

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.**

O.A.NO.342/96

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 14th day of February, 1996

Versus

1. Director of Education
Govt. of National Capital
Territory of Delhi, LUCKNOW ROAD
D E L H I.
2. Principal
Govt. Girls Comp. Model Sr.
Sec. School, Kedar Building
Subzi Mandi
DELHI - 110 007. ... Respondents

ORDER(Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman(3)

This application has been filed under Section-19 of the Administrative Tribunal Act, 1985. The applicant, Shri Chandra Bhan, Laboratory Assistant, Govt. Girls Delhi, Comp. Model Senior Secondary School/employee has prayed that the disciplinary proceedings initiated against him on account of absence from duty may be quashed and the respondents may be directed to decide ^{his} the application for voluntary retirement of the applicant. The disciplinary proceedings against the applicant was initiated by issuing

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the memorandum of charge dated 28.6.1994 with allegation that he remained ~~absent~~ from duty unauthorisedly w.e.f. 07.07.1993 to 30.9.1993 and thereby committed a gross misconduct and unbecoming of a Government servant violating the provisions of Rule 3 of CCS (Conduct) Rules 1964. That the applicant remained absent during the period in question and that he had left India during this period ^{one} as stated in his application and therefore, not disputed. The applicant has stated that he had sufficiently in advance applied for leave and permission to leave the country indicating in his application that he had already purchased Air-tickets to-and-fro and it would be difficult for him to get it cancelled and again to purchase. It is further alleged in this application that the applicant was by communication dated 7.6.1993 asked to explain certain details regarding his stay, etc. for which he had on 9.6.1993 indicated the places he would stay and also declaring that during the period of absence ^{employment} he would not accept any emoluments abroad. However, no order either granting or refusing the leave and permission to leave the country was communicated to the applicant. The applicant had also applied for permission for voluntary retirement vide representation dated 8.5.1993 giving three months notice. This was also not decided by the respondents. Under these circumstances the applicant left India came back and rejoined duty sometime in September, 1993. The department has treating the absence of the applicant as unauthorised, issued the impugned memorandum of charge to the applicant and the departmental enquiry ^{is} be in progress.

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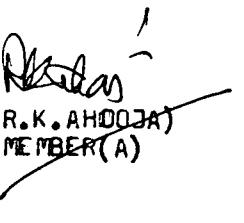
While the departmental enquiry is pending, it may not be possible to the Department to decide the application of the applicant for voluntary retirement. We find that the Tribunal cannot interfere with the departmental proceedings at this juncture as *prima facie*, the applicant has been charged sheeted for unauthorised absence alleging that it could amount to lack of devotion to duty. The learned counsel for the applicant however, argued strenuously that it is not every action or omission of government servant that would amount to a misconduct as has been held by the Hon'ble Supreme Court in the case of Union of India Vs. J. Ahmed (1979(3) SLR 504), and viewed in the light of the above dictum, the mere fact that the applicant had gone abroad and therefore, did not appear in the office during the period in question, without expressly getting the leave granted would not amount to misconduct. In the application itself, the applicant has referred to three other decisions (1) Rajpal Gaiadh Vs. UOI (1987) 3 ATC 633 DELHI; (2) Shanker Pandey Vs. UOI (1989) 11 ATC 181 CALCUTTA BENCH OF THE TRIBUNAL and (3) Nathu Ram Vs. UOI (1989) 11 ATC 340 (Jabalpur Bench). In the first case the Tribunal was considering whether the mere absence of an order granting extension of leave when an employee was on leave would make his absence a misconduct. In the facts and circumstances of that, it was held that it did not amount to misconduct. In the second case, the employee was referred to medical college for treatment and had to leave when his leave getting sanctioned. The facts obviously are dis-similar. In the third case details are not given in the application but it was held that absence from duty alone does not amount to misconduct.

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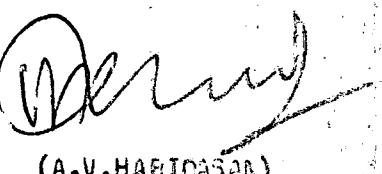
2. We do not find that the facts of the above cases are similar and much less identical to the facts of the case on hand and we also do not ~~wish~~ to enter into a detailed discussion as to whether the unauthorised absence of the applicant ~~do~~ actually would amount to misconduct because in that case, it is likely to prejudice the decision in the departmental proceedings ~~are~~ ^{one} ~~or~~ ^{another}. However, we are of the view in the facts and circumstances of this case the initiation of disciplinary proceedings by issuing a charge sheet cannot be said to be unjustified.

3. Since the departmental proceedings have been initiated and is still pending before the same reaches its logical conclusion, the respondents ~~not~~ be in a position to take a decision on the application submitted by the applicant for voluntary retirement. Therefore, in regard to voluntary retirement, sought by the applicant, no direction can be issued at this stage.

4. On a careful scrutiny of the application and after hearing the learned counsel for the applicant, we do not find anything in this matter, which at this stage needs admission and further deliberations. Therefore, the application is rejected under Section 19(3) of the Administrative Tribunal Act, 1985.


(R.K. AHOOJA)

MEMBER(A)


(A.V. HARIDASAN)

VICE-CHAIRMAN(S)

/RAO/