

Central Administrative Tribunal
Principal Bench

O.A.No.1236/98

Hon'ble Mr. Justice K.M.Agarwal, Chairman
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 22nd day of July, 1998

Shri Chetan Das
s/o Shri Roshan Ram
r/o 9619, Shiv Puri
Gurgaon
Haryana.

... Applicant

(By Shri S.C.Singhal, Advocate)

Vs.

1. Union of India
Ministry of Defence
New Delhi
(Services to be effected through its Secretary).
2. The Director General (OS)
Army Headquarters
DHQ Post Office
New Delhi.
3. Indian Ordnance Depot
Shakurbasti
New Delhi - 110 056
(Services to be effected
through its Commandant.

... Respondents

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

We have heard Shri S.C.Singhal, learned counsel
for the applicant.

2. The case of the applicant is that while working as 'Mazdoor' with Respondent No.3, he became seriously sick during the years 1996-97 and for that reason remained on leave. He claims that he sent his leave application along with the requisite medical certificates but the respondents vide order dated 10.1.1997 removed him from service on the ground of absence without leave. Thereafter he preferred an appeal on 21.2.1997 and after a long delay he was informed that the same had also been rejected vide order dated 5.12.1997. The order of

rejection of appeal is challenged on the ground that it is non-speaking; that it is against the principles of natural justice and further because it does not take into consideration that the applicant was never served any show-cause notice nor any charge-sheet and no valid enquiry had been initiated against him. (A)

3. We have seen the impugned order of the Appellate Authority dated 5.12.1997 which is annexed at Page 7 of the OA. We find that it is comprehensive and detailed, with reasons adduced for the conclusion of the appellate authority. It has been stated in the impugned order that the applicant was called upon to rejoin duty and to submit medical certificates in case he was sick. Subsequently he was directed to Ram Manohar Lohia Hospital or other Govt. Hospitals for a second medical opinion. Thereafter a charge sheet was duly issued and an enquiry was started. As all the communications sent by Registered Post both at local as well as permanent address of the applicant, were returned undelivered, a notice was also issued in the 'Times of India' on 09.12.1996 to provide the applicant an opportunity to make representation against the proposed penalty of removal of service. However, no reply had been received from the applicant.

4. The allegation of the applicant that no show cause notice or charge-sheet was issued and no enquiry was conducted is thus not correct. The respondents cannot be held responsible if the applicant, for whatever reason, leaves his place of posting without permission, and then cannot be contacted when Registered letters are sent to him. In fact, the respondents took further

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precautions and published a notice in a national daily newspaper. As per Rules 63 and 64 of P & T Manual, Vol.III reproduced in Swamy's - CCS (CCA) Rules at page 46 (1995 edition) it has been provided that whenever an official continues to remain absent from duty or overstays leave without permission and his movements are not known, or he fails to reply to official communications, the disciplinary authority may initiate action under Rule 14 of the CCS (CCA) Rules, 1965 and in all such cases, the competent authority should, by a Registered A.D. letter addressed to the official at his last known address, issue a charge-sheet; If the letter is received undelivered, the Enquiry Officer may hold an ex-parte enquiry. The respondents were thus perfectly within their right to proceed with the ex-parte enquiry once a communications sent by a Registered A.D. to the applicant ~~and~~ were returned undelivered. (5)

5. The learned counsel for the applicant laid stress on the omission of the appellate authority to grant a personal hearing to the applicant despite repeated representation made to that effect. Rule 27 of the CCS (CCA) Rules, 1965 pertaining to the consideration of an appeal, does not specifically provide for the grant of personal hearing of an appellant before deciding his appeal. The principle of right to personal hearing is not applicable to the departmental enquiries as the decision by the appellate authority can generally be taken on the basis of the records before it. It has however been laid down in Government of India, Department of Personnel & Training's OM No.11012/20/85-Est.(A) dated 28.10.1985 reproduced on Page 106 of Swamy's CCS (CCA) Rules, 1965 (1995 edition) that appellate authority may

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allow the appellant, at its discretion, the personal hearing. Since the discretion is left to the appellate authority and there is no binding provision in the CCS (CCA) Rules, 1965, the impugned order cannot be challenged on the ground that a personal hearing/appearing was refused in this case. (6)

6. In the light of the above discussion, we find no ground to proceed further in the matter. The OA is accordingly summarily dismissed at the admission stage itself.

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(K.M. Agarwal)
Chairman

R.K. Ahooja

(R.K. Ahooja)
Member (A)

/rao/