

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2524 of 2000

New Delhi, this the 08th day of September, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Joginder Singh Thakur
UDC Office of the Registrar
News Paper of India, West Block-8,
Wing No.2 R.K. Puram,
New Delhi-110 066. ...Applicant

By Advocate Shri M.L. Chawla.

Versus

1. Union of India,
Ministry of Information and
Broadcasting,
Shastri Bhavan,
New Delhi.
2. Registrar of News Paper of India,
(Ministry of Information & Broadcasting),
West Block 8, Wing No.2,
R.K. Puram,
New Delhi-110 067. ...Respondents

(By Advocate: Shri R.N. Singh, proxy counsel for Shri
R.V. Sinha, Counsel)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant in this OA has assailed an order dated 22.10.1999 and another order dated 12.1.2000 whereby the appeal of the applicant with regard to grant of Special Leave under Rule 44 of the CCS (Leave) Rules was not agreed to and by earlier order his request for leave had been rejected vide order dated 22.10.99 whereby the applicant was allowed Extraordinary Leave under Rule 32 instead of leave under Rule 44 of the CCS (Leave) Rules.

2. The facts, as alleged by the applicant are, that he was working as a UDC under the respondents and it

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is stated that on 12.1.1998 he gave a letter/representation to the President of India and other authorities complaining that he was not being treated properly by the respondents. He has also stated that he might need leave for rest.

3. Thereafter the applicant left Head Quarter of Delhi and went to his original Head Quarter at Shimla for recovery from the state of his illness.

4. The applicant further alleges that vide an order dated 22.1.1998 applicant was directed not to leave the station without taking prior permission of the competent authority, but the said letter was served upon him at Shimla when he had already left Delhi on 23.1.1998 by an oral permission of respondent No.2 and on receipt of the order dated 22.1.1998, he felt rude shock, due to that his health deteriorated from bad to worst and suffered an acute depression arising out of the respondents action because firstly they had permitted him orally to leave the Headquarters and within 24 hours they withdrew the permission and advised the applicant not to leave the Headquarters resulting in creation of an ugly state of confusion and frustration.

5. He further states that he was taken to Dr. Dhawan L., PMO Class-1 Gazetted Central Health Scheme for his treatment, who recommended him leave from 25.1.1998 to 31.8.1998 in the first spell and from 1.9.1998 to 18.12.1998 in the second spell on the ground of mental

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depression coupled with Sciatica pain. Certificates with regard to the said disease is alleged to be submitted to the respondents.


6. The applicant further submitted that he had applied to the respondents for granting him special disability leave for injury intentionally inflicted on the applicant by first allowing him to proceed to his home town and then arbitrarily directing the applicant not to leave the Headquarters when he had already reached Shimla. Thus the respondents did not consider the pathetic condition of the applicant and had rejected the case of the applicant for grant of leave. The order of rejection was passed by the Assistant Press Registrar, who instead of referring the case to the Registrar, who was the competent authority, had passed a nonest order since he was not competent to pass an order of rejection.

7. It is also stated that his appeal has also not been considered by the competent authority as the competent authority was Secretary, Ministry of Information and Broadcasting and not the Registrar of News Paper, Ministry of Information and Broadcasting, so both the orders are stated to be bad in the eyes of law. It is also stated that since the applicant had applied for leave under Rule 44, the respondents had no right to change the leave into Extraordinary leave without the consent of the applicant, then the nature of leave applied cannot be changed arbitrarily.

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8. The respondents, who are contesting the OA submitted that no oral permission was given to the applicant to leave Headquarters, rather written order was passed on 22.1.1998 directing him not to leave the Headquarters and on 22.1.1998 the order was tried to be served upon the applicant but the applicant avoided to receive the same and he left the office next day for Shimla, therefore, the order had to be sent to Shimla. As such, the applicant not only committed wrong by leaving the station but remained absent and was not traceable for 11 months and again on 12.2.1998, an order was sent to the applicant at Shimla calling upon him to join duties immediately, failing which he would be punished for remaining absent unauthorisedly as per the rules.

