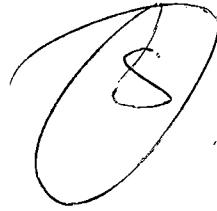


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 210 of 1986
T.A. No.



DATE OF DECISION 11.3.1987

Shri Shyam Sarup Singh

Petitioner

Advocate for the Petitioner(s)

Versus

Shri Rajinder Singh Mander & other Respondent

Shri P.H. Ramachandani

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ch. Ramakrishna Rao, Member (J)

The Hon'ble Mr. P. Srinivasan, Member (A)

(Judgment delivered by Shri P. Srinivasan, Member (A))

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 ?

JUDGMENT

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In this application the prayer lists nine items which are rather vague & prolix. However, the grievance of the applicant is, in substance primarily against three orders (i) dated 25.7.1984 by which the disciplinary authority found him guilty of certain charges and imposed the penalty of Censure and stoppage of increment for one year, (ii) ~~the exparakkarakar~~ dated 2.3.1985 in which the finding of guilt was upheld but the penalty was reduced to stoppage of increment for six months only and (iii) order dated 29.2.1984 by which certain persons junior to the applicant were promoted as Assistant Audit Officers but not the applicant.

2. The facts giving rise to this application may now be briefly stated. In November 1981 the applicant was working as Section Officer under the Director of Audit, Northern Railway at Delhi. He was a member of an Audit team whose job it was to conduct audit of accounts of the bigger stations in the Northern Railway. The team had to be constantly on tour in order to conduct such audit. The applicant had to go on tour to Ludhiana from 4.12.81 to conduct audit at the Ludhiana Station alongwith his immediate superior ~~XXXXXX~~ the Branch Officer. The applicant was also given a railway pass to undertake the trip to Ludhiana. However, he did not go to Ludhiana but went to his native village in Bijnor district in connection with some family matters. He did not report for duty till 31.12.81. He had not applied for leave in advance but according to him he had informed his immediate superior that he would be away ~~XXXX~~ for a few days and thereafter ~~XXXXXX~~ join the audit party at Ludhiana. As it happened he did not return to duty after a few days and when he reported for

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or Branch
Officer) /

duty on 1.1.1982 he did not apply for leave. According to the applicant he waited for his immediate superior viz., the Audit Officer to return from leave before he made his application. On 5.3.1982 he applied for leave for the period 4.12.1981 to 31.12.1981 on the ground that he had been unexpectedly held up by some family problems. The leave was rejected by the Deputy Director of Audit and thereupon pay and allowances already disbursed to him in respect of the period 4.12.1981 to 31.12.1981 were recovered. His absence from duty during this period was treated as unauthorised and hence/recovery. Thereafter on 11.7.1983 the Director of Audit, Northern Railway, New Delhi, issued a Memorandum to the applicant stating that it was proposed to take action against him under Rule 16 of the CCS (CC&A) Rules 1965. The charges in respect of which action was to be taken were enclosed with this letter. The applicant was asked to submit his representation within 10 days of receipt of the Memorandum. The charges in the main related to absence from duty on three occasions by the applicant which was alleged to be without authority and one of those periods was the period mentioned earlier ie., from 4.12.1981 to 31.12.1981. The applicant gave his representation within 10 days of receipt of the Memorandum. However, for some time no further action was taken. It was only on 8.4.1984 that an Inquiry Officer was appointed. The Inquiry Officer conducted the inquiry and gave his report on 25.7.1984. The disciplinary authority viz. the Director of Audit, Northern Railway, thereupon passed an order on the same day holding that it had been proved that the applicant had remained absent from 4.12.1981 to 31.12.1981 without proper sanction and that he had deliberately given the application for leave late. The disciplinary authority imposing the penalty of withholding increment for one year

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without cumulative effect. In respect of another charge
namely absence from duty from 11.1.1982 to 16.1.1982

held to be without approval which was also proved the penalty of
censure was imposed on the applicant. The applicant filed
an appeal against this order to the Deputy Controller and
Auditor General who was the appellate authority. The latter
passed an order on 2.3.1985 upholding the finding of guilt
in respect of unauthorised absence between 4.12.1981 to
31.12.1981 but reducing the penalty to withholding the
increment for six months. The applicant was absolved of
the other charge of absence from 11.1.82 to 16.1.82. There-
fore, the additional penalty of censure was cancelled.
While the disciplinary proceedings were pending promotions
to the higher post of Assistant Audit Officer opened up sometime
in February/March 1984. Promotion to these posts were on
the basis of seniority cum fitness. On 1.3.1984 orders were
passed promoting a number of persons to these posts but
leaving out the applicant. The applicant is aggrieved with
the orders imposing penalty, the appellate order upholding
finding of guilt of one charge and the order promoting his
juniors to the posts of Assistant Audit Officer leaving him
out.

