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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 948/97

New Delhi, this the 14th day of August, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

R.C.Gupta
1534 Dina Nath Building,
Chandrawal Road,
Old Subzi Mandi,
Delhi - 110007. Applicant
(By Advocate: Sh. K.B.S.Rajan)

VS.

1. Union of India,
Through the Secretary,
Department of Defence Production,
South Block,
New Delhi - 110011.
2. The Director General,
Electrical & Mechanical Engineering Dte.
M.G.O.'s Branch,
D.H.Q. P.O., New Delhi - 110011.
3. The Commandant,
509 Army Base Workshop,
Agra Cantt - 282001. Respondents
(By Advocate: Sh. Madhav Panikar)

ORDER

delivered by Hon'ble Shri T.N.Bhat, Member (J)

This OA is directed against the order dated 3.11.95 passed by the Commandant 509 Army Base Workshop, Agra Cantt, as also the appellate order dated 14.12.95 passed by the Director General FMF, M.G.O.'s Branch, DHA, New Delhi by which the appeal has been rejected. By the former order punishment of compulsory retirement with full terminal benefits has been awarded to the applicant and by

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the latter order the appeal against the aforesaid punishment order has been rejected by the appellate authority.

2. The applicant was working as Head Draftsman in 505 ABW located at New Delhi when in the year 1993 he was transferred to 509, ABW located at Agra. The applicant joined at his new place of posting on 14.12.93 and immediately proceeded on three days leave which was sanctioned. However, despite the expiry of the leave the applicant did not join and accordingly a chargesheet was served upon him on the following charges:-

that, "he reported on posting in this unit on 14.12.93 and proceeded on leave for three days from 16.12.93 to 18.12.93. Since then he is sending his leave application on Medical ground without medical certificate and is absenting till date. He was adviseed vide this workshop letter No.: 21104/RCG/Est-NI dated 25 April 94, 11 May 94 and 13 June 94 that his leave from 19 Dec 93 has not been sanctioned. As per Unit Standing Order he failed to submit his leave application within 24 hours and medical ceertificate within 48 hrs. He is still absent from the duty which shows, carelessness and negligence on his part."



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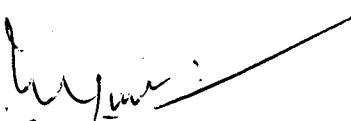
"On the above, a Show Case Notice bearing No. 21203/15203542/Est-NI dated 20 Aug 94 was issued to him. His reply has been received vide their application No. 242/RC dated 19 Sep. 94 which was not considered satisfactory."

"Thus, he exhibited lack of devotion to duty and an act as unbecoming of a Govt. Servant violating the provision of Rule 3 of CCS (Conduct) Rules 1964."

3. Lt. Col. Y.P.Singh was appointed as the Enquiry Officer who after holding the enquiry found the charges proved against the applicant and the disciplinary authority agreeing with the report of the Enquiry Officer imposed penalty as aforesaid.

4. The defence taken by the applicant was that due to the illness of his aged mother and wife as also his own illness he could not join duty and that he had submitted the medical certificates along with the applications for leave. It may be mentioned here that the applicant eventually joined in the middle of December 1994 when the chargesheet had already been issued to him.

5. The impugned orders are assailed mainly on the ground that proceeding on medical leave without prior sanction does not constitute misconduct especially so when



medical certificates have been furnished to support the applications for leave and the employer has not chosen to seek a second medical opinion. The applicant has taken the plea that even though the respondents had at one time asked the applicant to get a second medical opinion they had failed to communicate the necessary instructions to the concerned, Medical Officer and, as a result, the applicant was not examined.

6. The other grounds taken are that only a habitual negligence or absence from duty could be treated as a misconduct and that too if the absence is wilful and deliberate. According to the applicant the enquiry itself suffers from innumerable legal flaws as the conduct and completion of enquiry in one day itself shows that the enquiry was not conducted according to the rules. It is further submitted by the applicant that the Enquiry Officer had while forwarding his findings given certain suggestions regarding the penalty to be imposed on the applicant and that the disciplinary authority was influenced by those suggestions.

