

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA NO. 2558/89

New Delhi this the 11th Day of November, 1994.

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI B.K.SINGH, MEMBER(A)

Sh. S.L.Gupta s/o Sh.Devi Sahai,
R/O 1/1, Aryabhat Enclave,
Sawan Park Extension,
Phase-III, Ashok Vihar,
New Delhi - 52.
(By advocate Sh: G.D.Gupta).

Applicant.

VERSUS

1. Lt. Governor/Administrator,
Union Territory of Delhi,
Delhi Administration, Delhi.

2. The Director of Technical
Education, Dayal Singh Library Bldg.,
Din Dayal Upadhyay Marg,
NEW DELHI.
(By advocate Shri Suraj Singh).

Respondents

ORDER (ORAL)

HON'BLE SHRI J.P.SHARMA, MEMBER(J).

The applicant is aggrieved with an order passed in the departmental enquiry on the basis of a Memorandum issued on 16.1.1980 enclosing therewith annexure-I containing three Article of Charges with imputation of mis-conduct, list of documents and the witnesses to be examined in support of the aforesaid charges. After considering the reply submitted by the applicant the disciplinary authority has appointed Shri

S.K.Mehra as Enquiry Officer. After proceeding, according to the rules, the Enquiry Officer submitted his report dated 19.11.1983 to the disciplinary authority but the disciplinary authority passed an order dated 20.11.1984 imposing the penalty of withholding of five increments without cumulative effect.

2. The applicant filed an appeal in anticipation of the order on 26.3.1986. Here it may be clarified that it was a sort of representation which the applicant had preferred against the procedure adopted in the enquiry proceedings stating the violation of the rules and also praying that the illogical punishment order based on frivolous, fabricated and baseless charges may be quashed. The stand of the applicant, however, is that this order passed by the disciplinary authority in Nov., 1984 in the name of Lt. Governor was conveyed to him only in April, 1988.

3. The relief claimed by the applicant is that the impugned order of punishment dated 20.4.1984 received in April, 1988 be quashed and the respondent be directed to release the withheld increments from 1984 to 1988. or thereafter as a result of the punishment order.

4. A notice was issued to the respondents who contested this application and oppose the grant of the relief stating about the performance of the applicant in certain particular years recorded in the Annual Confidential Report. Respondent further stated in the reply that the request for inspection of documents was allowed to the applicant in compliance with the Govt. of India's instructions 24 appended to rule 14 of C.C.S.(C.C.A.) Rules, 1965. The Enquiry

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Officer has given his findings correctly on all the Article of Charges. However, the reply given to the various averments made in the original application is very cryptic and is not explanatory to cover the averments made in the distinct paragraphs of the original application.

5. The applicant has also filed the rejoinder in July, 1991 but since it was filed after the date allowed by the Tribunal so it was kept in part 'C' of the file. However, the perusal of the rejoinder goes to show that the applicant has highlighted the points already taken as grounds in the original application.

6. We heard the learned counsel for the applicant Sh. G.D.Gupta yesterday when counsel for the respondents could not appear being busy in other cases. So we adjourned the case for hearing today. We again heard the learned counsel for the parties today and also gone through the departmental file available with the learned counsel for the respondent. Firstly we find that the enquiry officer out of three Article of Charges has held that article 3 of the charge is not established. Article 3 of the charges is regarding misconduct attributed to the applicant for not receiving and refusing the official letters sent to him. The disciplinary authority has also given the affirmance to the aforesaid findings of the Enquiry Officer. Now, the main point for consideration remains with respect to article of charges 1 & 2 of the charges which charges i.e. 1 & 2 are quoted below:-

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ARTICLE I: That the said Shri S.L.Gupta, while functioning as Lecturer in Pusa Polytechnic, Pusa, G.B.Pant Polytechnic and Directorate Hgr. during the period of Oct., 1976 to September, 1977, deliberately came late and marked attendance on the class and did not take class and refused to sign attendance register/attendance sheet provided by the concerned authority. Thus he has failed to observe the punctuality and regularity required under the rules.

Shri Gupta by his above act exhibited lack of integrity, devotion to duty and conduct unbecoming of a Government servant.

ARTICLE II: That during the aforesaid period and while functioning in the aforesaid offices, the said Shri S.L.Gupta has availed leave frequently as per his convenience ignoring the public interest i.e. teaching the students and other functions assigned to him.

Shri Gupta by his above act exhibited lack of devotion in duty and conduct unbecoming of a Government service.

