CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1253/88

New Delhi this 16th day of September, 1994.

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

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Shri V.K.Gulati,
s/o Shri H.K.Gulati,
Technical Asstt.(Shipping)Deptt.
of Agriculture and Co-operation,
New Delhi.
.....Applicant.

By Advocate Shri R.K.Kamal

Versus

Union of India, rep.by
Secretary to Govt,
Ministry of Agriculture,
New Delhi.

2. Joint Secretary,
Agricultural Ministry,
New Delhi. .....Respondents.

By Advocate Shri Madhav Panikar.

JUDGMENT

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

In this application, Shri V.K.Gulati, former Senior Technical Assistant (Shipping), Deptt. of Agriculture and Co-operation, Govt. of India, has impugned the penalty order dated 21.1.87 (Annexure-V) removing him from service which has been upheld by the appellate order dated 8.7.87 (Annexure-VI).

2. From the materials on record, it appears that the applicant was proceeded against departmentally on the following charges:-

i) Unauthorised absence from duty for 132 days during January, 1983 to June, 1984.

ii) Late coming to office on several occasions without prior santion or permission of the competent authority

21

during the period June, 1983 to June, 1984.

iii) Coming to office on 12.3.84 and 13.3.84 but not doing any office-work but typing personal matters and misusing the office typewriter.

3. The inquiry officer in his report dated 30.6.1986 (Annex.-IV) held that the applicant had unauthorisedly absented himself from duty on 52 days during the period January, 1983 to June, 1984 and had come to office late as many as on 72 occasions during the period from June, 1983 to June, 1984. The charge of misuse of the typewriter was not proved. Accepting the inquiry officer's findings, the disciplinary authority passed the impugned penalty order which has been upheld in appeal against which the applicant has now come before the Tribunal.

4. The first ground taken by the applicant is that the punishment of removal from service on mere charge of "absenting without proper leave application" and "late coming" is ex facie arbitrary, unreasonable, gross and disproportionate and thus violative of Article 14 and 16 of the Constitution. A perusal of this ground makes it clear that the applicant has not denied the charges, but his attack is against the quantum of punishment. In Union of India vs. Parma Nanda : AIR 1989 SC 1185, it has been held that if there has been an inquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. Hence, this ground fails.

22

5. The next ground taken is that the delay in the conduct of the proceedings resulted in denial of reasonable opportunity to the applicant to plead his defence. This argument has no force, because, firstly, the charge relates to the period January, 1983 to June, 1984, and the inquiry was held between December, 1985 and February, 1986, which cannot be said to be a delay of such magnitude where the applicant could not remember his acts of alleged misconduct. Moreover, these alleged unauthorised absence and late coming were not isolated instances, but were frequent in number, and some of them were of considerable duration in time.

6. The next argument taken is that the findings of the I.O. are perverse. The applicant has nowhere substantiated this contention. The I.O. after conducting a detailed inquiry, in which the applicant also participated, has concluded that during the relevant period the applicant absented himself from duty on 52 days and came late on as many as 72 occasions. The applicant's only defence is that he had sent leave applications in respect of these absences and/or informed the authorities that he would be coming late, as he had to look after his aged parents who were chronically ill. The I.O. in his findings has pointed out, and it requires no reiteration, that mere submission of leave applications does not mean that the leave has been sanctioned, and the Government servant can choose to absent himself from duty by anticipating sanction. The appellate authority has correctly pointed out that leave is not a matter of right, but a privilege which has specifically to be sanctioned by the competent

authority and in the absence of sanction thereof, leave applied for cannot be taken as approved. Hence, this ground also has no merit.

7. The next ground taken is that the inquiry officer has been inconsistent in his findings. It is alleged that in spite of the applicant not signing the attendance register on a few dates, the inquiry officer held that the applicant had actually attended the office, and at the same time the I.O. had relied on entries in the very same attendance register to hold that the applicant came late on certain dates. The purpose of the attendance register is to mark the date and time on which the Government servant attends duty and if the I.O. did rely on the entries in the attendance register to conclude that the applicant had come late to office on different dates, it cannot be said that his finding was vitiated in any way. Hence, this ground also fails.

8. In the rejoinder, two additional grounds have been advanced by the applicant. Under the Code of Civil Procedure, these do not form part of the pleadings and it would be open to us to reject them summarily, but as they were raised by the applicant's counsel during hearing, we think it fit to discuss them.

The first additional ground taken by the applicant is that relevant office notings in the applicant's personal file with respect to the listed documents had been sought for at the time of commencement of the departmental proceedings which were denied to the applicant, which has prejudiced him. It is asserted that the production of these documents would have disproved the charges against him. In paragraph 3.2 of the I.O.'s

report it has been stated that the defence assistant had requested to make available the said office notings, but as the additional documents required were not specified, and their relevancy not indicated, the request was rejected. The second argument advanced in the rejoinder is that the I.O. refused to permit the Director (Admn.) to appear as a defence witness, who alone would have thrown light on the unavoidable circumstances under which the leave applications had been submitted. In this connection, Shri Kamal, also cited ruling in S. K. Jain vs. Union of India : ATR 1990 (2) CAT 255, in paragraph 17 of which it was held that the inquiry officer had proceeded in that case, contrary to the established legal position and the relevant instructions in regard to the supply of documents and summoning witnesses.

9. As stated above, the applicant's defence is that he was compelled to absent himself from duty and/or come late to office, as he had to look after his aged parents who were chronically ill, and that he had filed leave applications and/or informed the office about his coming late. The respondents have not accepted this reason advanced by the applicant and have correctly observed that mere submission of a leave application does not mean that the leave has been sanctioned, and a Government servant cannot absent himself from duty by anticipating sanction. In the absence of sanction thereof, leave applied for cannot be taken as approved. Neither the production of the office notings sought for by the applicant, nor the production of the Director (Admn.) as a defence witness would change this incontrovertible position. It is also significant that the applicant did not press this ground in his appeal petition.

Under the circumstances, even if the office notings were not produced, or the Director (Admn.) was not summoned as a defence witness, no prejudice can be said to have been caused to the applicant. In Managing Director, ECIL Hyderabad & Ors. vs. B. Karunakar & Ors : (1993) 25 ATC 704 SC, it has been held, "The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact prejudice has been caused to the employee or not..... has to be considered on the facts and circumstances of each case. Where, therefore, ...no different consequences would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

10. In the light of the facts and circumstances of this, and in the background of the ruling cited above we see no reason to interfere with the impugned order. This application fails and is accordingly dismissed. No costs.

(Mrs. Lakshmi Swaminathan)
Member (J)

(S. R. Adige)
Member (A)

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