

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1473 of 1996

New Delhi, this the 19th day of March, 1999

HON'BLE MR. R.K.AHOOJA, MEMBER (ADMN)
HON'BLE MR. S.L.JAIN, MEMBER (JUDL)

Sh. S.K.Malhan, S/O Late Sh.
R.S.Malhan, formerly UDC in the Office of
Deputy Commissioner, Delhi
Administration, Resident of 2305, Dinkara
Bldg. Chuna Mandi, Paharganj, New Delhi
-55.

--APPLICANT.

(By Advocate Sh. T.C.Aggarwal)

Versus

1. Lt.Governor, Govt. of National
Capital Territory of Delhi, Delhi.
2. The Chief Secretary, Govt. of
National Capital Territory of
Delhi, Services II Department, 5,
Sham Nath Marg, Delhi - 110054.

--RESPONDENTS.

(By Advocate -Sh. Raj Singh)

ORDER

Delivered By HON'BLE MR. S.L.JAIN, MEMBER (JUDL)

This is an application under Section 19 of the Administrative Tribunal's Act, 1985 for quashing the impugned order of removal and non speaking order of the Appellate Authority (Annexures A-1 and A-2) and a direction to the respondents to reinstate the applicant on the post of U.D.C. with all consequential benefits.

2. The facts giving rise to the petition are that the applicant was working under respondents as a regular UDC and was on the strength of ITI, Arab Ki Sarai in 1985. He fell seriously ill due to Bright's Disease due to Rheumatic - Arterio Sclerosis in which his joints were not working, even he could not write his application, at times, applications were written by his wife. Due to this serious ailment he applied and continued to send

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application which were received by the respondents. The respondents knowing of the serious illness, instead of enquiring of the problem directed him to join immediately and get checked from the Govt. medical Hospital, though his condition did not permit the same. Irrespective of that, on instructions, the applicant attempted to get himself checked by Govt. Hospital but as ill luck played, he could not be checked due to strike and for other sundry reasons. His all attempts of going by ambulance etc. went in vain. He also tried to comply to the last reference in 1987, given by the Joint Director (TE) to get himself checked by L.N.J.P. Hospital. With all difficulty, the applicant went to the Hospital against the medical advice of the doctor treating him, but the Hospital authorities did not entertain applicant on account of the lightening strike of the doctors. He again ventured to visit the Hospital in July '88 when there was no strike. The doctor on duty refused to entertain applicant because the endorsement of the office was not in accordance with the Govt. of India's instructions, under Rule 19 (3) of the CCS (Leave) Rules, 1972. The respondents thereafter took no steps to grant leave even though admitted leave applications, were received till 1990. However, in absentia, he was transferred from ITI, Arab Ki Sarai to D.C.'s Office, from where he was relieved, vide order dated 12.10.1988.

3. In the situation, a charge sheet was issued to him dated 20th December, 1990 wherein charges were levelled for unauthorised absence. He was declared fit in 1991. He represented to allow him to join duties and he was permitted to join the same after four months on

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7.8.1991 and in compliance of the same, he joined on 9.8.1991. The proceedings started in August, 1991 which was totally de-hors the rules. The witnesses cited on behalf of the prosecution were not examined, copies of the same were not made available to him hence, the question of cross-examination does not arise. The enquiry Officer allowed a novel method of allowing Presenting Officer to examine the charged official which can only be done after the prosecution evidence has been closed. The Govt. servant may examine himself in his own behalf if so prefers and not otherwise. He was not permitted to adduce defence witnesses although asked for and the proceedings were closed by the Enquiry Officer. The defence was also not asked for and is not produced. For such an enquiry he was held guilty and appealed against the same also did not find favour with the appellate authorities, though he has raised all these points in appeal. The settled rule and law is that the prosecution has to substantiate his case and onus lies on the Government to establish the charge. The orders of the disciplinary authority as well as of the appellate authority is non-speaking order.

4. The defence of the respondents is that the applicant was absenting himself wilfully from Govt. duty w.e.f. 9.4.1985 without prior permission of the competent authority. Vide Post Card dated 3.5.1985, he applied for Earned Leave due to some domestic problems. Subsequently, he used to send leave applications from time to time. The letter was issued by the Principal to the applicant to resume his duties but did not comply with the same. The letter was issued again on 15.8.1985

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to ask to resume duties, but he did not bother to comply the same. The applicant then directed to report to the M.S., LNJP Hospital to get himself medically examined on 7.10.85. He neither reported to the M.S. nor resumed his duties. On 30.3.87, he was again directed to report for duty or to the Staff Surgeon for medical examination. Despite the same, the applicant did not appear for medical check-up and had resumed his duties. On 19.8.1987, again he failed inspite of the direction to appear for medical check up. On 15.4.1988, Joint Director directed the applicant to report for duty immediately failing which his absence would be treated as unauthorised absence from duty and action under CCS (CCA) Rules, 1965 would be taken against him and in case he was ill, once again requested to appear before the Staff Surgeon, LNJP Hospital and submit medical certificate in support of his illness. The applicant forwarded leave applications for extension of his leave and failed to report for duty. He was relieved on 8.8.87 with direction to report for duty to Dy. Commissioner's Office which he did not do so. Subsequently, Memo dated 20.12.90 was issued on the basis of above allegations directing him to submit his written statement of defence within 10 days of the receipt of the Memo. The Deptt., however, charge-sheeted the applicant and inquiry against him was made by the Enquiry Officer appointed by the Disciplinary Authority. Presenting Officer presented the case, the applicant defended the enquiry and enquiry officer recorded the findings thereof. On the face of same, the applicant was punished and appeal against the same was also dismissed.

