

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.NO. 2157/89. 13th April 1989 Date of decision.

HON'BLE SHRI B.N. DHOUNDIYAL, MEMBER (A)

HON'BLE SHRI LAKSHMI SWAMINATHAN, MEMBER (J)

Lalit Kumar Sharma
s/o Shri D.C. Sharma,
Resident of R-33, Model Town,
Delhi-110 009. ... Applicant

(None for the applicant)

versus

1. Union of India
through Secretary,
Ministry of Surface Transport
(Roads Wing), Transport Bhavan,
1, Parliament Street,
New Delhi-110 001.

2. Secretary to the Govt. of India,
Ministry of Surface Transport
(Roads Wing), Transport Bhavan,
1, Parliament Street,
New Delhi-110 001. ... Respondents

(None for the Respondents)

O_R_D_E_R

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

The applicant being aggrieved by Order
dated 21.4.1988 as confirmed by Order dated 14.10.1988,
whereby the penalty of removal from service has been
imposed on him w.e.f. 21.4.1988 has prayed for the
following reliefs :-

(i) Quashing the impugned orders and

(ii) reinstatement in service with all

consequential benefits.

2. The brief facts of the case are that while the
applicant was working as Executive Engineer with the

JS

Respondents had applied for 3 days earned leave w.e.f.

11.1.1984 to 13.1.1984 vide his application dated 9.1.1984.

Further, he applied for 17 days earned leave w.e.f.

14.1.1984 to 31.1.1984 due to certain domestic circum-

stances vide his application dated 13.1.1984. Again,

he applied for extension of leave w.e.f. 1.4.1984 to

30.6.1984 on the ground of personal and domestic reasons.

3. According to the Respondents, he did not apply

for leave for the period from 1.2.1984 to 31.3.1984.

Further, the applicant applied for study leave for two

years w.e.f. 9.5.1984 vide his application dated 5th

May, 1984. To this, the Respondents had asked him to

furnish the details of the course of study and the

institute in which he had got admission vide their memo.

dated 30.3.1985. He had not been sanctioned any study

leave and he had also been asked to submit his leave

application for the period from 1.2.1984 to 31.3.1984.

The applicant rejoined his duties on 15.7.1986 and

continued in service till he was removed from service

vide the impugned order dated 21.4.1988.

4. After the applicant rejoined his duties, he was

issued a memo. of charges dated 25.8.1986. The statement

of charge levelled against the applicant was that in-

spite of repeated reminders issued on 26.4.1985, 7.6.1985

JS

5.6.1985, the applicant had not furnished the requisite information and continued to remain on unauthorised absence thereby contravening the provision of Rule 3 of the Central Civil Service (Conduct) Rules, 1964. The applicant submitted his explanation in his letter dated 31.12.1986 in which he has, inter-alia, stated that he had submitted the application for leave from time to time upto 14.7.1986. He has also stated that due to compelling domestic circumstances arising out of the serious illness of his mother and the dispute relating to his ancestral property, he could not go in for the graduation course which he had intended to take and for which he had applied for study leave. He has also mentioned that during this period he remained very tense and mentally upset and could not join the office also for which lapse he sincerely regretted (and) assured that he shall not repeat such action in future. Further, he has requested that in view of his past service record and his domestic circumstances, a sympathetic view may be taken and has requested that leave period from 11.1.1984 to 14.7.1986 may be regularised. Subsequently, the respondents vide order dated 5th May, 1987 appointed Shri M.R. Gathwal, Deputy Secretary as the Enquiry Officer to enquire into the charges framed against the applicant. Since the name of Shri M.R. Gathwal had been intimated in the

JB

list of witnesses by which the articles of charge framed against the applicant was proposed to be substantiated as witness No. 1, by a subsequent order dated 1st June, 1987, his name was deleted as a witness. The Enquiry Officer started the enquiry on 13th July, 1987 and completed the same on the same date and held the charge as proved in his enquiry report submitted to the disciplinary authority. The disciplinary authority passed the order dated 21st April, 1988 imposing the penalty of removal from service. A copy of the report submitted by the enquiry officer was also given to the applicant. A revision petition was filed against the penalty order to the President under Rule 29 of the CCS (CCA) Rules, 1965 which was rejected vide order dated 14.10.1988.

