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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 58/89

New Delhi this the 31st day of January 1994

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

THE HON'BLE MR. B.K. SINGH, MEMBER (A)

Shri M.P. Goel,
S/o Late Shri Ishwar Dayal,
Resident of U-85 Gautam Vihar,
Narela,
Delhi-110 040.

... Applicant

(By Advocate Shri J.K. Bali)

Versus

Delhi Administration, Delhi
through Secretary (Finance),
Delhi Administration,
5 Sham Nath Marg,
Delhi.

... Respondents

(By Advocate : None)

O R D E R (ORAL)

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

The applicant was working as Upper Division Clerk in the Sales Tax Department in Delhi Administration. The applicant was directed to report to Vigyan Bhawan on 10.1.1986 for getting complete the work of enumeration in the state of Punjab and he also collected certain amount for proceeding to Punjab on the same day. The applicant, however, reported for duty thereafter on a fitness certificate of Primary Health Centre (PHC), Narela on 16.1.1986.

2. The respondents have served him with a memo of chargesheet on 16.7.1987 (Annexure A 4) with the article of charge that he has committed misconduct in not complying with the orders dated 10.1.1986 of the Deputy Commissioner (Administration) Sales Tax and intentionally avoided an emergency duty which was of national importance. Along with the article of charges imputation of mis-conduct, the list of witnesses and documents to be relied upon

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was also furnished to the applicant. Shri A.K. Rikshi, Sales Tax Officer gave his report^{exonerating the applicant} dated 21.1.1988 regarding the aforesaid charges of the applicant, in view of the fact that the administration could not establish the charges level^{ed} against the applicant. However, the discipline authority did not agree with the report of the enquiry officer and under Rule 15 CCS(CDA), Rules 1965 disagreed with the same and passed the punishment order of 'Censure' dated 7.3.1988. The reasons of difference with the enquiry officer are detailed in only four lines quoted below:

"Shri Goel was in office on 10th Jan., 1986 and collected the advance in the late evening from the cashier. His contention that he was having temperature since 10th Jan., 1986 before Medical Officer Incharge, Primary Health Centre, Narela is not tenable"

No evidence whatsoever or reference to any document has been referred to by the disciplinary authority in the observation of disagreement and probably he has drawn all these surmises in a conjunctural manner that the applicant wanted to avoid his duty in Punjab. The order of the disciplinary authority was scrutinised by the appellate authority but was upheld by the order dated 25.8.1988. The appellate authority too did not consider any material on record on the enquiry officer's file nor referred to any statement of any of the witnesses examined or the documents before the enquiry officer. For all purposes this order too goes to show that the inference^{was} drawn by the appellate authority that 'Censure' punishment imposed upon the applicant is justified.

3. The applicant in the application has prayed that the aforesaid order of the imposition of the penalty be quashed. The respondents in their reply have contested

the application stating that the applicant reported to the Medical Officer-in-Charge, Primary Health Centre, Narela on 11.1.1986 while in fact his blood test was shown to have been done a day earlier on 10.1.1986. The Medical Officer has fallen a line with the applicant and no reliance could be placed on the medical certificate for the illness of the applicant for the period from 11.1.1986 to 15.1.1986. This is all a pretext to avoid going to Punjab which has been a a troublesome place at the relevant time. The disciplinary authority has reasons to differ with the enquiry officer and the same has been seen by the appellate authority. The application, therefore, deserves dismissal.

4. We have heard the learned counsel for the applicant. None appeared for the respondents. This is an old case. We decided to dispose of the case on merit. Firstly, the enquiry officer has considered the material evidence produced before him and also considered the blood test got done by the applicant at the Primary Health Centre, Narela. After going through those statements he gave the findings that the charge has not been proved. The learned counsel of the applicant has already referred to a document maintained in the said Primary Health Centre showing that the blood test for the applicant was taken on 11.1.1986. The applicant, therefore, did not go for his blood test on 10.1.1986. However, these documents are given subsequent to the filing of the present application and in view of this fact as the enquiry officer has not been apprised of these documents. It is not necessary to refer the same. However, the counsel of the applicant explained the matter of the documents in the manner that the original was brought before the enquiry

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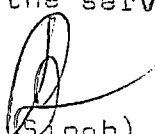
officer. It is also said that the enquiry officer has perused the relevant record maintained by the Primary Health Centre, Narela regarding entries of the patient of their blood test. Be that as it may it was found that the findings of the enquiry officer of exonerating the applicant were not rightly dispelled by speaking reasons by the disciplinary authority. The applicant should have been served with the enquiry officer's report alongwith the showcause notice by the disciplinary authority and there after he should have considered^{ed} whether the reasoning of the enquiry officer have been reasonable drawn on the basis of the evidence led before him. This goes to the very root of the punishment order. This defects could have been cured by the appellate authority had he applied his mind thoroughly but instead of that in general order that he agreed with the findings of the disciplinary authority has been passed. It is not necessary that elaborate exhaustive reasons be given but at the same time the appellate order must show that the authority has gone through the relevant record and particularly in a case there is a difference of opinion between the conclusion drawn by the enquiry officer on the one hand and the disciplinary authority on the other.

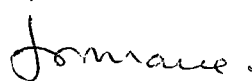
5. It is not necessary to go into further details in view of the above fatal defect in the order of the punishment.

6. It can also be observed that the absence from 11.1.1986 to 15.1.1986 has been taken to be as absence on medical ground and the period of leave thereof has been commuted. This goes to show that the applicant did not make any excuse or feigned diplomatic illness. In view of the above facts and circumstances, the application

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is allowed the punishment awarded to the applicant and is quashed. It shall not be taken into account in the career of the applicant. Copy of the application be placed in the service record. Costs on parties.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

Mittal