

Central Administrative Tribunal, Principal Bench

O.A. No. 2275 pf 1998

New Delhi this the 3rd day of November, 1999

HON'BLE MR. KULDIP SINGH, MEMBER (J)

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Constable Jal Raj Singh
N. 712/R.B.
R/o Village Sawda, P.O. Nizampur
Delhi-81.

...Applicant

Ms. Rachna Tewari, proxy counsel for Ms. Jasvinder Kaur, counsel

Versus

1. Lt. Governor,
Raj Niwas, Raj Niwas Road,
Delhi-52.
2. Senior Additional Commissioner of Police,
Rashtrapati Bhawan (Sec.),
New Delhi.
3. Deputy Commissioner of Police,
Rashtrapati Bhawan,
New Delhi.

...Respondents

By Advocate Shri H.L. Jad.

ORDER

In this OA the applicant has challenged an order dated 3.9.98 issued by the Deputy Secretary for and on behalf of Lt. Government of Delhi whereby the review petition of the applicant had been rejected in limine and the orders of the disciplinary and appellate authorities had been confirmed whereby those authorities had treated the leave period of 131 days of the applicant as leave without pay. The applicant has prayed for quashing of those orders and has also prayed that the respondents be directed to treat the period of leave of 131 days as leave of the kind due and the respondents be directed to pay the consequential benefits.

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2. The facts in brief are that the applicant was working as a Constable with the North West District at Delhi in the year 1995. On 1.11.1995, he proceeded on leave and remained on leave till March, 1996. The applicant claims that he had been informing his superiors regarding his illness. (11)

3. He further alleges that during his leave period he was transferred from North West District to Rashtrapati Bhawan on 24.11.1995, but he was not informed in writing about the same. However, thereafter he joined at Rashtrapati Bhawan on 11.3.96 and had been performing his duties when he received a show cause notice on 6.8.96 under Rule 20 of the CCS (Leave) Rules, 1972, calling upon him to show cause as to why his absence for a period of 131 days be treated as leave without pay.

4. To the said notice, a reply was filed. Authorities after considering his reply, passed an order vide Annexure G and it was held by the disciplinary authority that absence in such a way was not only dereliction of duty but also an act of indiscipline so the disciplinary authority treated his leave as without pay. Against the said order, the applicant had filed an appeal before the appellate authority. The appellate authority vide order Annexure B also held that the conduct of the representationst speaks about his carelessness and negligent attitude towards duty and does not deserve any leniency. Then he filed a review petition and the order of the Lt. Governor was conveyed to him vide Annexure A.

5. His main ground in the OA to challenge the said order is that an employee on leave should not be transferred from one place to another whereas in the present case the applicant was transferred from PS Mangolpuri to Rashtrapati Bhawan without any notice or intimation.

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6. It was also pleaded that Rule 20 pertains to a Government servant who is unlikely to be fit to resume duty but in this case no second opinion from any medical authority was sought nor it could be ascertained from the medical documents provided by the applicant that there was no reasonable prospect for the applicant that he would never be fit to return for duty.

7. His next ground is that the disciplinary authority as well as the appellate authority had acted in an utmost and biased manner while dealing with the representation of the applicant for treating the period of leave.

8. The respondents have contested the O.A. They have filed their counter-affidavit to the OA filed by the applicant and they claim that neither applicant sent his medical papers nor any intimation to the senior officers at his previous place of posting or his new place of posting and absented himself at his own will.

9. They have further pleaded that they were of the opinion that the applicant avoided to proceed to the new place of posting.

10. I have heard the learned counsel for the parties and have gone through the records.

11. At the outset I may mention that this Tribunal while deciding an application in such like disciplinary matters is not to sit over as an appellate authority over the departmental authorities. The jurisdiction of the Tribunal is only to see whether any illegality has been committed by the disciplinary authority or the appellate authority while proceedings with the

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departmental case. The role of the Tribunal is definitely not to reappraise the evidence led before the enquiry officer or the disciplinary authority. (13)

12. In this case, admittedly, a show cause notice was given to which a reply was filed by the applicant and after considering his reply, the disciplinary authority had passed the order treating his leave as leave without pay. Similarly the appellate authority had also considered his reply and had passed the orders.

13. The learned counsel for the applicant was unable to point out as to which principle of natural justice has not been followed by the disciplinary authority and how the proceedings conducted by the disciplinary authority are illegal or irregular and are liable to be quashed.

14. Though this court is not supposed to reappraise the evidence yet from the perusal of the reply to the show cause notice issued by the disciplinary authority, I find that the applicant herein had given a contradictory reply to the show cause notice because in that reply he had mentioned about the complicated case of delivery of his wife in which case he was involved for a period of 2 1/2 months. Assuming for the sake of arguments that he was busy with the complicated case of delivery of his wife, but that did not debar him to inform his authorities/senior officers regarding his leave and in any case that was not his personal illness for which he could ask for medical leave for himself. As such, I find that there is no ground made to quash the impugned orders particularly when there is no violation of any leave rule on principle of natural justice.

15. Hence, in view of the above, the OA fails and is accordingly dismissed. No costs.

(Kuldip Singh)
Member(Judl)

/Rakesh/