

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1533/96

New Delhi this the 2nd day of May, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN  
HON'BLE MRS. SHANTA SHAstry, MEMBER (ADMNV)

Jayanti Prasad Gupta,  
S/o Shri Mathura Prasad Gupta,  
R/o Flat No.8,  
Sadar Apartment, Mayur Vihar Phase-I,  
New Delhi-110 092. ....Applicant

(By Advocate Shri K.S. Negi, though none appeared)

-Versus-

1. Union of India through  
the Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110 001.

2. The Director,  
Intelligence Bureau,  
Ministry of Home Affairs,  
Govt. of India,  
North Block,  
New Delhi-110 001.

...Respondents

(By Advocate Shri B. Lall, though none appeared)

ORDER (ORAL)

By Reddy, J.

None appears either for the applicant or for the respondents. Since the matter is of 1996, we proceed to dispose of the same, on merits.

2. The applicant who was working as an Assistant Central Intelligence Officer-II, Intelligence Bureau, Delhi was transferred to Tezpur on 6-4-90. As he was undergoing medical treatment, he requested for cancellation of the orders. But it was rejected by order dated 20.06.90. He had been submitting medical certificates to show that he was ill. However he was proceeded against in the departmental enquiry and the punishment of compulsory retirement has been imposed upon him by order dated 22.7.94. This order has been

upheld by the appellate authority. The misconduct alleged against him was that he remained absent unauthorisedly w.e.f. 26.7.90 to 4.9.90 and also that he disobeyed ~~of~~ (8) orders of the superiors to report for duty.

3. In the impugned order itself the disciplinary authority has ordered that the period of his absence covered by the medical certificates would be regularised by granting him "leave of the kind due" and the period not covered by the medical certificates would be treated as leave without pay". Thus the disciplinary authority has regularised the period of unauthorised absence by granting 'leave of the kind due' and 'leave without pay'.

4. Two charges comprised of 2 articles and they are (1) unauthorised absence from 26-7-90 and (2) disobeying the directions of the superiors to appear before the Medical Board for medical check-up and without complying with the orders, the delinquent was sending private medical certificates. It is the case of the department that he has been absenting himself, without proper leave being sanctioned from 26-7-90. He did not attend the enquiry and it was held ex parte. Though, meanwhile certain directions ~~or my phued~~ were ~~not issued~~ <sup>or my phued</sup>, for instance to attend the Medical Board, to report to duty etc., he was treated as having not obeyed the orders, but according to the applicant, he was seriously ill and was in hospital. Whatever, may be the correct reasons, it appears to our mind that ~~the~~ main charge against the applicant was regarding his unauthorised absence. In the impugned order the misconduct of unauthorised absence is regularised. It follows, therefore, that, the alleged misconduct of unauthorised absence ceased to exist. He cannot therefore be punished. This case is squarely covered

by the judgement of the Hon'ble Supreme Court in State of Punjab & Others v. Bakshish Singh, JT 1998 (7) SC 142, wherein it was held that when the period of unauthorised absence was regularised the misconduct ceases to exist, it would no longer survive. Hence, the delinquent officer would be entitled to exoneration of the charge of unauthorised absence. (9)

5. In view of the above judgement of the Supreme Court, the OA has to be allowed and is accordingly allowed. The respondents are directed to reinstate the applicant into service, in the circumstances with 50% back wages. No costs.

Shanta Shastray

(SMT. SHANTA SHAstry)  
MEMBER (ADMNV)

'San.'

Rajagopal Reddy

(V. RAJAGOPALA REDDY)  
VICE-CHAIRMAN (J)