

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.2095 OF 1998

New Delhi this the 16th day of August, 2000

Hon'ble Mrs. Lakshmi Swaminathan, M (J)
Hon'ble Mr. S.A.T.Rizvi, M (A)

Sh. Madan Lal
(By Advocate: Sh. S.P.Mehta)

....Applicant

VERSUS

Union of India & Ors.
(By Advocate: Sh. Vijay Pandita)

.....Respondents

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| 1. | To be referred to the Reporter or not? | Yes |
| 2. | To be circulated to other Benches of the Tribunal? | No |

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(S.A.T. RIZVI)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A.NO.2095/98

New Delhi, this the 16th day of August, 2000

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Madan Lal Chander, S/O Sh. S.R.Chander,
R/O C-707, Sarojini Nagar, New Delhi.

.....Applicant

(By Advocate: Sh. S.P.Mehta)

Versus

1. Union of India, through, Police
Commissioner, New Delhi.

2. Sr. Additional Commissioner Police,
Security and Traffic, New Delhi.

3. Deputy Commissioner of Police,
Security (P.M.Cell), New Delhi.

.....Respondents

(By Advocate: Sh. Vijay Pandita)

O R D E R

Hon'ble Mr. S.A.T. Rizvi, Member (A):

This OA has been filed seeking quashing of impugned orders dated 10.2.95 (Annexure A-1), dated 3.9.97 (Annexure A-2) and dated 20.1.98, whereby the applicant has been punished, inter alia, by withholding of one increment for a period of two years without cumulative effect.

2. The facts of the case are as follows:-

3. The applicant proceeded to London on 93 days' leave duly sanctioned to him which was to end on 1.2.93. During his stay in London, the applicant fell sick on account of back-ache and applied for and was sanctioned leave till 31.8.93. Thereafter, he applied for another six months' leave by his application dated 29.8.93 accompanied by a medical certificate from a Government

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Doctor in London. This was rejected by the respondents vide order dated 17.12.93 (Annexure A-9). The applicant made a request once again on 5.1.94 for sanctioning the leave applied for suggesting additionally that the respondents could seek a second medical opinion from any authority in London. Then followed a letter dated 3.9.94 from the said Doctor in London addressed to respondent No.3 which, inter alia, mentioned that the applicant was not to travel within the next few weeks. The applicant, however, kept on extending leave in a piece-meal fashion. His applications were always accompanied by medical certificates right upto the period ending 8.4.96. During his absence, and after his request for further leave had been rejected as above, ex-parte proceedings were ordered against the applicant by respondent No.3 on 15.1.96. In this order, it was clearly stated that the applicant would be afforded every opportunity at every stage as per Rule 18 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980. While still on leave in London, the applicant, on 29.1.96, requested the respondents to fix the next date of hearing in the disciplinary proceedings already underway against him in the second half of April, 1996. The respondents directed the applicant to join the proceedings underway on 15.3.96 adding that, if the applicant was sick, he could appear before the medical authority of Police Organization for a second opinion. The contention of the applicant is that since the respondents had not agreed to his earlier suggestion of 5.1.94 for a second medical opinion by a medical authority in the U.K., their suggestion made as above was an afterthought. However, the applicant was declared

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medically fit early in April, 1996 and reported in Office in India and participated, on 16.4.96, in the enquiry proceedings underway against him on ex-parte basis and, by this time, prosecution witnesses had already been examined. Lastly, the applicant has asserted that the enquiry proceedings were not properly conducted, the prosecution witnesses were not allowed to be cross-examined by him and copies of the documents relied upon by the respondents were also not given to him. He has also stated that the Enquiry Officer did not go into the question of a possible second medical opinion at all and simply recorded that the charge against the applicant had been proved. The applicant was punished, as already stated above, vide order dated 8.9.97 and the appeal filed by the applicant, was rejected by the Competent Authority on 20.1.98. The applicant has stated that the Appellate Authority also did not apply his mind and did not look into the question of a possible second medical opinion. He has pleaded that the proceedings undertaken against him were illegal, arbitrary and malicious and that he has been deprived of his legal right of leave on medical ground. He has also alleged violation of Rules 19 (3) & 19 (4) of C.C.S. (Leave Rules/Police Leave Rules). Accordingly, he has sought reliefs as already mentioned in the beginning of this order.

