

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 966/1988.

DATE OF DECISION: 5-6-1992.

Shri Laxmi Chand Sharma

....

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 Sant Singh, counsel for the applicant.  
Shri P.P. Khurana, counsel for the respondents.

JUDGMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as Heavy Vehicle Driver in Delhi Milk Scheme under the Ministry of Agriculture, New Delhi, and was removed from service vide order dated 21.1.1985 (Annexure A-2) passed by the Deputy General Manager, has assailed the order of his removal from service as also the order dated 13.2.1987 (Annexure A-3) passed by the Appellate Authority and the order dated 20.4.1988 (Annexure A-1) passed in the name of the President. He has prayed for the following reliefs: -

"(i) That the following orders of the Disciplinary Authority, Appellate Authority and the Reviewing Authority may be quashed and the applicant may be reinstated in service: -

(i) 4-34/82-Vig. dated 21-1-85  
by the Disciplinary Authority

(ii) 4-34/82-Vig. dated 13-2-87  
by the Appellate Authority

(iii) 17013/3/82-AVU dated 20-4-88  
by Reviewing Authority

(ii) That the applicant may be deemed to have continued in service as if no order of penalty was issued and he may be paid salary and allowance along with other dues for the entire period of removal from service as applicable under the rules.

(iii) That the period of absence from duty from 11.4.81 to 16.7.86 may be treated as on leave of the kind due and he may be paid leave salary as admissible to him.

(iv) That the Hon'ble Court may give any other relief as deemed fit in the interest of justice, with costs of suit."

2. The facts of the case, in brief, are that the applicant was appointed as Milk Van Driver in Delhi Milk Scheme with effect from 1.4.1963. His designation was later changed to Heavy Vehicle Driver. On 20-4-1981, he applied for grant of six months' leave with effect from 17-4-1981 on medical grounds. Vide letter dated 2-6-1981, he was directed to report to Civil Surgeon, Dr. Ram Manohar Lohia Hospital, New Delhi for medical check up immediately and to produce Medical Certificate from that Hospital before his leave could be granted. The applicant neither appeared before the Civil Surgeon of Dr. Ram Manohar Lohia Hospital, nor did he ever care to send any intimation to office about his absence from duty, as a result of which, finally, a charge-sheet dated 28.8.84 was sent to him at his last known address by Registered Post, which was received back undelivered with the remarks of the postal authorities that the applicant was out of India. In the meanwhile, the respondents made an attempt to find out the whereabouts of the applicant with the assistance of the police authorities also, and even the police authorities vide their letter dated 18.6.84 categorically informed that the family of the applicant was residing at the address on which a number of communications had been mailed to the applicant; but on the basis of their enquiry, the police authorities also confirmed that the applicant was not residing in India and had gone to Iraq. In the circumstances, the Disciplinary Authority, having satisfied itself that it will not be reasonably practicable to hold the inquiry under CCS (CCA) Rules, 1965, as the address of the applicant in Iraq was not available, passed Order dated 21.1.1985 by which a penalty of Removal from service with immediate effect was imposed on the applicant.

The applicant filed an appeal dated 12.9.1986 (Annexure A-5) to the Chairman, Delhi Milk Scheme, New Delhi, which was rejected by the Appellate Authority vide order dated 13.2.1987 (Annexure A-3), which is a speaking order. The Revision Petition preferred by the applicant was also rejected vide Order dated 20.4.1988 (Annexure A-1). After exhausting the aforesaid remedies, the applicant filed this O.A. on 24.5.1988.

3. The respondents have contested the O.A. by filing a counter-affidavit, to which a rejoinder was also filed by the applicant on 31.10.1988. When the case was ripe for oral arguments, on 11.12.1991, counsel for the applicant filed M.P. No. 4128/1991 informing that the applicant had expired on 14.9.1991, leaving behind his widow, two sons and two daughters and that the name of the widow Smt. Rukmani Devi be brought on record as all the other legal heirs of the deceased applicant had filed their affidavits giving 'No Objection' to the substitution of the name of Smt. Rukmani Devi in the instant O.A. The said M.P. was allowed by a Bench of this Tribunal vide order dated 28.1.92.

