

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI. 7

Regn. No. O.A. 1349/1987. DATE OF DECISION: 1-8-1991.

Shri Kishan Applicant.

V/s.

Union of India Respondents.

CORAM: Hon'ble Mr. G. Sreedharan Nair, Vice Chairman (J).
Hon'ble Mr. S. Gurusankaran, Member (A).

Shri R.L. Sethi, counsel for the Applicant.
Mrs. Raj Kumari Chopra, counsel for the Respondents.

G. SREEDHARAN NAIR:

JUDGMENT

The applicant, a Labour 'B' Grade, Ordnance Factory, Muradnagar, was proceeded against for alleged gross misconduct. The imputation was that he unauthorisedly absented himself from duty with effect from 6.2.1984 to 4.6.1984. A Memorandum of Charges was issued against him on 14.6.1984. The applicant submitted his reply wherein he stated that as he had to look after his wife, who was suffering from Tuberculosis, he could not attend the office during the period in question, and pointing out that he had sent two applications for leave under Certificate of Posting. An inquiry was conducted. The Inquiry Officer, on the ground of the absence of the copies of the letters of intimation to the Factory held that the charge of unauthorised absence is proved. The disciplinary authority merely accepted the report of the Inquiry Officer and imposed upon the applicant the penalty of Removal from service. The applicant alleges that though an appeal was filed on 10.4.1986, despite five reminders, the same has not been disposed of. He prays for quashing the order dated 8.3.1986, under which the penalty has been imposed and for treating his service as continuous with all consequential benefits. It is urged that the impugned order has been passed in a mechanical way without application of mind and the report of the Inquiry Officer is illogical and illegal.

2. A reply has been filed by the respondents, wherein it is stated that the penalty was duly imposed upon the

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applicant in accordance with law and that it does not require any interference.

3. At the time of hearing, counsel of the applicant submitted that since copy of the report of the Inquiry Officer was not furnished to the applicant before the disciplinary authority imposed the order of penalty, there has been denial of reasonable opportunity and, as such, the order of penalty cannot be sustained. This point was met by counsel of respondents, who pointed out that the applicant being a civilian employee in Defence Services, is not entitled to the protection of clause (2) of Article 311 of the Constitution of India and, as such, this plea is not available to him. She placed reliance on the decision of a Division Bench of this Tribunal on which one of us (Shri G. Sreedharan Nair) was a member in KHUSHAL SINGH Vs. UNION OF INDIA (O.A. 244 of 1989 & T.A. No.10 of 1990) decided on 7.6.1991. Following the above decision, we repel the attack against the impugned order on the ground of denial of reasonable opportunity.

4. However, the applicant is on firm ground regarding his plea that the report of the Inquiry Officer is illogical and perverse. It may be stated that the defence of the applicant was that during the relevant period, he was attending to his ailing wife who was confined to the Hospital as she was suffering from T.B. The applicant has also urged that he had sent two intimations to the Factory during that period informing the reasons for the absence and that they were sent under Certificate of Posting. In the report of the Inquiry Officer, he has clearly held that "it is proved that wife of Shri Shri Ki shan, T.No.1575/2713/MBM Section, Lab 'B' Gr. was suffering from TB and was being treated at District Hospital, Ghaziabad. In order to attend her, Shri Shri Kishan remained absent from factory w.e.f. 6.2.84 to 5.6.84. " He had also held about the truth of the two intimations stated to have been sent by the applicant to the factory, but observing that the carbon copies of those letters of intimation are not available,

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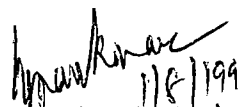
it was held that the charge of unauthorised absence stands proved. Ex-facie, the conclusion that the charge of unauthorised absence stands proved, is perverse as it does not at all follow from the earlier conclusion arrived at by the Inquiry Officer.

5. The disciplinary authority has merely accepted the findings of the Inquiry Officer without contributing anything of his own.

6. In view of the above, the order of the disciplinary authority imposing the penalty of removal from service on the applicant cannot be sustained in law. It is accordingly quashed. The applicant shall be reinstated in service forthwith. The intervening period shall be treated as duty for all purposes except for salary and allowances.

7. Before parting with this case, it is to be pointed out that from the order of the disciplinary authority, the applicant had submitted an appeal in time, on 10.4.1986, but till the filing of this application in September, 1987, no order was passed thereon. The applicant has alleged that he had sent five reminders. It is seen that immediately after filing of the application, on 30.10.1987, an order had been passed dismissing the appeal holding that the findings of the disciplinary authority are justified and penalty imposed is adequate. In view of the conclusion that we have arrived at, the order of the appellate authority cannot be sustained and the same is also hereby quashed.

8. The application is disposed of as above.


(S. GURUSANKARAN)
Member (A)


(G. SREEBHARAN NAIR)
Vice Chairman (J)

1.8.1991.