

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 468/99

(1)

New Delhi, this the 1st day of November, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Sh. Hemant Juyal
S/o Sh. C.P.Juyal
R/o Shanti Sadan,
Subhash Nagar,
P.O. Clement Town,
Distt. Dehradun,
working as P.T.I. in
Oak Grove School, Jharipani,
Distt. Dehradun (U.P) Applicant
(By Advocate: Sh. M.K.Gupta)

VS.

1. Union of India
through
General Manager,
Northern Railways,
Baroda House,
New Delhi-110001.
2. Chief Personal Officer,
Northern Railways Headquarters,
Baroda House,
New Delhi-110001.
3. The Principal,
Oak Grove School,
P.O. Jharipani
Dehradun. Respondents
(By Advocate: Sh. R.L.Dhawan)

ORDER (ORAL)

Sh. Govindan S. Tampi,

The challenge in this application is for granting the benefit of the leave, incorrectly declared as unauthorised and treated as dies non by the order of the appellate authority dated 26.9.95 and revisional order dated May 1998.

2. Heard counsel for both the parties.
3. The applicant, who was working as Physical Training

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Instructor with the respondents sought leave on 10.9.93 for 13th & 14th September, 1993 with station leave permission for making necessary arrangements for treatment of his wife. He sought extension of the leave by application dated 15.9.93. As he fell ill he sought further extension on 30.9.93 attaching sickness certificate. He resumed duty on 20.11.93 and produced the application alongwith medical certificate, but was not allowed to resume his duties. It was just before winter vacation which began on 4.12.93. He made a request for permission to proceed on vacation and thereafter sent representations ~~made~~ on 1.3.94 and 12.4.94. On 15.3.94 a letter was written to the applicant alleging that after the end of winter vacation he had not reported for duty on 31.1.94 and this particular period of absence would be treated as unauthorised absence. On 19.5.94 the applicant again reported for duty and requested him to allow to join duty but was not permitted to do so. He was issued a charge-sheet on 20.5.94 stating that he had "left station on 10.9.93 unauthorisedly and did not bother to report back for duty". His having denied the charge a fact finding enquiry was conducted in which he properly co-operated. The enquiry report dated 26.12.94 held the charges as proved. The disciplinary authority agreeing with the findings of the enquiry officer and holding that on previous occasions also the applicant had remained unauthorisedly absent and was thus a habitual absentee, awarded him the extreme punishment of removal from service by its order dated 10.3.95. On his filing an appeal the appellate authority on 26.3.95 modified the penalty of removal to a lesser punishment of reduction in pay to the initial stage in the existing grade for a period of two years with cumulative effect and also directed that the period of

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absence from the date of removal to the date of reinstatement may be treated as period not spent on duty and be converted as leave due if the applicant so desired. His request for treating the period from 10.9.93 to 19.11.93 as leave and from 20.11.93 onwards as duty was not agreed to. His revision application praying that the period from 10.9.93 to 19.11.93 and from 20.11.93 to 25.9.95 be treated as leave without pay and duty was rejected in May 1998. Hence this application.

4. Arguing strenuously for the applicant, Sh. M.K.Gupta, the learned counsel, points out that the applicant had left the school on 10.9.93 after applying for the leave and the permission to leave the headquarters to make arrangements for the treatment of his ailing wife, but when he returned on 20.9.93, he was not permitted to join duty as is clear from the letter written by the Principal of the School on 20.11.93 to the Chief Personnel Officer, Northern Railway, seeking clarification. He made repeated attempts to rejoin duty before the winter vacation and thereafter but only in April, 1994 he was directed to rejoin duty. Still he was proceeded against on the charge of unauthorised absence. The counsel indicates that the enquiry proceedings were vitiated and the enquiry officer was biased. The Enquiry Officer permitted the evidence of an individual who was not included in the list of witnesses and at the same time the record of the school to ascertain whether the application for leave was filed or not, was not produced. In fact one of the witnesses, did indicate that the applicant had sought permission before proceeding on leave. In spite of the above, evidence which was clearly in his favour, the Enquiry Officer had held the charge of unauthorised absence as proved, which was mechanically accepted by the disciplinary authority, who awarded him the

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extreme penalty. The same was reduced by the appellate authority though the latter also without any basis held the period of his absence as unauthorised. Sh. Gupta states that since 20.11.93, the applicant was not permitted to join duty and the first letter advising him to rejoin duty was issued only in April, 1994 he should not have been considered as being unauthorised absence for the period and proceeded against. In view of the above, the relief sought by the applicant deserved to be granted, pleads the counsel.