7. The applicant's OA is resisted by the respondents on the ground that this was a proved case of misconduct and absence from duty for a long period of one year and that on every occasion the applicant had submitted his medical certificates only after availing the leave applied for by him. It is further contended by the

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respondents that not once but three times' communications were sent to the applicant that his leave has been refused and that he should join immediately, failing which disciplinary action would be taken against him and that the applicant failed to join or to submit his medical certificates within a reasonable time.

8. As regards the procedure adopted by the enquiry officer the respondents have taken the plea that since no evidence was required and the essential facts were already established there was no need to prolong the enquiry. According to the respondents the applicant was given adequate opportunity of being heard and of defending himself which he availed.

9. The applicant has also filed rejoinder in which the pleas taken in the OA have been reiterated.

10. We have heard the learned counsel for the parties and have also examined the documents relied upon by them.

11. From the pleadings of the parties and the documents on record we find that the basic fact that the applicant remained absent from duty for nearly one year after his transfer from Delhi to Agra is not disputed even by the applicant. He has, however, taken the plea that due to his own illness as also the illness of his aged

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mother and wife he was compelled to proceed on leave and to continue to be on leave for about a year. The applicant also seems to lay emphasis on the point that his applications for all the spells of leave were supported by medical certificates furnished by him from time to time. However, it is not disputed by him that medical certificates have been submitted on every occasion only after he had availed leave and on certain occasions several months after availing the leave. We also notice that the Enquiry Officer had offered him adequate opportunity to produce his defence, if any, and to engage a defence assistant if he so chose, but the applicant did not make any request for producing defence or of engaging any defence assistant.

12. As already mentioned, the applicant seems to have taken the stand that if the leave is sought on medical grounds the competent authority cannot and should not refuse to grant leave. According to the applicant it is only when the delinquent official is proved to be a habitual absentee that his absence from duty can be considered to be misconduct. In the instant case, as already indicated, the applicant continued to remain absent from duty for complete one year. It is true that he had been sending applications for grant of leave on medical grounds, but it is equally true that not even once was any of his applications allowed nor the leave sanctioned. On the contrary, the stand taken by the

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respondents is that he had been informed that his applications for leave had not been sanctioned and he was asked to report for duty, failing which disciplinary action would be taken against him. If this is not habitual absenteeism we do not know what else is. Coupled with the above facts is the other fact that the applicant was not inclined to join at his new place of posting in Agra and had assailed the transfer order before this Tribunal by filing an OA which came to be dismissed.

13. In the facts and circumstances stated above, the Enquiry Officer and the disciplinary authority were perfectly justified in recording findings against the applicant and in holding that the charges against the applicant were established.

14. The Hyderabad Bench of the Tribunal has in M.A. Haleem vs. Secretary to Govt., Ministry of Water Resources and Ors., reported in 1998 ~~1998~~ (1) S.L.J (CAT) 489 held that where the employee had applied for study leave but despite orders refusing leave and asking him to join duty he continues to be absent, the employee would be guilty of misconduct.

15. The scope of judicial enquiry in relation to disciplinary enquiries being very limited the person challenging order of punishment is required to establish that the manner in which the proceedings were conducted

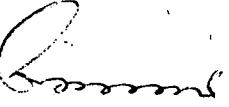
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was in contravention of the statutory rules or that the case was one of no evidence and on these grounds alone the Court/Tribunal can interfere with the orders of the disciplinary authority. In the instant case, the applicant has failed to establish either of the grounds. We are, therefore, convinced that in this case there are no grounds for interference with the impugned punishment order or the appellate order.

16. In view of the above, this OA is dismissed, as being devoid of force.

No costs.


(S.P. BISWAS)

Member (A)


(T.N. BHAT)
Member (J)

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