When Article 1 is taken in the light of the imputation of misconduct we find that in the charge a compact period from October, 1976 to September, 1979 has been shown when the applicant came late in the performance of duties and marked attendance on the cross and did not take class and refused to sign attendance register. However, in the imputation of misconduct only a single date i.e. 3rd November, 1976 is mentioned. Further stating that he did not report to the Principal about his late arrival. It is further clarified that he signed in the afternoon and put his arrival time as 9.05 AM and he could not take the class of IIIrd year of Civil Engineering in the Third period on 3.11.1976. If both charge and imputation of misconduct with respect of Article ^{one} of all the charges is taken into account, it does not make out a clear picture about the late coming

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of the applicant for the compact period from October, 1976 to September, 1979. Regarding Article II of the charge it is stated in the charge that the applicant has availed of leave very frequently according to his convenience ignoring public interest and in the imputation of misconduct of article II of the charge the period has been mentioned from 14.12.1976 to 17.12.1976. 20.12.76 to 23.12.76; from 4.1.77 to 7.1.77; 5.3.77; 22.3.77; 1.12.77 to 9.12.77; from 9.1.78 to 13.1.78; from 9.2.78 to 6.3.78 and from 7.3.78 to 18.3.78. In this imputation of misconduct it is also mentioned that as to how the applicant has availed of these absence from duties in the form of leave. Again there is a further period in the year 1978 i.e. 27-28.3.78; 39.3.78 to 8.4.78; 10.4.78 to 22.4.78; 1.5.78 to 10.7.78. It is also mentioned that he has applied for the leave but he has not obtained prior sanction or permission for the said leave. It is also mentioned that the applicant proceeded in summer vacation instead of being told that he should not avail of the same. Now the Enquiry Officer on the Article of charge I gave his findings without examining the Principal of the Institute. Shri Pratap Singh was Principal of G.B.Pant Polytechnic was also cited as witness but not examined.

7. In the annexure -IV of the Memo of chargesheet, Principal Pusa Polytechnic Institute has been cited as a witness. The Principal at that time was Sh. K. Srinivasan but earlier to this Sh. S.K. Mitra was posted as Principal who has time and again issued certain Memos to the applicant

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regarding his performance as a Teacher in the said Institute. The Enquiry Officer did not examine Sh. S.K.Mitra but examined Sh. G.B.Aggarwal, Accountant of the Delhi Co-operative Commercial Thrift and Credit Society to prove the fact that Sh. Gupta was on leave during the summer vacation. Shri K.Sriniwasan Principal PW-1 has certified Memos issued by Shri S.K.Mitra the then Principal dated 4.11.76 and 10.11.1976. Shri P.Kaushik Head of the Department of Civil Engineering was examined as a prosecution witness and he has also proved certain notes issued to the applicant. Shri V.P.Suri has also been examined as a witness regarding direction given to the applicant for a period from May, 78 to August, 78 and he did not receive any departure report of the applicant on 29.4.78. On the basis of the above evidence the Enquiry Officer relied upon a document Ex.P1 issued by Sh. S.K.Mitra, Principal, Pusa Polytechnic Institute. This is the only evidence on the Article No.1 of the charge. The applicant has made certain allegations against Shri S.K.Mitra and further he has stated that since he was President of the Association of Gazette Officers (Technical Education) Delhi and during the course of that office which he held he had certain unpleasantness with Shri S.K.Mitra. Respondents curiously averred in their counter in 4.3 they admitted the claim made by the applicant under the para 4.3 of the application as well as in 4.3 of the counter which are quoted below:-

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Para No. 3 of the application: That it may be stated that right from 1967, the applicant has been the Office bearer of the Staff Associations and he was, in fact, even the convener of the Joint Council of Technical Teacher, Delhi, and remained even the Vice-President and the President of the Association of Gazetted Officers Technical Education, Delhi and, infact, he is even today the President of Indian Polytechnic Teachers Organization, an All India Body and General Secretary of Association of Gazetted Officers, Technical Education, Delhi. Since in the aforesaid capacity as office bearer of various Associations from time to time, the applicant had to raise his voice against corruption and in-efficiency. This naturally infuriated and enraged the concerned officers against whom the voice was raised. The result was that in order to cover up thier mis-deeds and to teach the petitioner a lession resort was made to various tactics to harm the interest and career of the petitioner. In this connection, as usual first thing the department did, was that it got spoiled the confidential reports of the applicant though the results of the subject taught by the applicant were outstanding. The other thing was that the applicant was got issued a charge-sheet. Though the charge-sheet was issued for major penalty, but a very perusal of the same would show that the charges were very trivial and not warrant even to be levelled because apart from being trivial, they were completely incorrect and false. Infact, what happened, in the meantime, was that Shri S.K.Mitra, the then Principal, Pusa Polytechnic started harassing the applicant and the staff members on pretext of

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forced sterilization by marking them absent and stopping their salary arbitrarily. When the applicant in his capacity as Office bearer of the Association raised the voice against the said injustice and his dictatorial approaches, he not only stopped the salary of the petitioner for more than six months, but started harassing him unnecessarily and even threatened him of dire consequences. He violated the instructions of the then Chief Secretary and did not release the salary of the applicant. Ultimately the Director had to transfer Shri S.K.Mitra to Kashmere Gate Polytechnic and then only the salary of the applicant which was held up for more than six months could be released.