5. *Rebutting* the above plea, Sh. R.L.Dhawan, learned counsel appearing for the respondents states that the applicant has been a habitual absentee and has ^{continued} ~~considered~~ to be so. In the instant case, he has left without leave or permission on 10.9.93 and did not report for duty in spite of being asked to do so, till the chargesheet was issued to him on 20.5.94. The impugned proceedings were initiated and completed thereafter. He had left the school on 10.9.93 and did not turn up till 20.11.93, by which time, the main activities in the school, connected with his speciality like sports and games were over. This was done by him only to get the benefit of winter vacation. He did not rejoin at the time of re-opening of the school on 1.2.94 but the first attempt by him to come to the school was on 9.3.94. Direction to him to join the school was sent on 15.3.94 and posted at his house on 8.4.94. Hence the proceedings. The applicant should not have left the school without obtaining permission from the competent authority. The applicant's plea that Sh. D.C.Pant, Headmaster had permitted him to leave on 10.9.93, was immaterial, as Sh. Pant was away from 9.9.93 to 13.9.93 and the officiating Headmaster was Sh. D.C.Pande who has denied granting any permission to the applicant. Enquiry proceedings have been

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correctly gone through and the Enquiry Officer has given a proper report meeting all the points raised by the applicant. Disciplinary, appellate and revisionary authorities have also gone by the proper procedure and the applicant can have no legitimate grievance. Sh. Dhawan further points out that the behavioural pattern and the attitude of the applicant were not at all in tune with the job and responsibilities assigned to him and his punishment was totally justified and did not call for any interference or modification from the Tribunal.

6. We have carefully deliberated on the rival contentions. While the applicant states that he had left the school on 10.9.93 only to make arrangements for the treatment of his ailing wife and that too after applying for leave and obtaining permission to leave the station and that he was not permitted to rejoin duty when he came back on 20.11.93, the respondents argue that his absence throughout was unauthorised and deliberate. Facts brought on record do not prove the applicant's case that he had obtained the leave or permission from the competent authority when he left on 10.9.93. The evidence he produces in his support - the deposition of Headmaster D.C.Pant that he had taken permission - is ^{rebutted} ~~resulted~~ by the fact that Pant was himself on leave from 9.9.93. There is also no evidence that his request for extension or any medical certificates sent by him has reached the school. Obviously, therefore that his absence from 10.9.93 to 19.11.93 has been correctly held to be unauthorised. The position, however, is different from 20.11.93 to 15.4.94. It is on record that the applicant had presented himself at the school on 20.11.93, but he was not permitted to do so, as is evident

from the letter dated 20.11.93 from the Principal (respondent No.3) to the Chief Personnel Manager (Respondent No.2) which reads as under:-

"In view of the facts stated above, Sh. Hemant Juyal has not been allowed to resume his duties and the matter is being referred to you for clarification whether Sh. Juyal be allowed to resume his duties and in that case whether he would be entitled to vacation salary though he has virtually not performed any duty during the term."

7. The applicant's attempt to rejoin duty did not succeed till the school had directed him to rejoin duty by way of the letter served on him on 15.4.94. The period of 20.11.93 to 15.4.94 would have to be ^{Kept} treated as duty. Otherwise, keeping in mind his previous record of absenteeism and his being away from the school during the period the activities, concerned with his speciality are at the highest, we are convinced that the Enquiry Officer's report, as well as the decision of the appellate/revisionary authorities cannot at all be called in question. The penalty awarded to him by the appellate authority, endorsed by the revisionary authority is also reasonable and lenient and they do not call for any interference from us, except for a slight modification.

8. In view of the above findings the application fails, except marginally and is accordingly disposed of. Respondents are directed to treat the period of the applicant's absence

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from the school from 20.11.93 to 15.3.94, alone as duty, as he was prevented from joining the school by the respondents. The impugned orders are modified only to this extent and the remaining period of absence is correctly held as unauthorised.

In the circumstances of the case we order no costs.

 (GOVINDAN S. TAMPI)
Member (A)

unopposed,
(V.RAJAGOPALA REDDY)
Vice Chairman (J)

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