

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No.1804 of 1995

New Delhi, dated the 21st March, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Man Singh,
S/o late Shri Rattan Lal,
R/o 412, Sector-III, Pushp Vihar,
New Delhi-110017.APPLICANT

(By Advocate: Shri S.S. Tiwari)

VERSUS

1. Union of India through
the Secretary, Ministry of Defence,
South Block,
New Delhi.
2. The Jt. Secretary (Trg.)
Chief Administrative Officer,
M/o Defence,
DHQ P.O., New Delhi.
3. The Dy. Chief Admn. Officer (P),
O/o the Jt. Secretary (Trg.),
Ministry of Defence,
C-2 Hutments,
New Delhi.RESPONDENTS

(By Advocate: M.S. Ramalingam
Dept. Representative)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

We have heard Shri S.S. Tiwari for
the applicants and Shri M.S. Ramalingam for
the respondents.

2. The grounds taken to challenge the

termination order dated 4.1.94 and the appellate order dated 14.12.94 are

- (i) the absence was not wilful.
- (ii) the applicant's service could not be terminated for failure to get treated by Govt. doctors, when he had not been issued a CGHS card.
- (iii) His services were terminated by an authority not competent to do so.

3. Grounds (i) & (ii) may be taken together. The respondents have pointed out in their reply that the applicant while working as LDC with them, absented himself without intimation on 8 occasions for a total period of 5 years and 7 months, the longest period such period being from 4.6.88 to 22.6.92z. As per FR 19 and SRs (Ann. R-1) the employee concerned is required to apply for leave together with a medical certificate and await sanction of leave. However, on each occasion the applicant would absent himself without intimation and when memos were issued to him requiring him either report for duty or to submit M.C. from a Govt. doctor in case of sickness, the applicant would report after long period of absence and submit M.C. from private doctors and that too after resuming duty. There is no denial by the applicant in his rejoinder that he failed to apply for leave in time. It is well settled that no Govt. servant can avail leave as of right, but is required to make an application for leave ^{and await} its sanction before

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awaiting of the same. If the leave prayed for is on medical grounds, it has to be supported by medical certificate. The essential requirement is for an application for leave to be made before the leave is availed of. We note that the longest spell of the applicant's absence from duty was from 4.6.88 to 22.6.92. If, as the applicant claims, he required this leave on medical grounds no satisfactory explanation is forthcoming why he did not apply for leave soon after 4.6.88 and thereafter prayed for its extension, if indeed he was really ill. The applicant has filed an M.C. dated 4.6.88 issued by a private medical practitioner ~~(page~~ dated 4.6.88 issued by a private medical practitioner (page 52 of OA) stating that he considered it necessary that the applicant abstain from duty from 4.6.88 to 21.6.92. The respondents had correctly pointed out that it is indeed astonishing that this doctor could predict on 4.6.88 itself that the applicant would require abstention from duty exactly till 21.6.92! This M.C. rightly therefore inspires no confidence at all. The applicant's contention in his letter dated 22.6. 92 (page 50) that he was on medical leave from 4.6.88 to 22.6.92 and was joining duty on 22.6.92 after availing medical leave from 4.6.88 therefore has no legs to stand on, because what he terms leave, was actually unauthorised absence from duty and in the absence of any reliable evidence furnished by

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him that he was so totally incapacitated that for reason beyond his control he was unable to communicate with his superiors and make a formal prayer for leave, it must be construed that this absence was wilful and deliberate. Hence grounds (i) and (ii) fail. The ruling on ATJ 1994 (2) 234 relied upon by the applicant's counsel does not help the applicant's case.

4. In so far as ground (iii) is concerned the respondents on their addl. affidavit dated March 1996 have filed a copy of the applicant's appointment order dated 5.5.82 which shows that he was appointed by the Dy. Chief Administrative Officer and the appointment order was signed by the Sr. Administrative Officer on behalf of the Dy. Chief Administrative Officer. The impugned order dated 24.1.94 removing the applicant from service after conducting a proper departmental proceeding in which the applicant was given full opportunity to present his defence, was also issued by the Dy. Chief Admn. Officer and hence there has been no violation of the provisions of the Constitution.

5. Under the circumstance the applicant has failed to make out any case which warrants judicial interference. The O.A. fails and is dismissed. No costs.

A. Veda Valli
21/3/96
(DR. A. VEDAVALLI)
Member (J)

S.R. Adige
(S.R. ADIGE)
Member (A)

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