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5. On perusal of the charge-sheet, we find that Sh. Kundan Lal, Principal and Sh. Shobda Prakash, Principal were the listed witnesses. The same listed witnesses were not examined by the Presenting officer and no other witnesses were also examined by the Presenting officer. But the applicant-the delinquent officer was questioned on 27.8.91 and on the answers given by the applicant-the delinquent officer, the enquiry officer proceeded further. Again on 15.10.91, the applicant-the delinquent officer was questioned and the enquiry concluded.

6. Learned counsel for the applicant relied on 1992 (1) (CAT) 365 - Raj Kumar Singh Vs. The Union of India & Others and argued that in a domestic enquiry, burden of proof is on the department but instead of department proving the charges the enquiry officer asked the delinquent to disprove them, such an enquiry is against rules. We agree to the preposition laid down by the Central Administrative Tribunal, Madras Bench.

7. The applicant's counsel relied on 1995 (1) (CAT) 166 - Amand Singh Vs. Union of India & Others and argued that enquiry officer examined the delinquent at the very outset instead of asking prosecution to first prove the charges, enquiry officer assumed the role of Presenting Officer in his absence and such an enquiry was wholly irregular.

8. He further relied on 1994 (2) (CAT) 319 - Shri Kewal Krishan Chopra Vs. Union of India & Ors. and argued that if in an enquiry under CCS (CCA) Rules, 1965,

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Rule 14 of Sub-rules (14) to (18), are not followed the enquiry is in violation of rules and principles of natural justice and it is vitiated.

9. In this respect, he also relied on (1990) 14 Administrative Tribunals Cases 473 - V. Gunasekaran, Vs. Union of India and Another which lays down that cross-examination of charged employee, examining the employee in detail prior to, and using his answers for questioning the prosecution witness, the enquiry is vitiated.

10. In the present case, the delinquent employee - the applicant was cross-examined before the examination of the prosecution witnesses, no prosecution witness were examined and on the basis of his answers he has been held guilty. On the above referred judgements, cited by the learned counsel for applicant, we find that in the present case, the enquiry officer has adopted a procedure not prescribed by law and hence enquiry is vitiated.

11. Learned counsel for applicant also relied on 1993 (1) (CAT) 171 - P. S. Gopala Pillai Vs. Union of India & 2 Others and argued that the production of documents and exhibit marking are two different things and if no witness is produced to prove the same, cannot be said to have been proved. We agree with the learned counsel for the aforesaid proposition and hold that the documents are not duly proved in the present case as none is examined for and on behalf of the prosecution.

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12. The applicant has raised these issues before the Disciplinary Authority as well as before the Appellate Authority but the same issues have not been decided by both the authorities. The order passed by the Appellate Authority is non-speaking one which is as under:-

"5. AND WHEREAS, I am, after carefully going through the report of the Inquiry Officer, order passed by the Disciplinary Authority and all the related documents of the case, satisfied that Sh. S.K. Malhan, UDC remained absent from duty w.e.f. 09.04.85 to 08.08.91 for a period of more than six years and that for a Govt. servant to remain on unauthorised leave for over six years is a serious lapse involving dereliction of duty;

6. AND WHEREAS, taking into consideration all the facts and circumstances and the evidence brought on record, I see no justification of interfering with the decision taken by the Disciplinary Authority which appears to be fair and just."

13. In the circumstances, when the enquiry did not proceed in accordance with the prescribed procedure under Rule 14 of the CCS rules, the appellate authority who is bound to examine as per rules 27 (ii) CCS rules the legality of the procedure in view of the judgement quoted 1993 (1) (CAT) S.L.J. 519 M. Abdul Karim Vs. Deputy Director General, NCC (K&L), Trivandrum failed to examine the same and upheld the decision of the disciplinary authority by non-speaking order, without application of mind, such an order cannot be allowed to stand.

14. In the result, this OA deserves to be allowed and is allowed. Impugned order, Annexure A-1, dated 2.7.1992 passed by the Disciplinary Authority and confirmed by the Appellate Authority vide Annexure A-2, dated 14.7.1995 is

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hereby quashed and the applicant is reinstated. Looking to the facts and the circumstances of the case, when unauthorised absence is also a misconduct and the enquiry which was conducted, was against the procedure laid down, it is ordered that if the respondents so chooses they are at liberty to hold a fresh enquiry within a period of three months after the receipt of the order. Both the parties shall bear the costs of the litigation themselves.

S.L. Jain
(S.L. Jain)
Member (J)

R.K. Arora
(R.K. Arora)
Member (A)

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