

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(10)

O.A.No.214/89

New Delhi, this 1st Day of March, 1994

HON'BLE SHRI C.J.ROY, MEMBER (J)

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER (A)

Shri Umesh Prakash Sharma,
s/o Shri Murari Lal Sharma,
H.No.140 Gali No.5,
Than Singh Nagar,
New Delhi.

..Applicant

(By Shri M.L.Chawla, Advocate)

Vs.

Union of India: through

1. Secretary to the Govt.of India,
Ministry of Communication,
Sanchar Bhawan, New Delhi.
2. Member (Personnel) Telecom Board
Sanchar Bhawan,
New Delhi.
3. General Manager (Maintenance)
NTR: Kidwai Bhawan, Janpath,
New Delhi.
4. Chief Superintendent,
Central Telegraph Office,
Janpath, New Delhi.
(By Shri P.P.Khurana, Advocate)

ORDER (ORAL)

(Delivered by Hon'ble Shri C.J.Roy, Member(J))

Shri M.L.Chawla ld. counsel for the applicant argued at length about the demerits of the conduct of the inquiry and ultimately relied upon one averment i.e. non-supply of the inquiry report to the applicant which has thereby vitiated the inquiry.

2. Shri P.P.Khurana, ld. counsel for the respondents is also present and has argued and drew our attention to the latest Constitution Bench judgement of the Hon'ble Supreme Court arising out of Ramzan Khan's case which had been earlier disposed of by the Hon'ble Supreme Court.

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2. Before going into the aspects of this case, we would like to cover a few facts of the case. The applicant is an employee of the Central Telegraph Office, New Delhi. He was working with respondents as Telegraph Assistant but for some reason or the other, at some point of time he developed Endogenous depression thereby resulting in his being absent from duty.

3. The applicant has prayed that he should be given reinstatement or in the alternative a compassionate allowance by way of relief. It is also prayed to quash the order dated 28-2-87 thereby removing him from service as the same was based on improper and infirm inquiry and also to direct the respondents to sanction his leave period with all the consequential benefits. But in the interim reliefs prayed by the applicant, he has sought for a provisional appointment on daily wages and the grant of compassionate allowance provided under ^{PR} 41 as the applicant is out of job for the last several years and has no other source of income.

4. We have heard both sides on merits and perused records as well as departmental proceeding file. It is admitted by the ld. counsel himself for the applicant that from 29-6-85 to 7-1-1986 i.e. the date on which the charge sheet was issued, the applicant was absent without any intimation. However, he had submitted a medical certificate late on 9-4-1986 when he joined duty. According to Shri Chauha, who further clarified, that he had also given medical certificates alongwith the leave application in the month of January, 1986 and also in the month of March, 1986 but Shri Khurana

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1d. counsel for the respondents states that all these certificates were given to the respondents in the month of April as enclosure to his application dated 10-4-86. It is on internal page 18 of the counter reply. We see the medical certificates forwarded with that enclosure issued by Dr. Sunil Kumar Agarwal. We find this under annexure 2. The ground on which the leave is applied for is self sickness. It is on paper book page No. 63. However, we are not interfering in the case keeping in view that the applicant has not been able to convince us about his conduct in not submitting leave applications supported by medical certificate in time.

5. That apart, in the main relief the applicant has claimed only reinstatement and treatment of the leave as authorised but in the interim relief he claims for appointment on daily wages or to grant him compassionate allowance under Rule 41 of the Pension Rules /stating that he has no other source of income.

Rule 41 reads as below:-

"41. Compassionate allowance

(1) A government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on (compensation pension).

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the ** (amount of Rupees sixty per mensem).

*. Substituted by G.I., M.F., Notification No. G-18011/2/75-E.V(A), dated the 10th April, 1975.

** Substituted by G.I., Dept. of Personnel & A.R., Notification No. F.38(4) Pen.(A)/80, dated the 8th August, 1980.- Minimum pension since raised to Rs. 375."

6. Shri P.P. Khurana the 1d. counsel for the

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respondents opposed ^{any such} ~~this~~ ^{regarding compassionate allowance} direction stating that this direction cannot be given at this stage without an interim order. However, this objection is overruled because the Tribunal has got the power to modulate the relief and especially in view of the fact in the main relief the applicant has prayed for any further order or direction or directions, relief or reliefs this Tribunal may deem fit to grant in the facts and circumstances of the case to meet the ends of justice.

7. We feel it just and proper, in view of the indigent circumstances of the applicant, to take a lenient view to give some solace so that some financial support may be given by the respondents to the applicant in view of the fact that there was no moral turpitude involved or there is any mis-conduct of serious nature. However, we are convinced with the fact that we cannot interfere in the extent of punishment. We, therefore, direct the respondents to receive a representation within a fortnight from the date of this order from the applicant and consider payment of compassionate allowance under Rule 41 of Pension Rules and dispose of the same representation within a period of three months from the date of the receipt of the representation. They are also further directed to dispose of this representation by a speaking order. The applicant is also given the liberty that in case he feels aggrieved, he may approach this Tribunal. With these directions, the case is disposed of accordingly. No costs.

P. J. *Signature*
(P.T. THIRUVENGADAM)
Member (A)
'MALIK'

Signature
(C. J. ROY)
Member (J)