

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 545/89. DATE OF DECISION: 12-12-1990.

Smt. Najma Parwez APPLICANT.

V/s.

Union of India & Others ... RESPONDENTS.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

Shri N.M. Popli with Shri W.A. Nomani, Counsel for the Applicant.

Shri P.P. Khurana, Counsel for the Respondents.

1. Whether Reporters of local papers may be allowed to see the judgement? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their lordships wish to see the fair copy of the judgement? No.
4. Whether to be circulated to all Benches of the Tribunal? No.

J.P. SHARMA(J.P. SHARMA)
Member (J)P.C. JAIN(P.C. JAIN)
Member (A)

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(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A)).

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is working as Architectural Assistant Grade II, in the office of Senior Architect-II, Department of Telecommunication, New Delhi, has assailed the order dated 7.3.1988 passed by Member (Personnel), Telecom Board, in appeal whereby the order of dismissal of the applicant from service dated 2.6.87 was set aside, but the period of her absence from duty from 30.4.82 to the date of her rejoining was ordered not to be counted for any purpose. She has prayed for quashing the operative part of the order dated 7.3.88 and to issue a direction to the respondents to count the period from 30.4.82 to 17.3.88 for all purposes in her service.

2. The facts of the case, in brief, are that the applicant has been suffering from cancer and she had been granted leave upto 29.4.1982 on the basis of her leave applications alongwith Medical Certificates on prescribed proforma. She failed to produce Medical Certificate from the competent authority for the period of her absence beyond 29.4.1982 and as a result, she was dismissed from service on the charge of unauthorised absence from 30.4.1982.

and disobeying the orders of the office to join duty or to produce medical certificate for the period of absence, vide orders dated 2.6.87. She preferred an appeal against her dismissal from service, which was decided vide order dated 7.3.1988 passed by Member (Personnel), Telecom Board (impugned order). The operative part of the order in appeal, which the applicant wants to be quashed, is as under: -

"3. Though the procedural lacunae in the disciplinary proceedings against the appellant can be rectified by de novo action, since the fact remains that the appellant was suffering from a serious disease upto 29.4.82, the undersigned has decided to take a very lenient view of the lapses on the part of the appellant and accordingly hereby sets aside the order of dismissal from service dated 2.6.87 without any further proceedings towards imposition of a statutory punishment. Accordingly, the appellant may join back duty immediately. However, since the appellant was remaining away from duty on her own since 30.4.82 and as on the date of her dismissal from service also she was continuing to remain absent from duty and the medical board which examined her recently also are of the view that the appellant could have reported for duty from 30.4.82, the period from 30.4.82 to the date of her joining back cannot be counted for any purpose."

In the O.A., the applicant prays for a direction to the respondents to count the period from 30.4.82 to 17.3.88 for all purposes in her service.

3. The case of the applicant is that once an order of her dismissal from service was set aside, she became entitled to the benefit of the period from 30.4.82 to 17.3.88 to be counted for all purposes in her service. She claims to be still under treatment in the Government hospital and she was duly granted leave for the period from 1.9.82 to 30.11.82 i.e., even beyond 29.4.82, which comes within the period not to be counted for any purpose, as per orders of the Appellate Authority dated 7.3.1988. She has also pleaded that the order

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of the disciplinary authority dated 2.6.87 by which she had been dismissed from service, and which order has since been set aside by the impugned order dated 7.3.1988, was illegal for various reasons, e.g., it was not based on proper enquiry and no enquiry report was ever given to her; the order passed by the disciplinary authority was not given to her; the penalty of dismissal was in no way proportionate to the gravity of the charge etc.

4. In spite of a number of opportunities having been given to the respondents to file their counter-affidavit, vide the Tribunal's orders dated 11.4.89, 18.7.89, 30.8.89, and 29.9.89, they failed to do so and as a result, a Bench of this Tribunal ordered on 5.10.89 that the respondents have forfeited their right to file a counter-affidavit, and that the case be listed for final hearing in its turn. The O.A. was dismissed in default on 25.5.90 as none appeared on behalf of the applicant, but the same was restored to its original number vide the Tribunal's order dated 18.9.1990.

