

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA.No.1571 of 1996

Dated this 21st day of February 2000

HON'BLE MR.JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

K.R.Bahl
C-422 Sarojini Nagar
New Delhi-110023.

... Applicant

(By Advocate: Shri B.T. Kaul with Ms G.Goyal)

Versus

1. Union of India, through
The Secretary
Ministry of Defence
South Block
New Delhi.
2. The CAO & JS (TRG.)
Ministry of Defence
Govt. of India
DHQPO C-II Hutment
New Delhi-110011.
3. The Director
Directorate of Estates
Ministry of Urban Development
Nirman Bhawan
New Delhi.

... Respondents

(By Advocate: Shri S.M.Arif)

O R D E R (Oral)

Mrs Shanta Shastry, M(A)

The applicant joined AFHQ Stenographers Service in the capacity of Personal Assistant in March 1975. In the year 1991 the applicant developed psychiatric problems resulting in depression and hypertension. Initially the applicant proceeded on casual leave for five days from 23.7.92 to 27.7.1992. Thereafter instead of resuming duties, he remained absent continuously for a long spell up to 14.12.1992. He continued to remain absent even beyond 14.12.1992. When he

did not resume duty, the respondents asked him to submit his leave application together with medical certificate from a Government Doctor vide letter dated 18.5.1993, received by the applicant on 21.5.1992. The applicant submitted medical certificate along with his leave application and his leave up to 14.12.1993 was sanctioned and regularised by grant of Extra Ordinary Leave without pay and allowances on medical grounds. Since the applicant continued to remain on leave even beyond that period, the respondents decided to initiate disciplinary proceedings against him and issued a charge memo dated 20.12.1993 on the charge of remaining absent from duty in an unauthorised manner from 15.12.1992 onwards. On receipt of the charge-sheet, the applicant reported for duty on 21.1.1994 and submitted his representation on 8.2.1994. The applicant submitted that he was suffering from Urinary Track Infection with effect from 15.12.1992 to 20.1.1994 and that he had already submitted the medical certificate to the administrative section. However, in spite of that, enquiry was proceeded with. He was asked to appear before the Enquiry Officer on various dates. However, the applicant responded only to one notice of 27.4.1994 by sending a telegram that he could not attend the enquiry due to sickness. During the course of the enquiry the applicant sent one more

telegram explaining his inability to attend the enquiry on account of sickness. This was on 15.7.1994. The Enquiry Officer proceeded ex parte and finally held him guilty of the charge of remaining absent unauthorisedly. Based on the report of the Enquiry Officer, the disciplinary authority imposed the penalty of compulsory retirement with immediate effect vide order dated 19.4.1994. The applicant filed an appeal against the same. However, the appellate authority upheld the order of the disciplinary authority and rejected the appeal on 7.8.1994. The applicant filed a further review petition. The same was also rejected in 1995.

2. It is the case of the applicant that he was really sick and he was not in a position to come to office or even to think properly as he was mentally weak and had initially undergone psychiatric treatment. The applicant had applied for the leave and had produced various medical certificates from a private clinic as well as from Government hospitals like Safdarjung Hospital and the AIIMS accounting for the entire period of illness. These medical certificates certify that the applicant needed bed rest as he was affected with Urinary Track infection. The learned counsel for the applicant submits that immediately before the applicant joined duty on 20.1.1994 he gave a detailed application along

with all the medical certificates on 19.1.1994. The Enquiry Officer had proceeded with the enquiry in spite of the medical certificates produced and the Enquiry Officer does not seem to have taken into account the letter of 19.1.1994. The applicant had sent telegrams which had been received by the Enquiry Officer, yet instead of either knowing about his illness or asking the applicant to appear before a medical board to ascertain the real nature of the illness, the enquiry was proceeded ex parte. Applicant feels that due consideration should have been shown for his sickness particularly when he was mentally sick. According to the applicant the punishment of compulsory retirement is very harsh as he had not remained absent willfully. The learned counsel for the applicant relies upon a judgement of the Hon'ble Supreme Court in the case of UOI & Ors Vs I.S. Singh in CA.2408/92 decided on 19.1.1994 reported in 1994 Supp(2) SCC.518. In this case the respondent had sent an application to the Enquiry Officer stating that he was suffering from unsoundness of mind and the enquiry may be postponed till he regains his mental health. He also sent his medical certificate along with the application. However, the report of the Enquiry Officer did not show that he had paid any attention to these letters. The Hon'ble Supreme Court observed that if the letters were not accompanied by medical

