

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No.
~~T.A. No.~~

1594/88

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DATE OF DECISION 25.2.91

Ashok Kumar Vasudeva	Petitioner
Mr. R.L. Sethi	Advocate for the Petitioner(s)
Versus	
Union of India & another	Respondent
Mr. P.P. Khurana	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. Maharaj Din, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

ORDER

(N.V. Krishnan, A.M.)

The applicant was employed as a Stenographer Grade 'D' under the second respondent in the Ministry of Defence. He had applied for Earned Leave for 7 days on 27.1.1984 and got it extended upto 2.4.1984 on account of the illness of his wife.

2. Due to certain compelling circumstances connected with his wife's illness, he could not, admittedly, report for duty after the expiry of the leave sanctioned to him. He sent a few applications thereafter, but as the respondents felt that the applicant did not establish that his wife was ill, the leave was not sanctioned and he was considered to be absent unauthorizedly after the expiry of the leave sanctioned to him.

3. Therefore, disciplinary proceedings were initiated against the applicant on a charge of unauthorised absence (Annexure-D) and an Enquiry Officer was appointed who gave a report as at Annexure-F.

Accepting the conclusions of the Enquiry Officer who found the applicant guilty, the Disciplinary Authority passed the impugned order dated 18th June, 1985 (Annexure-H) imposing on him the penalty of dismissal from service. An appeal filed against this penalty order has also been dismissed by the impugned order (Annexure-K) dated 2nd August, 1988. The applicant is aggrieved by these orders and seeks to quash the same.

4. Among the grounds raised by him, one is that the Enquiry Officer initiated and completed the proceedings on 20th May, 1985 itself/ ^{because} after examining the witnesses of the Department he closed the case on that date itself. It is alleged that the applicant had given a note to the Enquiry Officer on 20.5.85 which has not been considered by him in his Report and hence the entire proceedings are vitiated.

5. We have heard the learned counsel for the respondents. He draws our attention Annexure-R2, being a copy of the proceedings dated 20.5.1985 in which it is recorded that on the completion of the evidence of the state witnesses, the delinquent did not want to give any written brief and for this reason, the case was closed for finalising the enquiry report.

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6. We have heard the counsel on either side. The simple question is whether it is probable that a delinquent government servant would have relinquished all his opportunities for putting forth his defence without even submitting a memorandum to the Enquiry Officer explaining his case. The applicant contends that on 20.5.1985 such a memorandum (Annexure-G) was given to the Enquiry Officer, which has, admittedly, not been considered in the Enquiry Officer's report. It is contended by the respondents that such a statement was not given at all before the close of enquiry on that day.

7. We are of the view that it is inconceivable that any reasonable delinquent government servant would have acted in this manner. Filing of at least a memorandum is the minimum defence which any delinquent government servant would have put in to protect his interest. We cannot believe that, without such a safeguard, the applicant had informed the Enquiry Officer that he does not have any defence to offer. This is all the more true if viewed in the light of the statement of the applicant in para 6(ix) of the application that after his return to Delhi, he got his wife examined and treated in the All India Institute of Medical Sciences. We are of the view that the balance of probability is that such a memorandum was given to the Enquiry Officer on that day.


8. As the enquiry report does not reflect any examination of the submissions made in the Annexure-G representation, the procedure is vitiated and there


has been a substantial failure to do justice to the applicant. Therefore, the subsequent orders of the Disciplinary/^{Appellate} Authority have rendered themselves liable to be quashed.

9. The applicant has also contended that the proceedings are vitiated because the second respondent had not issued a show cause notice to him after the conclusion of the enquiry and before imposing a major penalty. This stand of the applicant is devoid of any substance because after the 42nd amendment of the Constitution, by which Article 311 has been amended, it is not necessary to give such a show cause notice before imposing the penalty. However, natural justice requires that the applicant should have been given a copy of the Enquiry Report by the Disciplinary Authority before he came to the conclusion that the applicant was guilty, so as to enable him to make his representation against the findings in the Enquiry Officer's Report [Union of India Vs. Mohammed Ramzan Khan, 1990(2) SCALE 1094]. For this reason also, the subsequent proceedings have become void and are liable to be quashed.

10. For these reasons we dispose of this application by quashing the penalty order (Ann. H) dated 18th June 1985 and the appellate order dated 2nd August, 1988 (Annexure-K). The second respondent is at liberty to continue with the proceedings further, if so advised. In case he decides to continue with the disciplinary proceedings he should inform the applicant within two months from the date of receipt of this order, and in that event,

he should direct the enquiry authority to consider the Annexure-G report and, if found necessary, to give an opportunity to the applicant to establish by evidence his case as presented in Annexure-G and then submit a fresh enquiry report to the Disciplinary Authority who may then proceed to conclude the disciplinary proceedings in accordance with law. In the circumstances, the respondents shall reinstate the applicant within one month of the date of receipt of this order.


25-2-81
(Maharaj Din)
Judicial Member


28/2/81
(N.V. Krishnan)
Administrative Member

25.2.1991