3. The applicant argued his case himself. He contended
that he had been in service for over 35 years and had an
unblemished record. He had to proceed to his native place
early in December 1981 to attend to some family problems
which he thought would be solved quickly. He had informed
his immediate superior officer that he would come back quickly
in order to carry out the audit in Ludhiana. In fact his

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tour to Ludhiana was fixed with his consent because he had a brother staying there and he could accomplish both his official duties and family obligations but unexpectedly he had to proceed to his village and when he went there he found he could not return as early as he expected. He could come back only on 1.1.1982. He did not apply for leave immediately because normally he had to route his leave application through his immediate superior officer who was at the time out of station. He felt that the next superior officer (the Deputy Director of Audit) was not well disposed towards him and therefore he did not wish to submit the application for leave directly to him. His immediate superior officer returned to station on 1.3.1982 and immediately he sent his application for leave. The applicant alleged that the Deputy Director of Audit had some animus against him and therefore rejected his application for leave and ordered recovery of pay and allowance for the period of absence. Not content with this the Deputy Director initiated disciplinary proceedings against him. No action was taken after issuing the Memorandum on 11.7.1983 till 8.4.1984 when the Inquiry Officer was appointed. The authorities took the view that since disciplinary proceedings were pending he could not be promoted on 1.3.1984 to the next higher grade though promotion to this grade was only on the basis of seniority cum fitness. According to the applicant initiation of disciplinary proceedings commenced only with the appointment of the Inquiry Officer and so on the date of promotion his name should not have been put in a sealed cover denying him promotion. He was eventually promoted on 16.9.1985 to the post of Assistant Audit Officer and continues to hold that post till date. By being denied promotion earlier he had suffered loss of emoluments and prestige. His pensionary benefits would be adversely affected and so also his chances of employment after retirement from service.

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4. Shri P.H. Ramachandani, learned counsel for Respondents refuted the contention of the applicant. The applicant was not right when he submitted that before he proceeded to his native village he had orally informed his superior. On the contrary his immediate superior at that time had written a letter to the Deputy Director of Audit stating that the applicant had not taken his oral permission before proceeding to his native place. Even according to the applicant's own admission he was engaged in important audit work in very big stations. When he was asked to proceed to Ludhiana for audit, he had suddenly disappeared from the scene and the authorities concerned had no idea where he had gone. Even after returning to duty he did not immediately apply for leave as a responsible officer should have. This was probably because he felt that nobody ~~may~~ might have noticed his absence. It was only in March 1982 that after realising that he might get into trouble that he applied for leave. This conduct of leaving station without permission when he was deputed to carry out ~~important~~ audit work, applying for leave long after he returned to station was highly objectionable. ^{and v)} ~~and these~~ facts as such are not disputed by the applicant. On the other hand the authorities concerned had been very considerate in imposing the minimum penalty of withholding increments for six months. There was no justification for any sympathy merely because there had been no instance in the past prior to 1982 of any misconduct by the applicant.

5. We have considered the rival contentions very carefully. The basic facts which are ^{not} in dispute are that the applicant proceeded early in December 1981 out of station, where he was working, without any written intimation or application for leave and that he was ~~so~~ absent from 4.12.1981 to 31.12.1981 and further even after returning to station on 31.12.1981 the applicant did not make any application for leave for a ~~total~~ ^{period of} two months. This was indeed a lapse on the part of

P. H. Ramachandani

the applicant. Even if he had to stay back in his village longer than he expected, there was nothing preventing him from sending a letter explaining why he could not attend office. His explanation that he did not want to apply for leave to the Deputy Director directly cannot be accepted as a justification for the delay in applying for leave. Whatever be the explanation of the applicant for having to stay away from duty beyond ^{He could be expected} he was certainly remiss in not giving timely intimation or applying for leave at least immediately after coming back to Delhi. His allegation of mala fide is neither here nor there because the facts clearly indicate that he did not act with a full sense of responsibility as he should have after so many years of experience. We agree with the learned counsel for Respondents that the Respondents have been considerate to him in imposing a very minor penalty of stoppage of increment for only six months. The applicant himself explained that he had already reached the maximum of the scale and no further increment was due to him. Thus unintentionally even the penalty that was imposed did not in any way affect the pay and allowances of the applicant. Moreover in matters relating to disciplinary proceedings and imposition of penalty the role of this Tribunal is limited. If there was evidence on the basis of which the authorities below could arrive at a finding of guilt, we cannot go into the sufficiency of the evidence. We can interfere only if there was no evidence or the finding was based on irrelevant evidence or was perverse or arbitrary. The statement of facts set out earlier clearly shows that there was evidence on which the finding of guilt could be arrived. ^{at} We do not propose to substitute our opinion for that of the disciplinary authority or of the appellate authority. So far as the penalty imposed is concerned it cannot certainly be considered disproportionate to the charge levelled against the applicant. We, therefore, see no reason to interfere with these orders.

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6. So far as the promotion to the next higher grade is concerned we are satisfied that on the date of promotion disciplinary proceedings were in progress and charges had been communicated to the applicant and the intention to commence proceedings had already been intimated to him. In these circumstances the adoption of the sealed cover procedure, to our mind, seem perfectly in order. We also find that even though a punishment was finally imposed on the applicant in the appellate order dated 2.3.1985 he was promoted to the higher grade within six months thereof i.e., from 16.9.1985 and this does not certainly indicate mala fides towards the applicant by his superior officers. We, therefore, find no merits in the applicant's grievance against him not having been promoted on 1.3.1985.

7. In the result the application is dismissed. Parties will bear their own costs.

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
Member (J)

P. Srinivasan
(P. Srinivasan)
Member (A)

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