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CAT/70.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1008/94
T.A. No.

199

16.5.1997
DATE OF DECISION

Prem Singh Johar

Petitioner

Shri B.B. Raval

Advocate for the Petitioner(s)

Union of India & Ors.

Respondent

Shri N.S. Mehta, Sr. Counsel

Advocate for the Respondent

CORAM

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

The Hon'ble Shri R.K. Ahooja, Member(A).

1. To be referred to the Reporter or not? *Y*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

L.S.

(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 1008/94

New Delhi this the 16th day of May, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri R.K. Ahooja, Member(A).

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Prem Singh Johar,
S/o Shri Jai Ram,
R/o House No. F-410,
Village-Chitorni,
New Delhi.

... Applicant.

By Advocate Shri B.B. Raval.

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India, North Block
New Delhi.
3. The Deputy Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
No. 2, Tawi House,
Jammu. ... Respondents.

By Advocate Shri N.S. Mehta, Senior Counsel.

O R D E R

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

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the penalty order passed by the respondents dated 4.11.1993 which has been upheld by the appellate authority vide order dated 13.1.1994.

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2. The brief facts of the case are that the applicant has been working with the respondents as Senior Assistant from 16.1.1991. According to him, he had requested for transfer to SIB J&K to get some better allowances attached to the post in the field area. He was transferred to SIB Srinagar by order dated 20.7.1992 and he states that he reported at Jammu on 14.9.1992. He was then posted to Srinagar on 25.9.1992. He states that on receipt of information from Delhi that his child had sustained some fracture, he left Srinagar. He states that due to the fact that there were no other male member in his family, he was forced by circumstances to apply for extension of leave in order to attend to his son. He further states that he reported at Jammu office on 7.4.1993, on the same day he was transferred from Srinagar to SBI Jammu where, according to him, his family also joined. Thereafter, he was transferred from Jammu to Akhnoor by order dated 22.4.1993. He states that since his mother was unwell he had sought cancellation of his posting to Akhnoor and for his retention at Jammu office, but his request was turned down by the order dated 23.4.1993. Shri Raval, learned counsel for the applicant, submits that because of family circumstances of the applicant, the respondents ought to have considered the applicant's request for not being transferred to Akhnoor sympathetically and not forced him to join there. The applicant thereafter submits that he left for Delhi with his ailing mother and family for her treatment where the mother was admitted in the MCD hospital on 10.5.1993. He also claims that the fact that the mother died on 25.11.1995 is a relevant fact to show that the applicant had proceeded on leave in order to look after the mother. He submits that the mother required medical attendance throughout and so

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the applicant had to be necessarily on leave to look after her. The applicant was chargesheeted by memo dated 2.7.1993. He admits that a notice dated 14.8.1993 was received from the Inquiry Officer regarding the date of inquiry to be held on 7.9.1993 at Jammu. He states that he left for Jammu and submitted his joining report on 30.8.93 but this was not accepted. The learned counsel for the applicant submits that as the applicant has applied for leave, there was no question of issuing the chargesheet on the basis that he was on unauthorised leave. He further submits that it was for the respondents ~~to~~ have dealt with his leave applications which they have not rejected. He submits that as per his joining report given on 30.8.93, he had joined his duties on that date and the respondents have failed to deal with his leave applications or classify his leave period properly. After the departmental inquiry learned has started, the /counsel for the applicant submits that he could not attend on the dates given on the ground that his wife ^{family} was unwell. ~~and he was, therefore, unable to attend the same.~~ Shri B.B. Raval, learned counsel, submits that the respondents had proceeded with the inquiry and passed the order of removal from service without application of mind or considering the reasons he has been giving for his absence from duty.

3. Another ground urged by the learned counsel was that the quantum of punishment imposed on the applicant was disproportionate to the charge which was only that of unauthorised absence. He relies on the judgement in Ex. Naik Sardar Singh Vs. Union of India & Ors. (1991(3) SCC 213).

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4. The respondents have filed their reply controverting the above averments and we have also heard Shri N.S. Mehta, learned Senior Counsel. He submits that the representation of the applicant dated 4.5.1993 shows that he left the station of his posting for Delhi without permission as he had stated that his mother needed medical attention. In the statement of imputation of misconduct issued to the applicant with the memorandum of charges on 2.7. 1993, the respondents have stated that his representation against the posting orders to Akhnoor dated 2.4.1993, 26.4.1993 and 29.4.1993 and other representations were turned down by the office memo dated 23.4.1993, 28.4.1993 and 5.5.1993 on administrative grounds and he was directed to report at Akhnoor immediately, otherwise action under rules will be initiated against him. It was further stated that the applicant instead of joining at the place of posting left Jammu for Delhi without seeking any prior permission from competent authority and sent an application from Delhi requesting 30 days leave without pay w.e.f. 3.5.1993. He was again directed vide telegrams dated 12.5.1993 and 14.5.1993 and later by registered letters to first report by 17.5.1993 and then 18.6.1993 failing which action under rules would be initiated against him. According to the respondents, instead of complying with these orders, the applicant again requested for one/leave without pay w.e.f. 20.5.1993 to 20.6.1993 and then 2.6.1993 to 1.7.1993. The respondents have also submitted that they have not received the representation dated 1.5.1993 made by the applicant. They have also submitted that it is apparent from the application given by the applicant dated 4.5.1993, mentioned as 6.7.1993, in the reply that he himself has admitted that he had to take his ailing