5. Though this case had been listed in the revised list amongst the first ten cases which were posted peremptorily for hearing, none appeared for the parties.

Hence, we have perused the record of the case carefully and proceed to deal with the case.

6. The main grounds taken by the applicant are that (a) the impugned orders have been passed in violation of the principles of natural justice inasmuch as Shri Gathwal, Deputy Secretary had been listed as one of the three prosecution witnesses to substantiate the article of charge against him and later he was appointed as the

JS

12/

Enquiry Officer to conduct the enquiry (b) that the enquiry officer had travelled beyond the scope of the charge-sheet served against him (c) that the enquiry was started and completed on the same date i.e. 13.7.1987 and the applicant was not given an opportunity to produce his evidence in defence and cross examine witnesses cited in the charge-sheet and (d) that the orders passed by the disciplinary authority and the revision authority were mechanical and cryptic and not speaking orders and, therefore, in violation of the rules.

6. The Respondents, in their counter reply, have stated that the applicant had not applied for any leave for the period from 1.4.1984 to 31.3.1984 and he had been asked to furnish the details of the course of study and the institute in which he had taken admission for which there was no reply. They have also stated that inspite of several reminders the applicant had failed to furnish the necessary information/leave application. They have stated that they have addressed the letter to the address available in the record but the memorandum sent to his Delhi address as well as his home town in Himachal Pradesh dated 8.4.1986 instituting disciplinary proceedings against him was received back with the remarks that "he left without address" and "Kahin Bahar Rehta Hai".

8/

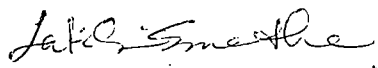
When he reported back on duty on 15.7.1986 after remaining absent from 11.1.1984 to 14.7.1986, he was allowed to join duty and posted at Demapur vide Office Order dated 11th August, 1986. On joining his duties, the disciplinary action had been instituted against him by memo. dated 25.8.86. 7. On perusal of the explanation given by him it is seen that he has admitted that since he was busy with certain domestic problems of his mother's illness and legal dispute about ancestral property, he could not join office or pursue his post graduate course which he had intended to. He has also requested that in the circumstances of his disturbed domestic affairs, a sympathetic view may be taken and his absence may be regularised for the period from 11.1.1984 to 14.7.1986. It is, therefore, clear that during the period of nearly 2½ years he has remained absent unauthorisedly for which he had neither applied for leave or given the necessary explanation asked for by the respondents. The Enquiry Officer had also asked him to produce documents and proof regarding the fact that he was involved in some dispute over ancestral property and about his mother's illness which prevented him from attending to his duties but he was not able to produce any satisfactory evidence. In the facts and circumstances, it is evident that the applicant has been unauthorisedly absent from

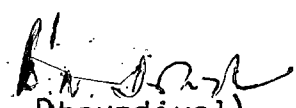
JS

his duties during the period in question from 11.1.1984 to 14.11.1986 for which he himself had requested for regularisation in his letter dated 31.12.1986. He has also been given reasonable opportunity to present his case before the impugned order has been passed.

8. The allegation that Shri M.R. Gathwal, Deputy Secretary, has pre-judged the issue as he had been cited as one of the prosecution witnesses is without any force as the officer's name has already been deleted as witness before he proceeded with the enquiry as enquiry officer. The applicant has also objected to the appointment of the enquiry officer very belatedly. We also find no substance in the other allegations made by the applicant.

9. In the result, the application is dismissed as being devoid of merit. There will be no order as to costs.


(Lakshmi Swaminathan)
Member (J)


(B.N. Dhoundiyal)
Member (A)