5. We have heard the learned counsel for the parties and have gone through the record of the case.

6. Although the applicant, by giving the various lacunae in the procedure adopted by the respondents in the matter of conducting departmental inquiry, has tried to establish that her dismissal from service was not justified, in the reliefs prayed for, she confined her prayer only to quashing the operative part of the order dated 7.3.88 passed in appeal and counting the period from 30.4.82 to 17.3.88 for all purposes in her service. In view of this and more so when the order of dismissal from service of the applicant has already been set aside in appeal, we do not consider it necessary to go into the question whether or not the applicant was dismissed rightly and by the right procedure. The short point to be examined in this case is as to how the period of her absence from 30.4.82 to

17.3.88 should be treated. It is not in dispute that the applicant had not been on duty from 30.4.1982 to 17.3.88 and she joined her duty only on 18.3.1988 (F.N.) after the order of dismissal was set aside by the appellate authority on 7th March, 1988. It is also an admitted fact that she could not produce any medical certificate from the competent authority for her absence from 30.4.1982 except for the period from 1.9.1982 for 91 days issued by the Irwin Hospital, New Delhi on 17.11.1982. This certificate was also produced by her much later after the disciplinary authority had concluded the disciplinary proceedings. The appellate authority, in his order dated 7.3.1988 has stated that "The disciplinary proceedings were initiated against the appellant on 12.1.1987, as she was absenting from duty for a long period and she did not comply with the orders to join duty or to produce medical certificate. On 27.8.82 a letter was sent to her asking her to produce leave application supported by M.C. On 19.7.1985 she was again addressed in this regard. On 1.1.86 a letter was written to her stating that she was granted leave upto 29.4.82 on the basis of M.Cs. issued by the hospital, that further leave can be sanctioned only on the basis of medical certificate and that what she had furnished was only a copy of the prescription. If she had really sent an M.C. dated 17.11.82 for 91 days leave w.e.f. 1.9.82, she would have intimated the same to the office in response to any of the communications mentioned above. If the hospital had refused to give her medical certificate or fitness certificate she could have brought the matter to the notice of the office then and there. Since the photo copy of the certificate dated 16.6.87 sent in with the appeal did not indicate that she was unable to attend office from 30.4.82 onwards also, the hospital authorities were requested to examine

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her and give their opinion. They have after examining the appellant held that she is fit to resume her duty, that no further evidence of disease was found after 29.4.82 and she was supposed to report for duty after taking 'fitness' from the hospital on 30.4.82. In the circumstances though it may be that after 30.4.82 also she was going to the hospital for periodical check up, her staying away from duty on the ground of inability to attend to duties due to disease and surgery is not medically supported."

7. The learned counsel for the respondents, in his oral submissions, raised an objection that the O.A. is barred by time and that respondents 2 and 3 have been impleaded by name. He also emphasised that the applicant failed to produce medical certificate as prescribed in the leave rules, for the period subsequent to 29.4.82 and as such, the period of her absence from 30.4.82 to 17.3.88 could not be counted for any purpose.

8. In her O.A., the applicant stated that the order passed by respondent No.2 dated 7.3.1988 was communicated to her along with a letter dated 9th March, 1988. A copy of this letter is at page 35 of the paper book and it shows that it was sent to the applicant by registered A.D. post. A note thereon shows that it was received by the applicant on 16.3.88. The O.A. was filed on 15.3.89. Thus, the O.A. was filed within one year of the date of receipt of the copy of the impugned order by the applicant. The other objection of the respondents that respondents No.2 and 3 are impleaded by name is also not very material to be recognised in this case.