4. We have gone through the record of the case and also heard the learned counsel for the applicant. On 10.3.92, when the learned counsel for the applicant concluded his oral submissions, learned counsel for the respondents was present. However, pursuant to his request for adjournment for production of the relevant departmental file as also for making oral submissions, the case was listed on 13.3.1992. On that date, none appeared for the respondents, and the case was adjourned to 24.4.1992. On 24.4.1992, Shri J.C. Madan, proxy counsel for counsel for the respondents, appeared but only to pray for a short adjournment. The case was accordingly adjourned to 22.5.1992 with a clear order that no further adjournment will be allowed. On 22.5.1992, none was present for the respondents and, therefore, the arguments were taken as closed.

5. The grounds taken in the O.A. are that the order of removal from service without holding an inquiry is violative of

Article 311 of the Constitution; that the disciplinary authority erred in working on an assumption that it was not practicable to hold an inquiry; that the allegation made in the impugned penalty order that the applicant had been absent from duty without prior permission of the competent authority is factually wrong as he had proceeded on leave after submitting an application for long leave on 11.4.1981 which was sanctioned by the competent authority sometime on 20.4.1981; that he was liable to disciplinary action only if a charge of wilful absence was levelled against him; that there was no evidence to show that he had gone abroad and that the assumption of the disciplinary authority was totally based upon surmises and conjectures; and that the provisions of Rule 14 of the CCS (CCA) Rules, 1965 have been violated. It is also pleaded that the penalty imposed is much in disproportion to the socalled charges against him.

6. The stand taken by the respondents in their reply is that no leave had been sanctioned to the applicant and, thus, he was unauthorisedly absent; that the communications sent to the applicant remained undelivered and the information obtained by them showed that the applicant had gone abroad. It is in these circumstances that the respondents had concluded that it was not reasonably practicable to hold an inquiry under the CCS (CCA) Rules, 1965.

7. We have given our careful consideration to the rival contentions of the parties. It is clear from the material on record that the application of the applicant for leave for a period of six months with effect from 17.4.1981 was not sanctioned and vide Memo dated 2-6-1981, he was asked to report to Civil Surgeon, Dr. Ram Manohar Lohia Hospital, New Delhi for medical check up and for producing medical certificate to enable the respondents to consider the application for leave. The applicant neither appeared before the Civil Surgeon, nor did he produce any medical certificate from him. Further, there is nothing on record to show that he applied for any subsequent leave thereafter. From para 3 of his appeal dated 12-9-1986

(Annexure A-5), it is clear that as per his own statement therein, he reported back for duty only on 16.7.1986. The medical certificate produced by the applicant subsequently is dated 10.10.84 (Annexure A-4) and it shows that he was admitted to Rana Nursing Home on 29.9.84 and was discharged on 10.10.84 after operation on 1.10.84. Thus, it is clear beyond any doubt that the applicant had not been able to establish that he was really ill during the entire period of his absence from April, 1981 till 15.7.1986 when he is said to have reported for duty. It is also clear that apart from the application for leave for a period of six months from 17.4.1981, no other application for leave was given by him, nor any intimation was sent by him to the effect that he was ill. Accordingly, the unauthorised absence of the applicant cannot be disputed.

