

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2267/99

New Delhi, this the 9th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Mrs. Govindan S. Tampi, Member (A)

Shri Prem Kishore Gupta
s/o Shri N.K.Gupta
R/o Q.No.6, P.S.Narela,
Delhi.

...Applicant

(By Advocate Shri S.K.Gupta)

V E R S U S

1. Govt. of NCT of Delhi
Through Chief Secretary
5, Sham Nath Marg
New Delhi.
2. Commissioner of Police,
Police Headquarters
MSO Building, I.P.Estate
New Delhi.
3. Addl. Commissioner of Police,
(Armed Police)
Police Headquarters,
I.P.Estate, New Delhi.
4. Deputy commissioner of Police,
IIIrd Bn. D.A.P.
Vikaspuri, New Delhi.
5. Asstt. commissioner of Police/HQ
IIIrd Bn. D.A.P.
Vikas Puri
New Delhi.

...Respondents.

(By Advocate Shri Ram Kawar)

O R D E R (ORAL)

Shri Govindan S. Tampi, Member (A)

In this application, the punishment of Censure imposed on the applicant by order dated 21-5-98 of the disciplinary authority and the appellate authority's order dated 6-11-98 confirming the same are under challenge.

2. According to the application, the applicant who was working as Head Constable (Ministerial) in the office of the respondents; attended the office on 6-12-97, he left his office at Vikas Puri, Police Lines, and on way home due to heavy rains, he got drenched and he fell ill. On 7-12-97, the applicant consulted the Doctor at Narela, who advised him to take five days rest. On Monday i.e. on 8-12-97, the applicant could not attend the office and, therefore, he directed his son Sh. Sanjeev Kumar to inform his office about his illness and also about his inability to attend office. On his returning to duty on 12-12-97, after availing himself of five days' rest he produced the Medical Fitness Certificate and applied for the leave for the days when he was absent. Proceedings were initiated thereafter and on 19-1-98 the respondent No.4 issued to the applicant a show cause notice proposing to impose on him the penalty of Censure and treating the absence period not spent on duty (dies non) on the ground of its unauthorised absence. After receipt of the applicant's reply, the above penalty was imposed on him. On 21-5-98, it was confirmed by the appellate authority on 6-11-98. Hence the application.

3. Heard learned counsel for both the applicant and the respondents. Sh. S.K.Gupta, the learned counsel appearing for the applicant indicates that the applicant had informed Department on Monday itself i.e. 8-12-97, at about 12:30PM that he was unwell and has been advised rest by the Doctor and followed it up by an application and a medical certificate, when he rejoined duty on 12-12-97 after

five days. This fact is not disputed by the Department as well, As he had given an intimation of his illness and inability to attend the office on account of his illness; his absence cannot be considered as wilful absence. In the circumstances of the case, the penalty of Censure was harsh and high, states Shri Gupta. He, therefore, seeks the intervention of Tribunal in setting aside that penalty.

4. Shri Ram Kawar, learned counsel appearing on behalf of the respondents reiterates the reply given by them and states that the applicant has not followed the procedure with regard to availment of leave as laid down in Leave Rules, where it is specifically indicated in Rule 19 (5) that the submission of medical certificate by itself on a later date does not regularise the absence. The applicant should have applied for and obtained the leave and his not having done so, proceedings were initiated against him, which ended in a very minor penalty of Censure. There was no ground to interfere with the same, according to the respondents' counsel.

5. We have carefully considered the matter. It is likely that the applicant's plea that he had taken steps to intimate the Department through his son about his illness, is a fact. It is also likely that he had fallen ill on 7-12-97 and was advised by the Doctor that he should take rest for five days. However, there is no reason why the ^{Leave application} ~~same~~ was not sent to the office on 8-12-97 itself, ^{after} ~~when~~ ^{reportably} his son informed the office by telephone about his father's illness.

The production of medical certificate and/or application after rejoining the duty on 12-12-97 does not confer on the application any right to avail himself on leave or absolve him from discharging the responsibility in terms of the Rule 19 (5) of the CCS (Leave Rules), 1972. In the circumstances, we cannot hold that the proceedings initiated by the respondents were incorrect or illegal. The nature of the penalty imposed - that of Censure, a very minor penalty - also does not warrant any interference, as being harsh or improper.

6. The application having no merit, therefore, fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)
Member (A)

/vikas/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)