

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1089/2000

New Delhi, this the 24th day of the January, 2001

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Shri Arun Kumar Sharma
(Date of Birth 25-04-1962)
S/o Shri Shri Niwas Suman
R/o C-48, Chander Nagar (West)
Street No.3,
Delhi-110051.

... Applicant

(By Advocate : Shri Surinder Singh)

V E R S U S

Union of India through the

1. Director General of Health Services
Nirman Bhavan,
New Delhi.

2. The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital
R.R. Cell,
New Delhi.

... Respondents

(By Advocate: Shri Rajinder Nischal)

ORDER (ORAL)

By Mr. Shanker Raju, Hon'ble Member (J) :

The applicant who was working as Pacing Lab Technician (ad hoc) with the respondents, has impugned the order of compulsory retirement from service passed on 27.5.1998 which was carried by him to the appellate authority, but without any success.

2. Brief facts leading to the present case are that the applicant was sanctioned earned leave for a period of 60 days on pressing domestic ground w.e.f. 18.2.1997 (Annexure A3). The applicant made an application for extension of earned leave for another 12 weeks on 17.4.1997 (Annexure A4) which was denied by the respondents vide office order

(2)

dated 16.5.1997 without stating any reason. The applicant further made a request to the Suptt. of Dr. RML Hospital for consideration of his extension of leave, but the said request was not answered. The applicant was served a Memorandum dated 21.6.1997 by the Deputy Director (Administration) for explanation for the alleged unauthorised absence from duty to which the reply was tendered on 2.7.1997 by the applicant. In this order no reasons have been assigned by the respondents for rejecting his request of extension of earned leave. Thereafter, the applicant again requested for grant of 45 days leave on 19.7.1997. According to the applicant, Hospital Authorities never conveyed any reason for not sanctioning the leave applied by him. Aggrieved by this the applicant has filed the present OA. On 28.8.1997 (received on 8.9.1997), the applicant was issued a Memorandum proposing to hold an enquiry against the applicant under Rule 14 of CCS (CC&A) Rules, 1965. The applicant submitted his written statement on 19.9.1997, stating that the reasons for refusal of leave has not been communicated to him and referring to Rule 12 of CCS (Leave) Rules, 1972, the disciplinary proceedings vitiated against the applicant. According to the applicant, he reported for duty on 15.4.1998 and was not allowed to join or to give his joining report. Despite various communications have been sent to the respondents, he was not allowed to join. On 15.4.1998, the applicant was served with the Memorandum whereby it has been proposed to impose

major punishment of compulsory retirement from service upon him. The enquiry report was also attached with the Memorandum. The applicant preferred his reply to the Memorandum taking various legal contention including holding of disciplinary in a perfunctory manner in contravention of Procedures & Rules 14(7) to 14(20) of CCS (CC&A) Rules, 1965. The disciplinary authority without dealing with the contention of the applicant passed an order on 27.5.1998 imposing a major punishment of compulsory retirement of service upon the applicant. The punishment was carried in an appeal and the appellate authority vide an order dated 28.11.1999 confirmed the punishment without affording a personal hearing to the applicant.

3. The applicant challenges the impugned order on the ground that he has been denied a reasonable opportunity to defend his case in the disciplinary proceedings taken by the respondents. According to him, the enquiry has been proceeded within a perfunctory manner without following the procedure laid down in Rule 14 of CCS (CC&A) Rules, 1965. According to him, mandatory relied upon documents have not been served upon the applicant as well as no oral or documentary evidence has been tendered in the enquiry or exhibited. The applicant further contends that he has been deprived of reasonable opportunity to take service of defence assistant and also to file his defence brief. The applicant contends that no Presiding Officer was appointed and

the daily order sheet has not been maintained by the Inquiry Officer authority. The applicant alleges that the Inquiry Officer had assumed the role of a Presenting Officer by putting the case of department by himself which shows his bias and arbitrariness. 10

4. The applicant has lastly contended that his request for extension of leave on the ground of construction of his house has been rejected without stating any reason. The applicant further states that he has enough earned leave to his leave record and aforesaid absence period can be adjusted against the same. According to him, the alleged overstay of leave was neither intentional nor unauthorised.

5. The respondents, in their reply, refuted the contention of the applicant and contended that there was only one Pacing Lab Technician in the Hospital, applicant's unauthorised absence has badly affected the services of the Hospital. According to the respondents, despite communication of refusal of leave to the applicant, the applicant failed to resume duties.

6. Respondents maintained that the enquiry has been proceeded with in accordance with Rule 14 of CCS (CC&A) Rules. The counsel for the respondents has contended that there was sufficient documentary evidence to sustain the charge against the applicant as such the Enquiry Officer has dropped the oral evidence and concluded the enquiry. Respondents

further contended that sufficient reasonable opportunity had been afforded to the applicant during the course of the Inquiry. The learned counsel for the applicant refers to Rule 7 of CCS (Leave) Rules, 1972 and contended that leave cannot be claimed as a right. (11)

7. The applicant has also filed rejoinder retreating his plea in the OA.

8. Learned respondents counsel, Shri Rajinder Nischal arguments keeping in view the legal and procedural infirmities in the inquiry contended that the matter may be remanded back to the respondents for conducting a fresh proceeding against the applicant from the stage of legal infirmity. We have considered this contention of the respondents regarding remanding the enquiry back.

