

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1010 of 1986. 199
TCA/100

DATE OF DECISION 31.7.1991.

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| <u>J.K. KAUL</u> | <u>Petitioner</u> Applicant |
| <u>Shri L.K. Garg</u> | Advocate for the <u>Petitioner(s)</u> |
| Versus | Applicant |
| <u>Union of India & Others</u> | Respondents |
| <u>Shri M.L. Verma</u> | Advocate for the Respondent(s) |

CORAM

The Hon'ble Mr. JUSTICE U.C. SRIVASTAVA, VICE CHAIRMAN

The Hon'ble Mr. I.P. GUPTA, ADMINISTRATIVE 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 ?

JUDGEMENT

(Delivered by Hon'ble Mr. Justice
U.C. Srivastava, Vice Chairman)

The applicant who was initially appointed as Upper Division Clerk rose to the post of Supervisor in the Jt. Director of Audit Defence Services, Central Command, Meerut has approached this Tribunal praying that a direction may be issued to the respondents not to treat him as unauthorisedly absent from 6.7.83 to 9.7.83 and he may be treated as continuing in service without treating the period 6.7.83 to 9.7.83 as break in service and if any entry to this effect is done in the service book, the same may be ordered to be removed, and the respondents also be directed to pay back the amount of salaries Rs.261.05p. deducted along with interest @ 18% p.a. from 31.10.83, and he could also be given all the

benefits which he has been or would be deprived of on account
of his service
of being treated as so-called break and Dies Non in the matter
of his service, provident fund, gratuity, promotion, etc.

2. The applicant who has worked as Supervisor started his service career in the post of U.D.C. in the office of the Director of Audit Defence Services, New Delhi. According to the applicant, he was a patient of Tuber-culosis and was on Medical Leave from 23.5.83 to 2.7.83. He resumed his duty on 4.7.83, i.e., on Monday and on that very day, he was served with an order to join at Shahjahanpur. As the applicant was very weak and had not recovered and as he was more than 51½ years, he applied for 3 days' Casual Leave from 6.7.83 to 8.7.83 and one day transit on 9.7.83 and according to him as on 6.7.83, 9 days' Casual Leave still was in his leave account. He joined M.E.S. office at Shahjahanpur on 11.7.83 as 10th was Sunday. After one and half months, he had returned and was immediately required to go to Shahjahanpur. The applicant applied for 3 days Casual Leave to look after his ailing wife. The applicant was never informed that his leave application from 6th to 8th July, 1983 has been rejected. After 3 months, he was served with an order dated 19.10.83 for the first time informing him that his absence from 6.7.83 to 9.7.83 has been treated as unauthorised and application for casual leave dated 6.7.83 was disposed of on 19.10.83. The applicant made a representation against the same. He received another letter dated 31.10.83 to the same effect as indicated earlier. The applicant's salary for 4 days' was also deducted. He made a representation against the same. Now, according to the applicant, respondent no.4 was under the influence and direction of the then respondent no.3 who was annoyed and deadly against the applicant. The applicant made an adverse entry against one Shri Bhagirath, Auditor who was very close to Mr. H.R. Bihagara, the then Joint Director of Audit Defence Services, Central Command, Meerut. He was threatened by the said Joint

Director. As the applicant refused to bend down, he was subjected to harassment. Thereafter, the applicant filed a writ petition in the Allahabad High Court which was dismissed with certain observations. According to him, the period from 6.7.83 to 9.7.83 which has been treated as unauthorised absence would adversely affect his service career and his pensionary benefits and that is why he has approached this Tribunal.

2. The respondents have wrongly taken a plea that application is barred by time as the applicant has been agitating for his claim from the very beginning and has failed to get any relief from the Department, he has approached this Tribunal. On merits, it has been stated that the applicant initially applied for Earned Leave on 13.5.83 on the ground of pressing domestic problems which was sanctioned. However, he applied for Earned Leave from 16.5.83 to 18.5.83 to consult a physician for his painful right knee joint. On 19.5.83, he applied for commuted leave for 15 days from 19.5.83 to 2.6.83. Further, he sent a medical certificate dated 2.6.83 from a private doctor declaring him fit to resume duties and it was done to get the commuted leave for the aforesaid period regularised. Now, the details of the leave taken have also been mentioned in the reply, according to which, the applicant was not suffering from Tuberculosis and it was doubtful that he was suffering from rheumatic pain. Despite this lapse, the period of absence from 16.5.83 to 2.7.83 was regularised. It has been stated that on 6.7.83, respondent no.3 told the applicant that no leave would be granted and he should proceed on tour immediately. Despite this, the applicant sent an application for Casual Leave from 6.7.83 to 8.7.83 for private work and this was done for disobeying the order. The application was thus rejected. The period of 6.7.83 to 9.7.83 was treated as 'Dies Non' by the competent authority for which

no salary was paid to him. It has been stated by the respondents that the applicant had worked against public interest by enjoying the said leave. Now, the applicant was transferred to Shahjahanpur to join duty and he took 3 days' Casual Leave and denial of the fact that there is no casual leave in his leave account is not justified. Leave as due, whatever be its type, could have been granted and consequential rejection of the applicant is not justified.

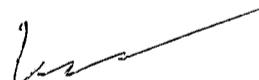
3. In the circumstances, the application deserves to be allowed and it is accordingly allowed and the respondents are directed to treat the period from 6.7.83 to 9.7.83 as continuing in service and not to treat it as any break in service. Respondents are also directed to pay back the amount of salaries which was deducted along with interest @ 12% p.a. from 31.10.83 within a period of three months and as there was no break in service, the respondents are directed to recalculate pension, P.F., gratuity, etc. of the applicant within a period of 3 months and the difference may be paid to him.

With these observations, the application is disposed of with no order as to costs.

I. P. Gupta

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(I.P.GUPTA)
MEMBER(A)
31.7.91.



(U.C. SRIVASTAVA)
VICE CHAIRMAN
31.7.91.