instead of reporting to the Headquarters, the applicant has been submitting his leave application to the earlier office of the Economic Adviser so ultimately an enquiry was instituted against the applicant in which the applicant participated and after observing the procedure, the applicant was punished and only a minor penalty was awarded.

10. I have heard the learned counsel for the parties and gone through the records of the case.

11. As far the pleas taken up by the applicant in the OAs are concerned it only discloses that the applicant is challenging the factual position and wants this court to re-appreciate the evidence. Since it is a settled law that the Tribunal while exercising the power of judicial review cannot re-appreciate the evidence on the facts so these pleas are not open to the applicant. The applicant even has not pleaded that it is a case of No Evidence. Nor it is pleaded that findings are



perverse.

12. As regards the procedure followed by the Inquiry Officer and the disciplinary authority are concerned, there is no complaint that the applicant has not been given any opportunity rather the documents do suggest that the applicant had been offered full opportunity to defend his case during the departmental proceedings and it is an admitted case of the applicant himself that he did not report for duty as a FOD in the department of Statistics Headquarters. He had only reported on 12.5.98 in the office of the Economic Adviser as such the plea taken by the applicant has no merits. The OA also does not disclose any othe ground fro the review of the impugned order.

13. In view of the above, no interference is called for. Accordingly, the OA is dismissed. No costs.

  
(KULDIP SINGH )  
MEMBER(JUDL))

/Rakesh