9. It is further stated that sanctioning of leave and leaving Headquarters require written permission so there was no question of oral permission. The medical certificates alleged to have been submitted by the applicant for the period 22.1.1998 to 28.12.1998 are stated to be quite vague and was sent for verification and the reply is still awaited. However, during the course of arguments, the learned counsel for the respondents has also submitted that the reply has been received and it is submitted that the medical certificates have not been issued by the D.D. Hospital Shimla. Thus it is stated that the leave application has been properly rejected and it is rejected by the proper authority and it is also submitted that the representation against the rejection was turned down in



consultation with the Ministry, so the applicant cannot say that his appeal has not been considered by the competent authority.

10. I have heard the learned counsel for the parties and gone through the records of the case.

11. Shri M.L. Chawla appearing for the applicant submitted that since the applicant had gone to his home town under an oral permission, where he had fallen sick and had submitted medical certificates, so his leave application should not have been rejected in the manner the respondents have rejected. In support of his contention, he has also referred to the case reported in ATR 1988 (2) CAT 623 entitled as Smt. Sushila Barla Vs. U.O.1. & Others wherein it has been held as follows:-

"Central Civil Service (Leave) Rules, 1972-Rule 3(1)(c) First Schedule Column (2) and (3)-Sub0-rule 5 of Rule 51(a) OM No.F8(7)-Estt. IV/A/60 dated 6.2.1981 issued by the Ministry of Finance-Entitlement of study leave-Pre-requisite completion of five years of service very essential-However administrative instructions cannot vest a right in any public servant to claim study leave as of a right or as imposing a statutory duty on the competent authority to grant leave to those who are ineligible-Liberalisation and relaxation-A discretion-in matters where there is no vested right competent authority is required to deal fairly and cannot act arbitrarily even in discretionary matters-Refusal to grant leave amounts to arbitrary exercise of power-Order dated 22.4.1986 quashed-Petition allowed".

12. The counsel for the applicant has also forcefully submitted that first of all the leave application had not been rejected by a competent authority and secondly his appeal against rejection order .

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had not been considered by the competent authority as it was the Secretary of the Ministry of I&B, who was the competent authority whereas the order of rejection had been passed by the Registrar of the News Paper of India and had been signed by the Deputy Press Registrar and since it had not been issued by the Secretary, Ministry of I&B, so on that score also it is bad in law.

13. In reply to this, Shri Sinha appearing for the respondents submitted that the medical certificates submitted by the applicant were sent for verification to the Shimla authorities and a letter has been received from that authorities that these medical certificates were not issued by the D.D. Hospital, Shimla. Thus medical certificates could not be relied upon.

14. Besides that it is also submitted that the authority who had rejected the leave application had been delegated the powers to deal with the leave applications. As far the representation is concerned, though the order had been issued by the office of the Registrar of News Paper of India and it reads that it has been issued in consultation with the Ministry of I&B, which means that the Secretary of the Ministry has also examined the leave application. Thus it is stated that the application for leave had been properly rejected.

15. I have also gone through the pleadings and the contentions raised by the rival parties at the Bar.

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16. From the pleadings itself it is quite evident that the applicant is trying to make a sympathetic case whereas the fact remains that the medical certificates in support of leave, on verification, turned out to be not a genuine one, so on the basis of these medical certificates, which were not genuine, the department was justified to refuse the leave under Rule 44 of the Leave Rules.

17. As regards the consideration of the leave application and the appeal against the rejection whether the same was rejected by the competent authority or not is concerned, the respondents have satisfactorily explained that the authorities who had rejected the application initially had been delegated the powers to entertain the leave application and the representation/appeal against the said rejection had been examined at the level of Ministry of I&B.

18. As regards the judgment cited by the learned counsel for the applicant is concerned, though it lays down that in matters where there is no vested right the competent authority is required to deal fairly in discretionary matters and it has also held that refusal to grant leave amounts to arbitrarily exercise of power. This judgment cannot be applied to the facts of the present case as first of all the applicant had left the Headquarters without permission which itself is in violation of Conduct Rules and secondly the applicant had submitted medical certificates, which are later on found to have not been issued by the genuine authorities concerned, so in such like cases the applicant cannot

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expect that discretion should have been exercised in his favour for grant of leave. This judgment does not help the applicant at all.

19. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

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