

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA.No.582/1997

New Delhi, this 19th day of July, 2000

Hon'ble Justice Shri V.Rajagopala Reddy, VC(J)  
Hon'ble Smt. Shanta Shastry, Member(A)

Laxman Prasad Kushwaha  
369A, Railway Colony  
Punjab Line, Ghaziabad (UP) .. Applicant

(By Shri Anis Suhrawardy, Advocate)

versus

Union of India, through

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|---|---|
| 1. Secretary<br>Cabinet Secretariat<br>7, Bikaner House (Avenue)<br>Shahjahan Road<br>New Delhi                   | 6. Under Secretary (Personnel IV)<br>Cabinet Secretariat<br>7, Bikaner House Annexe<br>Shahjahan Road, New Delhi. |
| 2. Secretary(R)<br>Cabinet Secretariat<br>7, Bikaner House (Avenue)<br>Shahjahan Road<br>New Delhi                | 5. Deputy Commissioner<br>Special Bureau<br>Post Bag No.5, Patiala<br>(Patiala)                                   |
| 3. Addl. Secretary (Personnel)<br>Cabinet Secretariat<br>7, Bikaner House (Avenue)<br>Shahjahan Road<br>New Delhi |   |
| 4. Joint Secretary (Personnel)<br>Cabinet Secretariat<br>7, Bikaner House (Avenue)<br>Shahjahan Road<br>New Delhi | .. Respondents  |

(By Shri Madhav Panickar, Advocate)

ORDER(oral)

By Reddy, J. -

The applicant who was working as Deputy Field Officer(Telecommunication) (for short, DFO-T) at Dalhousie, was issued a charge-memo dated 17.5.94 containing the following two articles of charge:

Article I - That the said Shri L.P.Kushwaha while posted and working as DFO(T) Cabinet Secretariat in SB, Dalhousie during the period 1993-94 committed gross misconduct inasmuch as that he proceeded on two days' casual leave w.e.f. 4.3.93 but extended leave upto 9.8.93 on medical grounds and thereafter has not joined duties as on date and continues to be unauthorisedly absent from duty feigning sickness. By his aforesaid acts of commission and omission the said Shri L.P.Kushwaha, DFO(T) has



shown lack of devotion to duty and has acted in a manner highly unbecoming of a Govt. servant and has thus violated Rule 3(1)(II) and (III) of the CCS(Conduct) Rules, 1964. (15)

Article II - That the said Shri L.P.Kushwaha, DFO(T) posted and working as DFO(T) Cabinet Secretariat in SB, Dalhousie committed gross misconduct inasmuch as that while being unauthorisedly absent from duty w.e.f. 9.8.93 feigning sickness, he had been directed by Competent Authority to report to the Civil Surgeon Dr. Ram Manohar Lohia Hospital, New Delhi, vide memo dated 15.2.94 for a second medical opinion. In utter disobedience of official directions, the said Shri L.P.Kushwaha, DFO(T) has failed to present himself before the said Civil Surgeon, as on date. By his aforesaid acts of wilful disobedience of the orders the said Shri L.P. Kushwaha has acted in a manner most unbecoming of a Government servant and has thus violated Rule 3(11)(iii) of CCS(Conduct) Rules, 1964.

2. The Enquiry Officer (EO, for short) submitted his report on 11.8.95 concluding that both the charges have been proved. The disciplinary authority (DA, for short) after considering the entire material on record including the representation made by the applicant to EO's report, agreeing with the findings of EO, imposed penalty of removal, by the impugned order dated 18.6.96. The applicant was unsuccessful in his appeal. The present OA was filed challenging the order of removal from service.

3. Learned counsel for the applicant contends that as applicant was sick and the climate at Dalhousie was not suitable for him, he could not join at Dalhousie. He therefore requested for transfer to Delhi and was awaiting the transfer order. In support of the plea of sickness, the learned counsel contended that the applicant had also submitted certificates from the Government Hospital, Ghaziabad. It is therefore contended that he cannot be found guilty of unauthorised absence. Lastly he submits that the penalty of removal is harsh and also disproportionate to the misconduct.

*OA*

4. Learned counsel for the respondents however submits that the applicant had not filed any medical certificate for his absence from 9.8.93 till the charge memo was issued in May, 1994 and that he had also disobeyed the directions given by the department to report to the Civil Surgeon of Dr. RML Hospital at Delhi. The EO found on evidence that the charges were proved. It is therefore contended that the Tribunal in exercise of its judicial review jurisdiction can not interfere with the findings of the EO or the DA or with the punishment awarded in the impugned order.

5. We have given careful consideration to the contentions raised in this case.


6. The gravamen of the charge against the applicant is of unauthorised absence from 9.8.93 till the date of charge memo dated 17.5.94 and of disobedience of the directions to report to the Civil Surgeon at the Hospital, at Delhi. It is true that the applicant pleaded that he could not attend the office on medical grounds. It is to be seen that he had applied for casual leave on 4.3.93 for two days but extended the same upto 9.8.93. The leave for this period was sanctioned on medical grounds. But it is to be noted that even after 9.8.93 he remained in Ghaziabad and did not join duty at Dalhousie, his place of duty. No doubt that he submitted certain certificates from the Govt. Hospital, Ghaziabad stating that Dalhousie was not suitable for his health. On that ground the applicant asked for transfer to Delhi. The EO has found based on evidence that he has not produced any certificate after

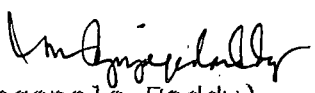
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9.8.93 seeking leave supported by medical certificates. Several witnesses have been examined in the enquiry and relying upon the evidence and documents, it was found that the applicant did not submit any medical certificate for his absence from duty from Dalhousie. The doctor of RML Hospital was also examined to prove that the applicant did not report for medical examination as directed. That it was concluded that the applicant had unauthorisedly absented and also disobeyed the directions issued by the respondents to report for duty for second medical examination. The findings are based on evidence on record and this Tribunal will not interfere in the said findings of fact.

7. It is true as contended by the learned counsel for the applicant that the penalty of removal is harsh. But it is to be noted that the applicant was absent for full one year without sanction of leave. In the circumstances, it is not possible for us to interfere with the punishment.

8. The OA therefore fails and is dismissed accordingly.  
No costs.

  
(Smt. Shanta Shastri)  
Member(A)

  
(V. Rajagopala Reddy)  
Vice-Chairman(J)

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