9. We have carefully considered the rival contentions of both the counsels and perused the available record in the file.

10. We find from the record that the Enquiry Officer after conducting the preliminary hearing where the applicant was not present concluded the enquiry on 7.1.1998, despite holding the proceeding on 3.11.1997 when the applicant had failed to attend the enquiry. On 1.12.1997 when the applicant was present in the enquiry, he had been read out the charges and thereafter without affording him an

(6)

opportunity to present his written defence brief an instant oral explanation has been taken from the applicant and thereafter the enquiry has been concluded by stating as under:-

12

"He could not give any satisfactory answer for his unauthorised absence and only communicated that even on date he was not in a position to join.

His attention was also drawn to the fact that he was ordered to join duty since his leave was not sanctioned vide no.6413/87RNLH(Tech.)/RR17307, dated 28.8.1997. He could not bring out any satisfactory answer for his non compliance."

11. We find from the Memorandum issued to the applicant on 28.8.1997 that certain witnesses have cited to prove the charges against the applicant as well as few documents have been listed in support of Articles of charge. The Enquiry Officer in absence of a Presenting Officer of department gathered the evidence against the applicant himself assuming the role of Presiding Officer and thereafter proceeded to record his findings without affording a reasonable opportunity to the applicant to present his defence evidence or his defence brief. In the enquiry report, we find no material to suggest that the Enquiry Officer after reading the charge had ever asked the applicant to give his defence. A mere reference to the application shown by the applicant where he has applied for extension of 60 days earned leave and regarding that the applicant could not make any satisfactory answer for his unauthorised absence, would not be a compliance of

(7)

Statutory Rules of Procedure laid down in Rule 14 of CCS (CC&A) Rules. This summary procedure is permissible under Rule 14 (9) if the delinquent officer had admitted his guilt. There is nothing wrong on the record to show that the applicant after reading the charge had admitted the same. In that event, the procedure laid down further is to be meticulously followed abrupt by the Enquiry Officer which inter alia includes giving an opportunity to the delinquent officer to produce his defence witness and to give his defence brief. There is also no indication in the enquiry report as well as in the order passed by the disciplinary authority that due to the absence of the applicant, the enquiry has been proceeded ex-parte. As such, we are of the considered opinion that the Enquiry Officer had acted in a perfunctory manner and without following the relevant Rules concluded the enquiry. We are also of the considered opinion that adoption of such a perfunctory procedure to arrive at the finding of guilty against the applicant is illegal. In our view the enquiry is vitiated on this point alone.

12. There is yet another aspect of this case is that the disciplinary authority, while issuing the Memorandum to the applicant attaching the enquiry report vide Memorandum dated 17.3.1998 proposed a penalty of compulsory retirement from service upon the applicant. Although the aforesaid conclusion is tentative, it is not legally permissible. In view

of the ratio laid down by the Constitutional Bench in the case of E.C.I.L. Hyderabad Vs. B. Karunakaran (JT 1993 (6) 1). We feel that by proposing a major penalty, the disciplinary authority has predecided the tale fact of the enquiry and had acted with a pre-determined mind to punish the applicant. In our view, such a procedure is not sustainable in the eyes of the law and the same has also vitiated the impugned order of penalty. NA

13. It has been next contended that findings of the enquiry officer is abrupt and is without reasons. Inquiry Officer is mandated to record reasons on each article of charge. Resort is taken to Rule 14 (23) of CCS (CC&A) Rules . We have carefully considered this contention of the applicant and perused the enquiry report, we find the following conclusion arrived at by the Enquiry Officer:-

"Enquiry finds Mr. Arun Kumar Sharma, Pacing Lab. Tech. guilty of the charges since leave is not a matter of right."

14. In our view the aforesaid conclusion is vague abrupt and inconclusive. The defence of the applicant although not taken from him but what had been communicated by the applicant in his written communications sent to the department were also not at all taken into consideration. No reasons at all have been assigned by the Enquiry Officer to come to the conclusion of guilt against the applicant. In

our view the enquiry is also vitiated on this ground as contrary to Rule 14 (23) CCS (CC&A) Rules *ibid*.

15. We find from the record that the applicant in his appeal has asked for a personal hearing, but the same has been denied to him by the appellate authority. We feel that the order of the appellate authority is rendered illegal on this count. In this view of ours we are fortified by a ratio laid down by Hon'ble Apex Court in the case of Ramachander Vs. UOI (1986 (2) SLR 608). In the result, we are of the firm view that the enquiry conducted against the applicant was against the laid down Procedural Rules, depriving him of a reasonable opportunity to defend his case.

16. In the circumstances, the OA succeeds We quash and set aside the impugned order of compulsory retirement dated 27.5.1998 as well as the appellate authority order dated 28.11.1999. We, however, are not inclined to remand the matter back to the respondents, as three years have passed since then and also in the peculiar facts of the case, the respondents who had conducted a perfunctory inquiry should not be allowed to fill in the gaps. As a result, the respondents are further directed to reinstate the applicant in service with all consequential benefits within a period of two months from the date of receipt of the copy of the order. The intervening period between the date of compulsory retirement (27.5.1998) to the date of

(10)

16

reinstatement shall be treated as on duty for all purposes. However, we limit the back wages to 50%. We further direct the respondents to pass appropriate orders regarding regulation of absence period of the applicant w.e.f. 19.4.1997 as per Rules. No order as to costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

V.K. Majotra
(V.K. MAJOTRA) 24.1.2001
MEMBER (A)

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