

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

5 O.A. 1138 of 1998

16

New Delhi, this the 13th Day of August, 1999.

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)  
HON'BLE SHRI S.P. BISWAS, MEMBER(A)

R.N. Agarwal  
Chargeman Grade-II (T)  
Regional Training Institute  
Opto Electronics Factory, Raipur  
Dehradun - 248 008. .... Applicant

(By Advocate: Mrs. Meera Chhibber)

Versus

Union of India, through

1. The General Manager  
Opto Electronics Factory, Raipur  
Dehradun - 248 008.
2. The Director General  
Ordnance Factory Board  
10-A Auckland Road  
Calcutta - 700 001.
3. The Secretary to GOI  
Ministry of Defence  
South Block  
New Delhi. .... Respondents

(By Advocate: Shri V.S.R. Krishna)

O R D E R (Oral)

Smt. Lakshmi Swaminathan, M(J)

The applicant is aggrieved by the impugned orders passed by the respondents dated 6.9.1997 withholding two increments of the applicant without cumulative effect for a period of two years and order dated 20.10.1997 which the learned counsel for the applicant says she is not pressing as it has become infructuous. The appeal filed against the order dated 6.9.1997 has also been rejected by the appellate authority by its order dated 16.3.1998 which has also been impugned in the OA.

18

(17)

2. The facts of the case are: the applicant who was working ~~as Charge man~~<sup>as Charge man</sup> in Opto Electronics Factory, Dehradun under Respondent No. 1, was Charge man Grade-II (T), was issued a charge memo. on 25.3.1997 for most irregular attendance to duty by availing 121 days leave on 17 occasions during the period between January 1996 to December 1996. The impugned order of withholding two years' increments had been passed by the competent authority on his finding that the charge of gross misconduct - failure to maintain devotion to duty by availing '121 days' leave on 17 occasions during the period of 12 months, i.e. from January 1996 to December 1996 was established.

3. Mrs. Meera Chhibber, learned counsel has based her arguments on two main grounds for assailing the impugned orders. She has submitted that the aforesaid period of leave for 121 days had been duly sanctioned to the applicant by the respondents as evident from the records (Annexure A-9). In the reply filed by the respondents, this fact has not been disputed in which they have categorically stated that the applicant had availed of 121 days leave on 17 occasions. They have, however, contended that the submission of formal applications for leave which have been sanctioned and regularised does not prevent them from charging the individual for irregular attendance. Secondly, learned counsel for the applicant has also submitted that in two other cases of S/Shri B.K. Sharma and N.K. Sharma who are also employees of the Opto Electronics Factory, Dehradun which is also under Respondent No. 1, those persons had also availed of long

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(13)

spells of leave - 107 days on 26 occasions and 170 days on 10 occasions, respectively, for the same period, i.e. January 1996 to December 1996. However, neither of these two persons have been chargesheeted or penalised whereas it is otherwise in the case of the applicant. Learned counsel, has, submitted that this is a clear case of discrimination shown by the respondents against the applicant. Further, the applicant has only availed of sanctioned leave on 17 occasions and, therefore, he cannot be charged for being irregular on duty by issuing charge memorandum on the present case.

4. On the other hand, Shri V.S.R. Krishna, learned counsel for the respondents has submitted that there is absolutely nothing wrong in the memorandum of chargesheet issued on 25.5.1997. He has emphasised that the memorandum is one for irregular attendance to duty, irrespective of the fact that the leave sanctioning authority had sanctioned the leave. He has also submitted that there is no question of discrimination as it was for the competent authority to take a decision in the facts and circumstances of each case.

5. We have carefully considered the pleadings and submissions made by the learned counsel for the parties. The respondents have, in their reply dated 16.4.1999, which is taken on record, categorically stated that they are not disputing the facts stated by the applicant. There is no <sup>of the parties</sup> doubt from the averments <sub>L</sub> that the applicant had duly applied for leave which had been sanctioned and thereafter

18

(19)

he availed of the same. In the circumstances, it appears that the subsequent memorandum of chargesheet dated 25.3.1997 is an after thought which is contrary to the stand taken by the respondents themselves earlier. We are unable to agree with the contentions of the learned counsel for the respondents that even if the leave has been sanctioned which has thereafter been availed of by the employee, it is still open to them to charge the employee for irregular attendance. This attitude of the respondents will indeed give rise to uncertainty because the employee would be in a dilemma whether he should proceed on leave which has been duly sanctioned or not, just in case on his return he will be faced with a chargesheet for his absence. If the respondents felt that the long absences of the applicant were not desirable in the exigencies of service, they could have very well refused the leave at the right time, which they have failed to do. In the facts and circumstances, we do not, therefore, find any justification in the action of the respondents issuing a chargesheet against the applicant on 25.3.1997 for irregular attendance to duty by availing 121 days' leave on 17 occasions, as admittedly they themselves had sanctioned the leave earlier.

6. Regarding the question of discrimination raised by the applicant, it has been categorically stated by the respondents that with respect to S/Shri B.K. Sharma and N.K. Sharma they had been allowed to avail leave for 107 days on 26 occasions and 170 days on 10 occasions, respectively. We find the reply filed by the respondents

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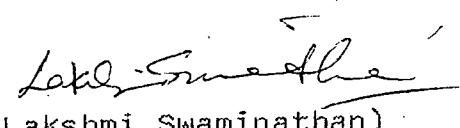
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unsatisfactory as no reason whatsoever has been given by them as to how the case of the applicant is, in any way, different from the other two cases where they have chosen not to issue any chargesheet or impose any penalties against those persons for availing of sanctioned leave, and that too for the same period. It is settled position that unless the action challenged is reasonable and ~~having~~<sup>12</sup> nexus to the object sought to be achieved, it will have to be termed as arbitrary and discriminatory which cannot be countenanced in law. We, therefore, find no merit in the reply filed by the respondents that each case can be decided on its own merit without disclosing what are the relevant facts, which weighed with them to distinguish the present case from the other two cases. Hence, the contention of the respondents that they have not acted in a manner against the applicant is rejected.

7. For the reasons given above, we see merit in the application. Accordingly, the OA succeeds and is allowed. The impugned penalty order dated 6.9.1997 and the appellate authority's order dated 16.3.1998 are quashed and set aside. The applicant is entitled to receive the consequential benefits, which shall be granted to him by the respondents within three months from the date of receipt of a copy of this order.

Parties to bear their own costs.

  
(S.P. Biswas)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Member (J)