Para No. 4.3 of the Counter: It is correct to say that being office bearer of various Associations from time to time he used to raise his voice against corruption and in-efficiency which naturally infuriated and enraged the concerned officers.

8. In view of the above it was all the more necessary for the Enquiry Officer to have called Shri S.K.Mitra and to place him for cross examination to justify the Memos issued by him twice in 1976. In any case we find that the article 1 of the charge is totally vague and it is also open to controversy whether a government servant who comes late once and charged for a misconduct in a departmental proceedings, there is an ample provision available with the authority, as to treat the late comers by reducing their

leave account by haft day's casual leave. In any case we find that there is no evidence, what-so-ever regarding article-1 of the charge particularly the person who has issued the Memos i.e. Sh. S.K.Mitra has not been examined in support of the Memos he had issued. A document has to be proved by the author and if the author of the document is not available and situated at a place far away then and only then the secondary evidence of producing of the document can be done. In the present case Sh. S.K.Mitra was very much available and he was the main person to justify that the applicant was late on a particular date i.e. 3.11.1976.

9. Regarding article-II of the charge we have put a straight away query to the learned counsel for the respondent as to when the leave has been sanctioned and the period of absence have been regularised as a period of authorised absnece from duty and whether it will still amount to a misconduct and the learned counsel for the respondent could not show any rule, law or notification to substantiate the aforesaid charges. The matter would have been different if the authrities, in the public interest, would have conveyed the refusal of the leave to the applicant even when he submitted his application either supported by medical certificate or nor. When the respondents have considered the leave application and the evidence furnished in support thereof and condoned his absence by grant of leave then the period cannot be said to be a period on which the applicant remained unauthorisedly

absent. It may be a moral fault on the part of the applicant to ignore the interest of pupils he was made to teach, but at the same time a person has also certain urgent works which he has to perform and they may be considered by such a person of such urgent nature as to take absence from normal working though that may be not in the public interest. Availing of earned leave particularly is not a matter of right. The respondents were in their right to refuse the same. Regarding the leave on medical grounds with the medical certificate is accepted and the permission has been granted to the person who has been granted leave has been treated as not capable of performing his official duties during the period he was in the medical care. Such leave cannot be denied because the person could not physically discharge the function in the post. Regarding the availing of the casual leave they are made for the purpose when any eventuality occurs and a person may report even after availing of that type of leave if due to him, as per establishment DoPT OM. It is not the case of the respondent that the applicant has ever absented beyond the period he applied for the leave or that the leave not due in his account has been availed of by him. When the respondents have considered that matter and the competent authority has granted sanction of the leave then that will not amount to as misconduct. The charge, itself, goes to show that the applicant has furnished an explanation but subsequently it is stated in the same that it was not in the public interest. The interest of individual and that of the public may clash. But we find that the applicant is not an angel

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who can ignore his personal interest for the sake of the public interest. It is not the case that the applicant has not fallen ill or obtained fake medical certificates. Thus the finding on the article II of the charge is perverse and finding which may not be arrived at on a reasonable analysis. The article III for the charges has been proved as said above.

10. Besides the above we do find that the applicant was also denied due opportunities of furnishing certain documents which specifically called by the Enquiry Officer. The Enquiry Officer was allowed the inspection of the documents but still there remains some material documents which has been mentioned by the applicant at page 13 in para 8 of the application which are: (a) attendance register; showing cross and signatures of 3.11.1976 thereafter and (b) Leave applications and the medical certificates submitted by the applicant. The respondents in their reply to para no. 8 of the counter did not state any fact in support of the denial thereof. In view of this the contention of the learned counsel for the applicant is substantiated by the averments made in the pleadings which are not denied by the respondents. Today we have also considered another OA No. 1099/90 in which the applicant has also prayed that the respondents has withheld crossing of EB w.e.f. 1.8.1976. Considering the whole of the case we also allowed that original application with certain directions.


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11. The Memo issued to the applicant by Shri S.K.Mitra Principal commences after August, 1976. The applicant having been the President of Union had unpleasant task of confrontation with the Administration on various issues governing the members of the Association. He has specifically alleged malafide against Sh. S.K.Mitra earlier Principal of the Institute which has not been denied. In view of the facts and circumstances the Memo of Chargesheet issued to the applicant remains to be a cumulative effect of this background.

12. The application is, therefore, allowed. The impugned order of punishment dated 23.11.1984 conveyed to the applicant in the month of April, 1988 as alleged is quashed and set aside and the applicant shall be given the benefit of the withheld increments from the date it has been withheld as if it is not awarded to the applicant. Applicant's pay shall be re-fixed at each occasion with the increments fell due in his favour. In the circumstances the parties are left to bear their own costs.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

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