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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

D.A. NO. 2405/89

New Delhi this the 11th day of May, 94.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Shri S.S. Thukral
S/o Shri Atam Parkash,
R/o 1075, Gulabi Bagh,
Delhi.

... Petitioner.

By Advocate Shri Venkataramani and Shri S.M. Garg.

Versus

1. Delhi Administration through
The Secretary(Medical),
Medical and Primary Health Department,
5, Sham Nath Marg,
Delhi.

2. Director,
Health Services,
Directorate of Family Welfare,
Delhi Administration,
2, Battery Lane, Rajpur Road,
Delhi.

... Respondents.

By Advocate Ms Ashoka Jain.

ORDER (ORAL)

Shri Justice V.S. Malimath

The petitioner, Shri S.S. Thukral, was an Upper Division Clerk working in the Directorate of Family Welfare of the Delhi Administration. A disciplinary inquiry was initiated against him primarily on the allegation that he was unauthorisedly absent from duty from 29.10.1982 to 28.2.1983 and thereafter till the memo of charges were served. The petitioner did not plead guilty and an Inquiry Officer was appointed. The Inquiry Officer held the charges proved. The disciplinary authority accepted those findings and passed the order on 31.12.1987 imposing the penalty of compulsory retirement from service with effect from 14.12.1987 further

directing that the period of absence from 27.9.1982 onwards shall be treated as 'Dies-non' and the pension and death-cum-retirement gratuity be restricted to 75% of the amount of each admissible to him. On appeal, the said order was confirmed by order made in July, 1989, produced in the case as Annexure XI. It is the said order that has been challenged in this case.

2. A bare perusal of the order of the appellate authority makes it clear that it is not a speaking order. None of the contentions raised by the petitioner have been examined. Hence, we are inclined to take the view that the said order is not a valid order. This would justify remand of the case to the appellate authority, but we consider it appropriate to notice certain circumstances and the contentions which were urged by the learned counsel for the petitioner in support of the petitioner's case that the order of the disciplinary authority is also liable to be quashed.

3. The principle contention raised is that the findings recorded against the petitioner are perverse as no reasonable person would have recorded the findings of holding the petitioner guilty of the charges levelled against him. If we examine the substance of the charges, it is that the petitioner remained absent from 29.10.1982 without prior sanction of leave. The period of absence from 29.10.1982 to 28.2.1983 would be of four months and upto the date of the memo of charges it would be more than five months. This is a pathetic case in which the petitioner had to face several painful problems. The reasons for the petitioner's absence from duty have necessarily to be examined not only for the purpose of holding the petitioner guilty but also in the matter of assessing the penalty that

should be imposed. The petitioner remained absent and sought leave on the ground that his two infant children have fallen seriously ill. But the memo which the petitioner received in response to his request is one contained in Annexure-I dated 5.11.1982. It is stated that in case the petitioner is sick, he should report to the Police Surgeon, Police Hospital for medical examination immediately and that he will not be allowed to join duty unless he produces the medical and fitness certificate from the Police Surgeon. It is unfortunate that a responsible Officer like the Deputy Director Family Welfare without ascertaining the real cause of the petitioner's absence directed the petitioner to report to the Police Surgeon for medical examination and warned him that he will not be allowed to join duty unless he produces the medical and fitness certificate from the Police Surgeon. The petitioner has promptly replied on 1.12.1982 wherein he has stated that he had in his previous application mentioned that his two infant children had fallen seriously ill and they had been under treatment for the whole of the month of November and that they are/ ^{now} recovering steadily and there is no one to look after the ailing children, his wife being a temporary Government servant not being in a position to avail of leave. He had applied for leave so that he could look after his children. When leave is sought on this ground, it is surprising that the officer without looking into the reason for grant of leave chose to direct the petitioner to report to the Police Surgeon for medical examination further warning him that if medical and fitness certificate from the Police Surgeon is not produced, he will not be taken back to duty. The petitioner promptly brought this aspect to the notice of the authorities and sought

further extension of leave for a month from 16.12.1982 to 15.1.1983 to enable him to make alternative arrangement to look after his children. When these facts were brought to notice about the children's sickness and about the mistake committed by the authorities, instead of looking at the matter in the proper perspective, the request of the petitioner for grant of leave was rejected by memo dated 7.1.1983 and the petitioner was asked to report for duty within seven days, failing which he was warned that disciplinary action would be taken against him. There is material which has been produced before us which is also supported by the contention which the petitioner has raised in the memo of appeal before the appellate authority that he had, in fact, taken his children before the Inquiry Officer and also before the Directorate of Health Service. These facts are uncontested. From the materials, it is quite obvious that the reason put forward by the petitioner for grant of leave was a true and genuine one. If the children of the petitioner were really sick and it is on that ground that leave/sought as none was available to look after them, one would expect the officer to have acted reasonably in the matter of dealing with the petitioner's application for grant of leave. It is not that the authorities had disbelieved the version of the petitioner in regard to the petitioner's children being not well and there being no one else to look after them. We have, therefore, no hesitation in holding that the authorities acted in a manifestly unreasonable manner in declining to grant leave to the petitioner and calling upon him to join duty within seven days. Obviously,

the petitioner was not in a position to do so as it was not possible for him to leave the children in distress. These facts and circumstances certainly indicate that the petitioner was not dealt with fairly and reasonably in regard to the grant of leave which he had asked for till 28.2.1983 as admittedly the petitioner had sought leave till that date. It is not, however, the case of the petitioner that he had sought leave from 28.2.1983 onwards. Hence, the petitioner's absence from 28.2.1983 till the issuance of the memo of charges dated 31.3.1983 remains without satisfactory explanation from the petitioner. It is, therefore, reasonable to draw the inference that the petitioner remained absent without any justifiable cause for the said period from 28.2.1983 to 31.3.1983. As regards this lapse, there being no explanation from the petitioner, the disciplinary authority would be justified in taking the appropriate action. What would be the appropriate punishment that ought to be imposed in regard to the unauthorised absence from 28.2.1983 onwards? That is a matter on which the disciplinary authority or the appellate authority ought to apply its mind. We, however, consider it necessary to say that the punishment now imposed of compulsory retirement from service and consequential directions issued curtailing the retirement benefits is manifestly unreasonable and far out of proportion to the gravity of the misconduct, namely, unauthorised absence from 28.2.1983 onwards. What other lower punishment should be imposed is ^a matter which can be decided by the disciplinary authority. Suffice it to say that any punishment lower than the compulsory retirement from service may meet the ends of justice.

4. Before concluding, we would like to say that the petitioner having remained absent for the first period from 29.10.82 to 28.2.83 for justifiable reasons and thereafter without any justifiable reasons, the authorities would be justified in denying the backwages for the period during which he had not worked.

5. As the matter has been pending for a long time and the petitioner appears to have only few years to serve, an early decision in the matter is absolutely necessary. Hence, instead of remitting the case to the disciplinary authority, we consider it appropriate to remit the case to the appellate authority with the following directions:

"The matter shall stand remitted to the appellate authority who shall pass a fresh order regarding the penalty, if any, to be imposed on the petitioner for his unauthorised absence only for the period from 28.2.1983 onwards in the light of the findings recorded above. The appellate authority is directed to pass an appropriate order within a period of three months from the date of receipt of a copy of this order. No costs."

P.J. Dr. T.

(P.T. Thiruvengadam)
Member(A)

V.S. Malimath

(V.S. Malimath)
Chairman

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