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certificates the proper course for the Enquiry Officer was to have called upon the respondent either to produce medical certificate or to direct him to be examined by a Medical Officer specified by him. The Enquiry Officer's report did not even refer to the request contained in the application of the respondent and nor did he mention why and for what reasons the Enquiry Officer ignored the plea of the respondent. Enquiry Officer proceeded ex parte and made his recommendation on the basis of which the penalty was imposed on the respondent. The Supreme Court held that the Enquiry Officer had not only conducted the enquiry in a manner contrary to the procedure prescribed by Rule 14(2) of CCS(CCA) Rules but also in violation of the principles of natural justice. The Hon'ble Court dismissed the appeal, but directed that the respondent shall not be entitled to any emoluments for the period of absence. However it would count for seniority and other purposes. The learned counsel for the applicant states that his case is covered by this judgement and as such the respondents should have given him at least an opportunity to appear before a medical board instead of proceeding with the enquiry. On this ground the applicant seeks the impugned orders to be set aside.

3. The learned counsel for the respondents explained in detail that the action taken by the

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respondents is strictly according to the rules and the respondents gave enough opportunity to the applicant to account for his leave and to produce the medical certificates in time. The applicant joined duty only after issue of a charge memo on 20.12.1993. It is only after the applicant had kept silent for a long period and after having given him notice several times during the course of the enquiry that the Enquiry Officer proceeded ex parte. It is not denied that the applicant had remained absent unauthorizedly as he had not submitted either his leave application or medical certificates till 19.1.1994, i.e. after the charge memo was issued. Whatever leave application and medical certificates were submitted, were submitted much later. Therefore, the respondents are fully justified in retiring the applicant compulsorily. The learned counsel for the respondents has cited the case of UOPE & Ors Vs B. Dev reported in 1999(1) AISLJ 196. In this case the petitioner while posted in London was relieved on transfer to India on completion of tenure. But he kept on staying in London on one plea or the other and then absented himself till the date of retirement. He was therefore charged for absence and enquiry was held and he was held guilty and his full pension was withheld.

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4. We have heard both the learned counsel for the applicant as well as the respondents. It is not disputed that the applicant remained absent unauthorisedly for a prolonged period and that he submitted his leave application, medical certificates and letters but not in the prescribed forms. The respondents were therefore justified in initiating the disciplinary proceedings. We however note that the applicant was really sick both physically and mentally and he was under depression. It should not have been expected of a sick man to respond properly particularly when the sickness was of a prolonged nature. The applicant had undergone psychiatric treatment. Though he became well for a little time there was relapse. In these circumstances, one cannot expect that the applicant could have behaved in a normal manner. That apart, the applicant did submit his application along with the medical certificate on 19.1.1994, i.e. much before the actual enquiry commenced. Though it is not denied that the charge-sheet was issued earlier. The applicant has also given his statement on 8.2.1994. Considering the facts mentioned in the letters and representations, the enquiry could have been postponed as requested by the applicant. It is true that the absence was not authorised absence. But there does not appear to be any wilful absence on the part of the applicant as the medical certificates clearly

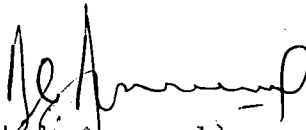
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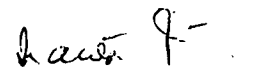
establish that he was suffering from a serious illness. In fact he had to be admitted on an emergency basis in AIIMS due to psychiatric problem. The right course of action therefore should have been for the respondents to have stopped the enquiry and to have asked the applicant to appear before a medical board. We are of the view that the applicant's case is covered by the observations made in the case of UOI & Ors Vs I.S. Singh (supra). The least that the respondents could have done was to have asked him to appear before a medical board before conducting the enquiry. The fact that even after joining on 20.1.94, the applicant had to remain absent again from March 1994 due to further sickness goes to show that he was really not a normal person but was sick. We do not think that the judgement cited by the learned counsel for the respondents in case of UOI & Ors Vs B. Dev is applicable in the case of the applicant and therefore cannot accept the same.

5. Since this is a case where the entire absence has been due to medical reasons duly supported by medical certificates of the Government authorised hospitals, we set aside the orders of the disciplinary authority dated 19.4.1995, the appellate order dated 7.8.1995 and the order of the reviewing authority dated 13.10.1995 and direct the respondents to

reinstate the applicant after asking him to appear before a medical board and obtaining fitness certificate within a period of three months from the date of receipt of a copy of this order. There will however be no order as to costs.

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(Ashok Agarwal)
Chairman


(Mrs. Shanta Shastry)
Member(A)