4. A perusal of the counter reply filed by the respondents and the other connected papers filed by the applicant reveals that the Disciplinary Authority has passed a detailed and speaking order dated 3.9.97 punishing the applicant as above. It is clearly stated

therein that all the relevant documents were given to the applicant on 25.4.96 and, for his sake alone, all the PWs were summoned once again on 30.4.96, but the applicant did not cross-examine any one of them. The copies of the statement of all the PWs were also supplied to the applicant. The Disciplinary Authority has also mentioned that the medical certificates issued in favour of the applicant by the Doctor in London nowhere indicated that the applicant was unfit to travel by air and that it was only from the letter dated 3.9.94 of the Doctor in London that it came to notice, for the first time, that the applicant was then not able to travel within the next few weeks. On this basis, the said authority has gone on to say that the applicant was fit to travel before 3.9.94.

5. The order passed by the Appellate Authority dated 20.1.98 is also a detailed and reasoned order. He has, in his order, not without justification, expressed surprise that the applicant fell sick on 1.2.93, i.e., exactly on the day he was supposed to resume his duties in India. He has stated that if the applicant had really intended to resume his duties in India on the said date, he should have left U.K. before 1.2.93. The Appellate Authority has further brought out that while the applicant had been, according to his own version, suffering from back-ache even before he left for London, it was seen that he did not take leave on that account while working in India. The same authority also mentioned that the wife of the applicant, who was an employee of the Ministry of External Affairs, was posted in London at the time the applicant happened to be in

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that country and that she remained posted there for three years or so, the period coinciding with applicant's stay in the U.K.

6. In the rejoinder filed by the applicant, he has mentioned that there was a mandatory provision for a second medical opinion in case of doubt but has not specifically quoted the relevant provision.

7. We have heard the learned counsel for the parties and perused the records, and find that there is no force in the arguments advanced by the applicant as there is no mandatory provision for a second medical opinion as suggested by the applicant. The Rules 19 (3) & 19 (4) of C.C.S. (Leave Rules) are as under:-

"3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date.

4) It shall be the duty of the Government Medical Officer referred to in sub-rule (3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose may either require the applicant to appear before himself or before a medical officer nominated by himself."

A plain reading of the above rule clearly shows that the Competent Authority has no obligation at all to go in for a second medical opinion and the matter is purely at his discretion.

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8. We also find that even the defence witnesses produced by the applicant have not fully and unequivocally supported his version, as regards his illness. We are amused to find that the applicant's Doctor in London has given a certificate dated 28.8.93, wherein he has mentioned that the applicant would not be able to work for six months from 1.9.93. We are inclined to feel that if the applicant had really fallen sick and was really unable to attend to work, the Doctor could easily declare that he was unable to work right from the date of the certificate, i.e. 28.8.93. We have enough reason to marvel at the said Doctor in London who, sitting on 28.8.93 visualised that the applicant would not be able to attend to work not from the same date but from a future date, namely, from 1.9.93. According to us, the applicant, whose wife was posted in London during the period in question, simply wanted to stay on in London till his wife remained posted there, and just to be able to do so, he managed medical certificates, one after the other, with the total period of leave extending from 1.2.93 to 15.4.96. In this limited context, we cannot also help pointing out the details of leave applications given by the applicant himself in para 4.9 of the OA. It would seem therefrom that practically on each occasion, the period of leave applied for was either three months or four months, and never, except once, less. It was only towards the end, i.e., in April, 1996 that he opted for a shorter duration of leave limited to 8 days from 1.4.96 to 8.4.96. According to us, the limit in the extension of leave in this manner by the applicant is not entirely without reason which may have nothing to

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do with his illness. We have already mentioned that the applicant had received notice of ex-parte proceedings while still in U.K. It is this event which prompted him to ask for the much shorter leave of just 8 days, and he could not possibly help the situation as, earlier to this, he had already asked for three months' leave extension ending 31.3.96 and when he did so, he was not quite aware of the ex-parte proceedings.

9. In the background of the discussions above, we find that the OA has no force, and have no hesitation in rejecting it. Accordingly, the OA is rejected. No order as to costs.

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(S.A.T.Rizvi)
Member (A)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

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