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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No. 1697/87

Date of decision: 21.04.93

Sh. S.S. Sawhney

Petitioner

versus

Union of India
through Foreign Secretary,
Government of India &
anr.

Respondents

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

For the Petitioner

Dr. D.C. Vohra, Counsel.

For the Respondents

Sh. P.P. Khurana, Counsel.

JUDGEMENT (ORAL)

(BY HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN)

The petitioner Sh. S.S. Sawhney was an Assistant in the Indian Embassy at Washington. He gave notice on 22.12.80 to the Government with the intention to voluntary retire on the expiry of the period of notice of three months in accordance with the terms of the scheme for voluntary retirement laid down in Office Memorandum No. 25013/7/77-Estt(A) dated 26.8.77. By the same letter he also made a request for grant of leave for three months with effect from the afternoon of 22.12.80 to run concurrently with the period of notice for voluntary retirement. The reason for seeking leave is stated to be ^{an} urgent need for medical treatment of his wife. The competent authority not having responded to the said notice of retirement within a period of three months, the petitioner in accordance with the scheme must be deemed to have retired with effect from 21.3.81. Even though that is the legal consequence flowing from inaction of the competent authority, we find that specific order was made by the Government on

10.8.81 retiring the petitioner with effect from the afternoon of 21st March, 1981 as prayed for by him.

2. With the sanction of the President under Rule 9 of the Pension Rules, departmental proceedings were initiated against the petitioner for the alleged misconduct of the unauthorised absence on the part of the petitioner from 24.12.80 to 21.3.81 and for not reporting to duty at the Headquarters at New Delhi in compliance with the orders of transfer. An Inquiry Officer who held the enquiry having held the charges proved against the petitioner after considering the cause shown by the petitioner the impugned order came to be made on 14.11.84 withholding the entire monthly pension and gratuity admissible to the petitioner. It is the said order that has been challenged by the petitioner in these proceedings. Our attention, however, was drawn by Dr. Vohra, the learned counsel for the petitioner during the course of arguments, to the order made by the Government during the pendency of these proceedings on 7.6.88 to treat the period from 24.12.80 to 21.3.81 as Extraordinary Leave without pay. That order reads as retirement of the petitioner with effect from 22.3.81 (FN).

3. On a perusal of the Inquiry Officer's report, pleadings and the records in this case, we find that no decision was taken by the competent authority on the request of the petitioner for grant of leave for a period of three months co-extensive with the period of notice which leave he had prayed for on the ground that it is necessary for securing urgent medical treatment of his wife. It is the very same period in respect of which the petitioner had applied for

that he had been held guilty of unauthorised absence and defying compliance with the orders of transfer. The petitioner having made a specific request for grant of leave on the ground that the leave is necessary for securing medical aid to his wife, it was imperative on the part of the competent authority to take a decision on that request before embarking upon the disciplinary action on the ground that the petitioner remained unauthorisedly absent for the period for which he had applied for leave. We must take judicial notice of the fact that Government servants apply for leave and avail of the same even before the same is sanctioned by the competent authority. Many times it becomes impossible for the Government servants to secure sanction of leave before availing of the same. Many times Government servants who fall sick and, therefore, not in a position to attend to their duties cannot be expected to avail of leave on medical grounds only after it is sanctioned by the competent authority. But then the law is quite clear that the leave is not a matter of right and the grant of the same depends upon the exercise of discretion by the competent authority to grant or not to grant the same. Hence it was expected of the authorities to have taken a decision on the request of the petitioner for grant of leave before taking a decision to hold a disciplinary enquiry against him. The competent authority would have been justified in initiating action for unauthorised absence if it had dealt with the request of the petitioner for leave and rejected the same. We have, therefore, no hesitation in holding that the authorities acted arbitrarily/invoking the power to initiate disciplinary enquiry against the petitioner without in the first instance passing orders on his application for grant of leave. Though

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Shri P.P.Khurana, learned counsel appearing for the respondents invited our attention to the opinion of the Union Public Service Commission in this behalf, we do not find any categorical statement in the same to the effect that the application of the petitioner for grant of leave was considered and rejected. All that is stated is that on receipt of the application of the petitioner for grant of leave, the Embassy at Washington warned the petitioner to report for duty at the headquarters in pursuance of the order of transfer failing which his absence will be treated as unauthorised. This does not say whether it dealt with the application of the petitioner for grant of leave sought on the ground that it is necessary for him to go on leave to secure urgent medical treatment of his wife. There is nothing on record to show that the authorities had at any time tried to find out if the reason putforth by the petitioner for grant of leave for urgent medical treatment of his wife was true or it is only an excuse putforth by the petitioner not to comply with the order of transfer to the headquarters. The only order that has been placed before us is one made subsequently on 7.6.88 treating the period for which the petitioner had applied for leave as Extraordinary Leave without pay. It may be possible to say or view that the effect of granting of Extraordinary Leave on 7.6.88 is to condone the absence of the petitioner and treat the same as authorised. We need not detain ourselves to examine this aspect of the matter further closely as we are satisfied on the material placed before us that the competent authority has acted arbitrarily in imposing the

penalty on the petitioner before dealing with his application for grant of leave. On that short ground, the impugned order is liable to be quashed.

4. Having regard to the lapse of time and the changed circumstances including grant of Extraordinary Leave for the unauthorised absence by order dated 7.6.88, we do not consider it just and proper to reserve liberty for taking further action in accordance with law against the petitioner. The petition is allowed and the order dated 14.11.84 withholding entire monthly pension and gratuity of the petitioner is hereby quashed. Pension and gratuity shall be released to the petitioner with utmost expedition preferably within a period of 4 months from the date of receipt of this order. No costs.

B. N. Dhoundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

V. S. Malimath
(V.S.MALIMATH)
CHAIRMAN

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