

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1649/96

New Delhi, this 22nd day of February, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Smt. Shanta Shastray, Member(A)

V.R. Shukla
Investigator(FOD)
Dairy Farm, Jungli Ghat
PO Port Blair
Andaman & Nicobar Islands .. Applicant

(By Shri S.S.Tewari with Shri T.D.Yadav, Advocates)

versus

Union of India, through

1. Secretary
Department of Statistics
Ministry of Planning
Sardar Patel Bhavan, New Delhi
2. Director
National Sample Survey Organisation
(FOD) Block C, Pushpa Bhavan
Madangir Road, New Delhi-62 .. Respondents

(By Shri V.K. Mehta, Advocate)

ORDER(oral)

Hon'ble Smt. Shanta Shastray

The applicant who was working as Investigator in the National Sample Survey Organisation was transferred to Port Blair on 22.6.92, proceeded on leave from 20.7.92 and remained on leave for a prolonged period. Disciplinary proceedings were therefore initiated and after conducting an enquiry, the applicant was found guilty of unauthorised absence and punishment of reduction of pay by 2 stages in the time scale of pay of Rs.1400-2300 for a period of two years with effect from 1.11.94 was imposed. It was further directed that he would not earn increments of pay during the period of reduction of pay and after expiry of this period the reduction would have the effect of postponing his future increments of pay. Further, absence from 4.8.92 to 19.4.93 was treated as unauthorised absence resulting in loss in pay and allowances for the period of absence

under proviso to FR 17(i) and thus break in service vide order of the DA dated 27.10.94. The applicant preferred an appeal against the order of DA dated 27.10.94. The appeal was rejected, by upholding the order passed by the DA. Applicant has prayed to set aside the impugned orders dated 8.12.95, 4.8.95 and 27.10.94 and has requested to treat the period of medical leave from 4.8.92 to 19.4.93 as authorised leave and to give him all consequential benefits accrued as a result of reliefs prayed for.

2. The applicant was transferred to Port Blair in June, 1992. Then he proceeded on leave with effect from 20.7.92 in order to bring his family from Faridabad. He was granted leave for 15 days and on expiry of the same he was to report back on 4.8.92. He extended his leave further and again extended it by another fortnight as there was a court case coming up on 1.9.92. Again from 5.9.92 he fell sick and he could not resume duty till 19.4.93. According to the learned counsel for the applicant, the applicant kept the concerned authority informed about his illness and also submitted necessary medical certificates (MCs, for short) and in spite of that, the authority proceeded against him and held the entire period from 4.8.92 to 19.4.903 as unauthorised absence and imposed the penalty on him. Learned counsel submits that though the applicant had produced the MCs belatedly, the authenticity of the same was not challenged. Since MCs were not treated as wrong certificates, the enquiry officer (EO, for short) should have given due consideration to the same. Merely because it was not in proper form or because it was submitted late, applicant's claim should not have been ignored by the EO.

3. The learned counsel for the respondents has stated that the applicant was given enough opportunities to produce MCs as leave was not sanctioned from 4.8.92 to 18.5.93. He was informed telegraphically that leave was not sanctioned and he should report for duty by 13.9.92. But the applicant kept on extending his leave. His leave applications were not followed immediately with MCs as per rules. Therefore applicant's leave could not be granted. Since the applicant did not join inspite of not sanctioning the leave disciplinary action has been taken against him and it has been established beyond doubt in the enquiry that the applicant remained absent unauthorisedly. Therefore the DA was justified in upholding the enquiry report and imposing the penalty.

4. We have heard the learned counsel for both the parties and perused the orders of the DA as well as the AA. We note that both DA and AA have gone into great details to consider the objections raised by the applicant and after careful study, have arrived at the conclusion of unauthorised absence of the applicant. One of the points raised by the learned counsel for the applicant is that the MCs were not found to be false and hence the authority failed to appreciate that the applicant was really sick as held by the MCs. We find that the DA has dealt with this point in his order dated 27.10.94 as is clear from the detailed discussions he has recorded in page 4 of the said order.

5. The AA also has considered the case in great detail. After having gone through the records of the disciplinary proceedings very carefully, the AA upheld

the order of the DA. AA has also referred to the point raised by the applicant regarding MCs and has held the objection as not tenable. Applicant was supposed to despatch the MCs immediately after they are issued by the medical practitioner, but he violated the rules in force which constituted procedural impropriety. (10)

6. It could be seen that both the DA as well as the AA have applied their mind and passed detailed and reasoned orders. In the circumstances, we do not find any reason to interfere with the said orders. However, the learned counsel for the applicant has brought to our notice the self-contradiction in the penalty imposed. He also points out that even the respondents are unable to fix the pay of the applicant in the light of this penalty. He has cited the case of R.K.Bharati Vs. UOI decided by the Principal Bench of this Tribunal on 19.5.86 in OA 141/85 wherein it was held that the identical punishment as given to the applicant in this case was self-contradictory. The relevant portion is reproduced below:

"There is contradiction in the impugned order. If, during the period of operation of penalty of reduction, it is specified that increments will be earned, the question of postponement of future increments does not arise. Only if it is ordered that increments will not be earned during the penalty period, the order can specify whether it will not have the effect of postponing future increments. Even then, such period of postponement of future increments should not exceed the period of penalty".

7. In that case, the Tribunal has set aside the punishment order. On this ground, the learned counsel for the applicant has pleaded that a similar order may be considered to be passed in the case of the applicant.

8. We have perused the relevant order and we cannot take a conflicting view. However, we feel that the purpose would be served if we sever the last portion of the penalty i.e. "and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay". In fact this appears to be one of the suggestions made by the respondents' office to the higher authority. Rule 11(V) of the CCS(CCA) Rules, 1965 deals with major penalty. This has different parts, i.e. reduction to lower scale in the time scale of pay, for a specified period, after reduction as to whether or not the government servant will earn increments of pay during the period of said reduction and whether on its expiry such a reduction will or will not have the effect of postponing future increments of pay. Therefore the portion relating to reduction having effect ~~only~~ of postponing future increments can be separated and deleted. We therefore allow this OA in respect of the penalty to the extent that the last portion of the penalty i.e. "and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay" shall be deleted. In other words, after the expiry of two years, the applicant's pay shall be restored with consequential benefits.

9. With this observation, we dispose of the OA but without any order as to costs.

Ashok Agarwal
(Ashok Agarwal)
Chairman
Shanta Shastray
(Smt. Shanta Shastray)
Member(A)

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