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mother to Delhi and he could not inform anyone or control room about his departure and requested for 30 days leave without pay w.e.f. 3.5.1993 to 2.6.1993. On the later question of non-supply of the inquiry report/raised by Shri B.B. Raval, learned counsel, Shri N.S. Mehta, learned Senior Counsel, has submitted that no prejudice has been suffered on this account for which he relies on the judgement of the Supreme Court in S.K. Singh Vs. Central Bank of India, (1996(6) SCC 415). He also relies on the judgement in Union of India Vs. Parma Nanda, (AIR 1989 SC 1185), which had been followed in a number of other judgements that this Tribunal should not interfere with the punishment orders as if it was exercising appellate jurisdiction. The learned counsel, therefore, submits that the application may be dismissed.

5. After careful consideration of the pleadings and the submissions made by the learned counsel for the parties, we are of the view that no interference is justified in this application for the following reasons.

6. From the application dated 4.5.1993 given by the applicant himself, it appears that he has admitted that he had to leave Jammu for Delhi due to the ill health of his mother and he was not able to inform anyone or to the control room about his departure and he had asked for 30 days leave without pay w.e.f. 3.5.1993 to 2.6.1993. The applicant was transferred to Akhnoor by order dated 20.4.1993. According to the applicant himself, he had submitted a representation on 23.4.1993 that his posting to Akhnoor may be cancelled and that he should be allowed to be retained in Jammu as his family was also there. From the applicant's representation referred

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to above, it is clear that he left Jammu prior to 3.5.1993 without taking permission to leave Jammu or sanction of leave. It is also seen that the competent authority had considered the representation of the applicant for not joining at Akhnoor but not acceded to it. His request for being adjusted locally was also turned down on administrative grounds and the directions were that he should join at Akhnoor forthwith. The respondents had also informed him by another communication that if he did not join at Akhnoor, action under rules would be taken against him. The departmental proceedings had been initiated against the applicant vide order dated 2.7.1993 in which he was charged for misconduct/misbehaviour on the ground that he was unauthorisedly absent with effect from 3.5.1993 and he had disobeyed the lawful orders of the competent authority. The argument advanced by the learned counsel for the applicant that as the applicant was required to look after his ailing mother, wife, child and he also had to be on medical leave on account of his own sickness, the respondents ought to have considered his various leave applications and should not have chargesheeted him, is rejected. From the facts narrated above, it is clear that the applicant had absented himself from duty w.e.f. 3.5.1993 as per his own version given in his representation, referred to above. In Gujarat Electricity Board & Anr. Vs. Atmaram Sungomal Poshani,

JT 1989(3) SC 20, the Supreme Court has held that an employee/Govt. servant has no right to be absent from duty merely on account of pendency of representation against the order of transfer. The Court held that the respondent's

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failure to join his duties resulted in unauthorised absence and his failure to join duty in spite of repeated reminders constituted sufficient valid ground for taking action under Regulation No. 113 of the Gujarat State Electricity Board Service Regulations. In the present case also, the respondents had informed the applicant that if he did not report for duty, action under rules would be initiated against him. It is also a fact that the respondents had allowed the applicant to report for duty firstly on 17.5.1993 and than again on 18.6.1993 and on his failure to report for duty disciplinary proceedings have been initiated against him vide memo dated 2.7.1993.

7. From the facts of this case, it is also seen that the applicant has been given reasonable opportunity to participate in the disciplinary proceedings and his requests for postponements had been accommodated, even then he chose not to take part in the enquiry. He cannot, therefore, have any grievance now on that account as the disciplinary proceedings have been conducted in accordance with the rules and in compliance with the principles of natural justice.

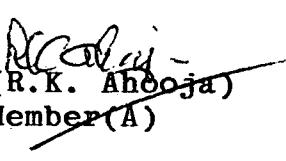
8. The other ground taken by the learned counsel for the applicant that the punishment awarded is disproportionate is also rejected. We do not find that that the punishment of removal from service is either arbitrary or perverse which justifies any interference with the findings of the competent authority in this case (see observations of the Supreme Court in **Union of India Vs. Parma Nanda (supra)**, **Upendra Singh Vs. Union of India**, JT 1994(1)SC 658).

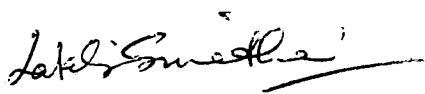
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9. We do not also find that any prejudice has been caused to the applicant by non-supply of the inquiry report in this case. It is also relevant to note that this point was not urged by the learned counsel for the applicant at the time of initial argument but was brought in as a subsidiary point later on.

10. It is also clear from the several representations made by the applicant himself that even though he was well aware of the dates when the inquiry was to be held, he had sought adjournments of the departmental proceedings on the ground of ill health of his family. However, from the documents placed on record, it is clear that the applicant had absented himself from duty unauthorisedly w.e.f. 3.5.1993. On these facts, therefore, the applicant has been unable to show what prejudice, if any, has been caused to him by non-supply of the inquiry report (see S.K. Singh's case (supra)).

11. For the reasons given above, we find no merit in this application and the same is accordingly dismissed. No order as to costs.


(R.K. Ahuja)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'