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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.427 of 1988

Date of Decision: 12.7.93

Maharaj Swarup

.....Petitioner.

Versus

Union of India & othersRespondents.

For the petitioner: Shri Sant Lal, Co-unsel.

For the respondents: Shri P.P.Khurana, Counsel.

CORAM:

Hon'ble Mr. Justice V.S. Malimath, Chairman.

Hon'ble Mr. S.R. Adige, Member(A)

JUDGMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner Shri Maharaj Swarup was a Sorting Assistant in the Postal Department. He was subjected to a disciplinary enquiry in respect of two charges. The first charge says that he remained absent from duty frequently, abruptly and without information or without prior leave sanctioned. The second charge says that while he remained absent from duty frequently and without prior permission, he has exhibited lack of devotion to duty which is unbecoming of a Government employee. In the statement of imputations, information in regard to the incidents that justified the charges has been furnished. In respect of Article I, it is stated that on 30.6.84 when the duty hours of the petitioner were from 22-30 to 04-30 hours, he remained absent from duty and reported to duty only in the afternoon of 30.6.84 when he applied for earned leave for one day without mentioning any reason in support of his application for leave. The said leave was duly sanctioned. The other instances adverted to are in respect of 4.7.84 when he remained absent without information and he joined on 6.7.84 and submitted

his leave application. Again he was absent on 10.7.84 and 12.7.84 and submitted his applications for leave on 11.7.84 and 16.7.84 respectively. He did the same thing when he remained absent without prior permission on 17/18.5.84 and 24th and 29th May, 1984. It is not disputed that the absence from duty for all the aforesaid periods was covered by the orders of leave granted by the competent authority on applications being made for that purpose by the petitioner. About article II is furnished among others, statements showing the number of days on which he actually worked and the number of days he was absent on leave. In 53 months he remained absent from office for 219 days in addition to 75 days casual leave and 10 restricted holidays. It is, however, necessary to point out that the entire absence was also covered by leave granted to the petitioner on his applications made for that purpose from time to time. The Enquiry Officer held the petitioner guilty of both the charges and the Disciplinary Authority agreeing with the same imposed the penalty of reducing the pay of the petitioner by five stages from Rs. 300/- to Rs. 260/- in the pay scale of 260-480 for a period of three years. During this period, he was debarred from earning any increment of pay. On the expiry of the period of reduction, it was ordered that the penalty imposed will not have the effect of postponing the future increment of his pay. The said order was affirmed by the Appellate Authority vide its order dated 6.4.87. It is in this background that the petitioner has challenged the order of the Disciplinary Authority (Annexure-A1) dated 28.8.86 and that of the Appellate Authority (Annexure-A3) dated 6.4.87.

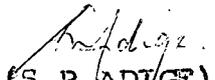
2. The principal contention of Shri Sant Lal, learned counsel appearing for the petitioner is that the petitioner cannot be held guilty of being in the habit of being absent frequently without prior intimation or permission, the competent authority having duly granted leave to the petitioner from time to time in respect of all the periods which are the subject matter of the charges levelled against the petitioner. It is not disputed that though the petitioner remained absent for different spells of time and at frequent intervals he did make applications for grant of leave in respect of those periods. Though the applications for that purpose were made most of the time after availing of the leave, the fact remains that the competent authority granted leave for all those periods. Shri Sant Lal submitted that if being absent without prior permission or making belated applications for grant of leave was considered as improper conduct on the part of the petitioner, the proper occasion to take that into account and to deal with the situation appropriately was when the competent authority dealt with the applications of the petitioner for grant of the leave. Shri P.P. Khurana, learned counsel appearing for the respondents submitted that that was the occasion when the competent authority which had power to sanction the leave could have taken this fact into account in exercising its discretion one way or the other in the matter of granting leave prayed for by the petitioner. The competent authority could have declined to grant leave on the ground that prior permission or intimation was not given or on the ground that the application was belated. When leave was granted without

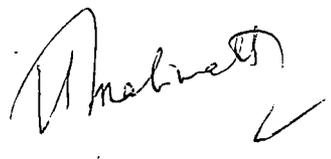
finding fault on the part of the petitioner on the ground that prior permission was not obtained or the application was belated, it is reasonable to draw an inference that the competent authority did not find the conduct of the petitioner at that time blame worthy. As on every occasion the competent authority in sanctioning leave without finding fault with the petitioner in any manner cannot now complain that he is frequently absenting himself and that his conduct is blame-worthy. If on each occasion the conduct of the petitioner was not blameworthy merely because such conduct was repetitive in character, no inference can be drawn to the effect that the petitioner habitually commits such an improper conduct. It is only if there is repetitiveness of improper conduct that an inference of habitual default or misconduct can be drawn. As the conduct of the petitioner on each and every occasion in obtaining leave was not recorded as blame-worthy, no inference of misconduct can be drawn.

3. We have, therefore, no hesitation in holding on consideration of the facts and the stand taken by both the parties ^{that} imposition of penalty on the petitioner cannot be sustained. In that view of the matter, we consider it unnecessary to examine the other contentions raised by the petitioner that the findings are perverse and the enquiry proceedings are vitiated on the ground that the attested copies of all the documents relied upon by the department have not been furnished or that the order is vitiated by malafide.

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4. For the reasons stated above, this application is allowed and the impugned orders of the Disciplinary Authority and the Appellate Authority (Annexure -A1 and A-3) are hereby quashed. The respondents are directed to grant all consequential reliefs flowing from this order to the petitioner within a period of four months from the date of receipt of copy of this order. No costs.


(S.R. ADIGE)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

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