

Central Administrative Tribunal
Principal Bench

16

O.A. 2221/97

New Delhi this the 9th day of August, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.A.T. Rizvi, Member(A).

Shri Chaman Lal,
S/o Shri Sohan Lal,
R/o D-126, DDA Flats,
Kalkaji, New Delhi.

... Applicant.

(By Advocate Shri D.S. Mahendru proxy for Shri C.S. Prashar)

Versus

1. NCT of Delhi,
through Secretary,
5, Alipur Road,
Delhi.
2. Medical Superintendent,
LNJP Hospital,
New Delhi.

... Respondents.

(By Advocate Shri Ajesh Luthra proxy for Ms. Jyotna Kaushik)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant, who was working as a Stretcher Bearer with the respondents is aggrieved by the order passed by the respondents dated 19.1.1996 removing him from service.

2. The brief relevant facts of the case are that according to the applicant while he was working with the respondents, he became mentally ill and suffered from fits of schizophrenia and delirium from March, 1995. He had been employed by the respondents in 1988 and regularised as a Group 'D' employee/Stretcher Bearer w.e.f. 20.1.1989. Shri D.S. Mahendru, learned counsel has submitted that from 1989 the applicant was very regular in his duty, but because of his mental condition being deteriorated from March, 1995, he was absent from duty. The applicant has stated that he had

✓

informed the respondents through his friends and colleagues regarding his illness, who had ~~made~~ ^{given him} an impression that his leave has been sanctioned. It is, however, relevant to note that neither in the application or even in the rejoinder the applicant has cared to mention either the names or designations of his colleagues through whom he states that he had sent the information regarding his mental condition to the respondents. Finally, after being treated at his native place by a Tantrik, the applicant states that he became alright by the end of December, 1996 (sic-1995).

3. The applicant has filed MA 2188/97 praying for condonation of delay of 200 days in the interest of justice. He has stated in paragraph 3 of this MA that he came to know for the first time about the impugned order dated 19.1.1996 in February, 1996, when he came to the respondents to report for duty after he became well. He has also submitted that in the meantime legal notice had been issued through the counsel to the respondents on 25.6.1997 to which he got no reply. Hence, the O.A. was filed on 19.9.1997.

4. Learned counsel for the applicant has submitted that the respondents were well aware of the permanent village address of the applicant and during his absence they ought to have informed him at that address also to rejoin duty. Admittedly, the respondents had issued a notice in ^a ¹³ Hindi Newspaper called 'Hindustan' dated 21.12.1995 asking him to report ~~for~~ duty, as he has been absent since 1.4.1995, failing which it was also stated that further action will be taken under Rule 19(II) of the CCS (CCA) Rules, 1965.

13

Learned counsel has contended that both the O.A. and M.A. should be allowed in the circumstances of the case by quashing the impugned order of termination and allowing the applicant to be reinstated with all consequential benefits.

5. We have seen the reply filed by the respondents and heard Shri Ajesh Luthra, learned counsel. He has stated that the applicant was a habitual absentee and in most of the times he was issued show cause notices for his wilful absence, ^{and} ^{as} a number of memos have been referred to in paragraph 4.7 of the reply. As no reply was forthcoming from the applicant, the respondents had also issued the notice dated 21.12.1995 in 'Hindustan' Newspaper, in which the same address of the applicant is given, as shown by the applicant in this O.A., i.e. D-126, DDA Flats, Kalkaji, New Delhi. It is not disputed by the learned counsel for the applicant that this Newspaper is a publication in New Delhi but his main contention is that no notice had been sent to the applicant's ^a ^{as} village address, where he was undergoing treatment from ^a ^{as} Tantrik for his mental ailment.

7. Shri Ajesh Luthra, learned counsel for the respondents, has also submitted that the application is hopelessly barred by limitation. He has pointed out that by the applicant's own averments, he was cured of his mental illness by the end of December, 1995, and there was no explanation as to why he reported for duty in February, 1996, as averred in paragraph 3 of MA 2188/97. He has, therefore, submitted that both on merits as well as on limitation, the O.A. may be dismissed.

YB:

3. We have carefully perused the pleadings and the submissions made by the learned counsel for the parties.

9. The admitted facts in this case are that the applicant states that because of his mental illness from March, 1995, he did not attend office from April, 1995. As mentioned above, while he states that he had informed Respondent 2 through his friends and colleagues about his illness, who had also given him an impression that his leave has been sanctioned, it is relevant to note that neither the names of his friends or colleagues have been mentioned nor has any mention been made that any application had been sent to the respondents on which they could have sanctioned the leave. Therefore, we are unable to agree with the contention of the learned counsel for the applicant regarding these facts, particularly when the respondents themselves have stated that no such application has been received by them, with necessary medical certificates in case the applicant was undergoing treatment for his mental illness.

10. The other main contention of the learned counsel for the applicant is that the respondents ought to have sent another notice to his permanent address at his village, as they were aware of the same. However, in the facts and circumstances of the case, we consider that the notice issued by the respondents in the Newspaper "Hindustan" on 21.11.1995, giving the same address as the applicant has himself stated in the memo of parties, is sufficient in the present case. In other words, it cannot be held that the respondents have not given sufficient notice to the applicant to report back for duty and/or informed ^{them by} of his whereabouts, as he has been admittedly

(B)

absent from duty with effect from April, 1995.

11. Regarding the question of limitation, it is evident from the pleadings in this case that even after the applicant became well, according to his own averments in December, 1995, he decided to report for duty to the respondents two months later in February, 1996. In the meantime, the impugned order dated 19.1.1996 has been passed by the respondents, following the aforesaid notice issued by them in the Newspaper on 21.12.1995. Taking into account the facts and circumstances and the settled law on the subject as also the provisions of Section 21(3) of the Administrative Tribunals Act, 1985, we do not, therefore, find any sufficient reason to condone the delay of more than seven months in filing the O.A. As mentioned above, there is also ¹⁸ ~~not~~ ¹⁸ merit in the O.A. to persuade us to condone this long delay, as the applicant has been absenting himself from duty since April, 1995.

12. In the result, for the reasons given above, the O.A. fails both on merit as well as limitation and is accordingly dismissed. No order as to costs.

R
(S.A.T. Rizvi)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'