9. The contention of the applicant is that she has been suffering from two cancers namely abdomen and breast cancer and regularly getting her treatment for Radio Therapy and Chemootherapy and has been sending the medical certificates, as and when were available

from the Government hospitals. She claims to have sent her first medical certificate for the period from 20th July, 1981 to 29th April, 1982 and another medical certificate for the period from 1.9.82 to 17.11.82. She has alleged to have sent a letter dated 29.8.85 in reply to letters received from the Department informing the Sr. Architect - I (Coord) P&T, New Delhi that she had been suffering from cancer and was not in a position to attend to her duties (Annexure II). She has filed copies of some other letters dated 26.5.87, 16.6.87 and 22.1.87 to show that she had been writing to the Department about her illness and the treatment which she was getting from Government hospitals. In her letter dated 26.5.1987, she had even offered to take voluntary retirement on medical ground and this fact was mentioned by her also in her appeal dated 4.7.1987 (Annexure IV). In her appeal, she had mentioned that she had been repeatedly requesting for the necessary Medical Certificate but the same had not been made available to her particularly on account of her case file being misplaced for some time in the Hospital and subsequently the Hospital authorities taking the view that it was not necessary as it was a continuous treatment and in case the office so required, they were empowered to refer and obtain opinion of a Medical Board. She has tried to make out a case that there has never been any intentional unauthorised absence on her part.

10. It is not a matter of dispute that a Government servant who wants leave on medical grounds, has to apply for the same in the prescribed form accompanied by a medical certificate from an authorised Medical Attendant. The respondents took action against the applicant because she failed to produce the Medical Certificates for some period. If she had any genuine difficulty in getting the medical certificates, she could have approached the

Department for necessary help in this regard. There is nothing before us to establish that she had sought the help of the Department for getting Medical Certificates and that such a request had been declined. Further, the fact that she continued to receive medical treatment during the period of absence does not ipso-facto establish that she was unfit to resume duty; the ^{report of the} Medical Board, in fact, proves to the contrary.

11. The learned counsel for the applicant has cited a number of rulings* in support of her case. We have gone through these rulings and find that the same are not directly applicable to this case. Moreover, the facts of this case are significantly different than in the other cases. None of the cited cases declares it ^{as} the law that in all cases of penalty being quashed, the charged official is entitled to either full back wages or to all other benefits of service for such a period. In the case before us, the circumstances in which the applicant was allowed to join duty clearly show that it was more on compassionate ground because of the seriousness of the disease from which she suffered rather than on the merits of the case. The learned counsel for the applicant submitted at the bar that he is conscious of the fact that as the applicant had not worked during the period under consideration, she would not be entitled to pay and allowances of the job for the said period, but other benefits should be allowed to her. These benefits can be (i) whether the period of absence be treated as duty; (ii) whether the period of absence will amount to

* (1) 1976 (3) SCR p. 160.
(2) 1985 (1) SCC p. 134.
(3) 1989 (Supplement) SCC p. 301.
(4) 1988 (Supplement) SCC p. 779.
(5) 1978 (2) SCR p. 621.
(6) 1984 (3) SCC p. 5.
(7) 1983 (2) SCC p. 443.
(8) 1990 (3) SCC p. 565.

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break in service or not; (iii) whether the period will count for increment in the time scale of pay or not; and (iv) whether she should be allowed the leave due to her during this period. A perusal of the order passed in appeal shows that the period from 30.4.82 to the date of her joining back will not be counted for any purpose. The scope of this part of the ~~judgment~~ ^{order} cannot be said to be very precise. F.R. 54 (1) provides that when a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review etc., the authority competent to order reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the Government servant and whether or not the said period shall be treated as a period spent on duty. Thus, at best, the order passed in appeal can be taken to mean that the period of absence shall not count as period spent on duty and that the applicant shall not be entitled to pay and allowances for the said period. In view of this and also in view of the peculiar circumstances and facts of this case, we are of the view that the period of absence in the case of the applicant should not be treated as a break in service for purposes of pensionary benefits.

12. In view of the foregoing discussion, we allow the application to the extent that the period ^{of absence} from 30.4.82 to 17.3.88 shall not be treated as a break in service of the applicant for purposes of pensionary benefits. We leave the parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA)
Member (J)

P.C. Jain
17.3.88
(P.C. JAIN)
Member (A)