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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1420
T.A. No.

198 7

DATE OF DECISION 23.2.1990

V.K. Anand

Petitioner

Mr. M.D. Goel

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Mr. P.H. Ramchandani

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G. Sreedharan Nair, V.C.

The Hon'ble Mr. P.C. Jain, M(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? S
4. Whether it needs to be circulated to other Benches of the Tribunal? 23/2

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Registration No.1420 of 1987

Date of decision 23.2.1990.

V.K. Anand ..

Applicant

- versus -

The Union of India and others..

Respondents

CORAM:

Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

Hon'ble Shri P.C. Jain, Member(Administrative)

Counsel for the applicant : Mr. M.D. Goel.

Counsel for the respondents : Mr. P.H. Ramchandani.

ORDER

(Passed by Hon'ble Shri G.Sreedharan Nair, Vice-Chairman):-

The applicant was a permanent Accounts Clerk in the office of the fourth respondent, the Controller of Defence Accounts. He was proceeded against by the issue of a memorandum of charges for lack of devotion to duty and acting in a manner unbecoming of a Government servant. The imputation was that he failed to receive the official communication sent to him regarding his transfer to Bikaner by the order dated 1.4.1982. It was also alleged that he had absented himself from duty unauthorisedly with effect from 10.4.1982 without any report or proper authority and refused to accept the official communications directing him to report for duty. As a result of the enquiry, the disciplinary authority imposed upon the applicant the penalty of removal from service with effect from 18.2.1984. The applicant prays for quashing the said order. Since the appeal preferred by him against the said order was rejected

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by the appellate authority, the order of the appellate authority is also sought to be quashed. Consequential benefits are also claimed by the applicant.

2. It is urged that the applicant fell sick on 3.4.1984²⁰⁰ and recovered from his sickness only on 29.6.1986 and during this period he was examined and treated by various Doctors and medical practitioners. It is further stated that certificates for grant of leave of absence were forwarded to the fourth respondent. According to the applicant when he reported for duty on 30.6.1986, he was intimated that he had been removed from service and as such cannot be allowed to resume duty. The applicant submitted appeal to the third respondent but it was rejected.

3. It is alleged that the enquiry has not been conducted in accordance with the principles of natural justice and no reasonable opportunity of defence was afforded to the applicant. There is also the plea that the order of removal is void as the fourth respondent had no jurisdiction to pass ^{the} order since the appointing authority of the applicant is the third respondent, the Controller General of Defence Accounts.

4. In the reply filed on behalf of the respondents, it is stated that the leave applied for by the applicant was not regularised as he did not submit any medical certificate for the period from 2.5.1982 onwards. It is contended that the applicant was transferred to Bikaner on administrative grounds and was relieved of his duties on 3.4.1982 and was directed to report for duty, but the letter was returned. The respondents ~~further~~ state that

the further letter sent to the applicant to report for duty was returned with the endorsement of refusal and thereupon the memorandum of charges was issued which was also refused. The communications sent to the applicant by the Enquiry Officer were also returned with the endorsement of refusal. Hence, the enquiry was conducted *ex parte* and the penalty was imposed. The allegation of the applicant about denial of reasonable opportunity is denied.

5. The first question that arises is whether the Enquiry Officer was justified in holding the enquiry *ex parte*. The concerned file was made available by counsel of respondents. It is seen therefrom that the applicant was duly informed by letter sent through registered post about the fixing of the preliminary hearing date on 29.11.1982. The applicant did not appear. The letter sent to him was received back with the endorsement of the Postal authorities "Refused". The Enquiry Officer gave another chance to the applicant and the date of hearing was adjourned to 17.1.1983. Again a registered letter was sent to the applicant intimating him about the posting. That too having been returned, yet another opportunity was afforded and the hearing was adjourned to 7.3.1983 informing the applicant that no further adjournment will be made. Even thereafter the letter was received back un-delivered. Hence, the Postal authorities were informed about the same and their remarks were called for when the Enquiry Officer was intimated by the Senior Superintendent of Post Offices, Meerut Division, ^{ICAO} the letter was un-delivered because it was refused. It is seen that even thereafter the Enquiry Officer thinking it necessary to give another

opportunity to the applicant, adjourned the hearing, and fixing the date on 31.5.1983 sent another letter to the applicant. That too was returned with the endorsement "Refused". It ~~was~~ was in these circumstances that the Enquiry Officer decided to proceed with the matter and held the enquiry *ex parte*. He was fully justified in doing so, and cannot be faulted. After taking note of the fact that the applicant was transferred to Bikaner and was relieved on 3.4.1982 but communication in that behalf was not accepted by the applicant, the Enquiry Officer held that the charge is established.

6. The disciplinary authority after considering the facts arrived at the conclusion that the applicant refused to accept the letters sent to him. Because the applicant did not send any application for sanction of leave ~~or~~ ^{or} medical certificate in support of his alleged sickness with effect from 10.4.1982, it was also held that the imputation of unauthorised absence is established. On this premise the penalty of removal from service was imposed by the order dated 14.2.1984.

7. In view of the foregoing, it cannot be stated that this is a case where there has been denial of opportunity of defence. The submission of counsel of the applicant that from 3.4.1982 till 29.6.1986 the applicant was sick and was actually insane cannot be accepted. Firstly, there is no acceptable proof in support thereof. Secondly, it is seen that during this period certain communications praying for leave were actually sent at the instance of the applicant. It was pointed out by counsel of the respondents that it was because the applicant wanted to evade the transfer to Bikaner that he had been absenting himself. It is significant to note that the alleged sickness is from 3.4.1982, the date on which he was relieved pursuant to the order of transfer dated 1.4.1982, to report for duty at the station to which station he was transferred.

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8. The second ground alleged by the applicant is also equally devoid of merit. Even assuming the appointing authority of the applicant is the third respondent, as the applicant was actually appointed by the fourth respondent, the latter was competent to impose the penalty of removal from service. Besides, it is clear from the order dated 6.9.1979 that in respect of Group 'D' staff and Group 'C' staff appointed after 25.3.1967, the fourth respondent, the Controller of Defence Accounts, is the competent authority to impose all penalties. The applicant was admittedly appointed after 25.3.1967.

9. It follows that the application is devoid of merit. It is accordingly dismissed.

23/2/1990
(P.C.Jain)
Member(A)

23/2/1990
(G.Sreedharan Nair)
Vice-Chairman