8. It is true that in accordance with clause 2(b) of Article 311 of the Constitution of India, an employee holding a civil post under the Union, can be dismissed or removed from service or reduced in rank without holding an inquiry and without giving to the concerned employee a reasonable opportunity of being heard in respect of the charges against him if the competent authority is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to hold such an inquiry. It is also true that in accordance with clause (3) of Article 311 of the Constitution of India, the decision of the competent authority on whether it is reasonably practicable to hold such inquiry or not is final. However, as held by the Hon'ble Supreme Court in the case of UNION OF INDIA v. TULSI RAM PATEL & OTHERS (1985 Suppl. (2) SCR 131), two conditions must be satisfied, viz., (1) there must exist a situation which renders holding of any inquiry "not reasonably practicable"; and (2) the disciplinary authority must record in writing its reasons in support of its satisfaction. As regards the second condition, the respondents did not produce the relevant record to show that the disciplinary

authority had recorded in writing the reasons in support of its satisfaction even though more than enough opportunities were given for this purpose. In regard to the first condition, the decision of the competent authority ~~if~~ assailed in a court of law, it is incumbent that the competent authority lays before the court the circumstances which led it to the conclusion that it was not practicable to hold an inquiry in the case. The only ground and which is also mentioned in the impugned order of removal from service of the applicant is that the registered letter sent to the applicant at his home address was received back undelivered with the remarks "Addressee left India" and that the enquiries made by the police revealed that whereas the family members of the applicant were residing at the address on which the communications were sent to him, the applicant himself had gone abroad. In other words, the only ground for not holding the inquiry is that the Memorandum of Charges could not be delivered to the applicant and that he was not available to participate in the inquiry. Even in these circumstances, the respondents were duty bound, in terms of the scheme in the CCS (CCA) Rules, 1965 to hold an ex parte inquiry. Such a view was taken in the case of P.D. JOSHI v. UNION OF INDIA AND OTHERS (1990 13 ATC 172), A. SUBBIYAN v. THE SUB-DIVISIONAL OFFICER, TELEPHONES, PONDICHERRY (SLJ 1991 (3)(CAT) 535), and R. RAGHAVAN v. DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, TRIVANDRUM AND OTHERS (1989) 10 ATC 195) and we with respect agree with the view taken on this point in these cases. It is, therefore, to be held that on the facts and in the circumstances of the case, the action of the respondents in resorting to the power vested in the disciplinary authority under sub-rule (ii) of Rule 19 of the CCS (CCA) Rules, 1965 cannot be sustained.

9. In the normal circumstances, after quashing the impugned orders, we would have directed for holding an inquiry in accordance with the rules. However, in this case, as already stated above, the applicant is no more and this application is

being pursued by his legal heirs. From the verification by the applicant in the O.A., which was filed in 1983, it appears that at that time, he was 50 years of age. If so, he would not have reached the age of superannuation by 14.9.1991 when he is said to have died. Accordingly, the question of his reinstatement in service does not arise.

10. In view of the foregoing discussion, the O.A. is partly allowed with the following directions: -

- (1) The impugned order dated 21-1-85 passed by the Disciplinary Authority, the order dated 13-2-87 passed by the Appellate Authority and the order dated 20-4-88 passed by the Reviewing Authority for removing the applicant from service and for rejecting his appeal and revision petition respectively are hereby quashed and set aside. The applicant will be deemed to have been reinstated in service with effect from 17.7.1986 as he himself admitted that he was absent from duty from 11.4.81 to 16.7.86, as is clear from the relief prayed for in sub-para (iii) of para 9 of the O.A.
- (2) ~~As~~ <sup>(The applicant has</sup> prayed for ~~by the~~ <sup>the</sup> applicant that the period of his absence from duty from 11.4.81 to 16.7.86 may be treated as on leave of the kind due and he may be paid leave salary as admissible to him, <sup>in</sup> the facts and in the circumstances of the case, we grant this relief and accordingly direct the respondents to grant to the applicant leave of the kind due, including leave without pay, for the period from 11.4.81 to 16.7.86.
- (3) On the basis of the above directions, the legal heirs of the applicant shall be entitled to retirement benefits, in accordance with rules.

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11. The above directions shall be complied with within a period of three months from the date of receipt of a copy of this judgment by the respondents. No order as to costs.

*for mince*  
(J.P. SHARMA) S1617  
MEMBER (J)

*Car 5/6/92*  
(P.C. JAIN)  
MEMBER (A)

5.6.1992.