

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

OA 847/87

15.10.1992

Shri Lachhman Singh

...Petitioner

Vs.

Union of India & Ors.

...Respondents

CORAM :

Hon'ble Shri I.K. Rasgotra, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Petitioner

...Shri A.S. Grewal

For the Respondents

...Shri O.N. Trishal

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI I.K. RASGOTRA, MEMBER (A))

Shri Lachhman Singh, the petitioner was sanctioned four days' casual leave w.e.f. 2.9.1984 with permission to prefix and suffix the gazetted holidays. He was due to report for duty on 10.9.1984 as he is said to have fallen sick. On 15.10.1984 he came to resume duty, but was served a summary of allegations and disciplinary proceedings were initiated against him on the charge of having remained absent from duty unauthorisedly from 10.9.1984 to 15.10.1984 amount to 35 days. The charge framed against the petitioner also lists his past conduct regarding his frequent unauthorised absence. It is in this background that the petitioner has approached the Tribunal, aggrieved by the orders of the respondents dt.3.6.1985 (and not 1986), 5.11.1985 and 22.5.1986 imposing

the penalty of forfeiture of two years' approved service permanently and treating the period of unauthorised absence as extraordinary leave.

The learned counsel for the petitioner, Shri A.S.Grewal contended that the disciplinary proceedings were not conducted in accordance with the law as the documents listed in the charge (p-13 of the paper book) were not supplied to the petitioner, despite his several written requests. The petitioner was thus denied the opportunity to prepare proper defence of his case. The next point agitated by the learned counsel is that the order of forfeiture of two years' approved service permanently and treating the period of unauthorised absence as extraordinary leave amounts to double jeopardy, as the petitioner, on the one hand, has been deprived of the pay and allowances for the unauthorised period of 35 days, while on the other, the punishment for forfeiture of two years' approved service permanently has been imposed for the same charge. He further submitted that the petitioner had also submitted a medical certificate on 15.10.1984 in support of his absence on medical grounds but this was ignored by the respondents. Keeping in view the above facts, the learned counsel contended that the penalty imposed on the petitioner is not warranted in the facts and circumstances of the case.

The stand of the respondents as projected by Shri O.N.

Trishal, learned counsel for the respondents, is that the documents listed in the Memorandum of charge is only a narration of facts of the earlier periods of absence indicating the modus-operandi of the petitioner. The learned counsel submitted that it would be apparent from the fourteen instances mentioned in the Memo of Charge that the petitioner is in the habit of taking a few days' casual leave etc. and then remaining absent unauthorisedly thereafter for much longer period. As such no document except the admitted facts of absence were cited by the respondents in Charge Memo and, therefore, the question of non supply of the documents is not relevant in the case. The learned counsel for the respondents further contended that this is also not a case of double jeopardy as the period of unauthorised absence has been regularised as extraordinary leave which confers on the petitioner continuity in service with its consequential effects. All that has been denied to him is pay and allowances for the period of unauthorised absence in accordance with the principle 'No Work No Pay.' Regarding the medical certificate, the learned counsel for the respondents contended that the said medical certificate was from a private doctor indicating that the petitioner suffered from Typhoid fever. The medical certificate, however, did not recommend any rest period for the petitioner. Since Typhoid fever does not last for a more than perhaps a week, the said medical certificate cannot be taken to justify the unauthorised absence of 35 days.

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The learned counsel for the petitioner referred us to the following cases decided by the Tribunal in support of the contentions of the petitioner for payment of salary and allowances, which was regularised as extraordinary leave.

- (i) Karanchand Vs. Union of India, through Secretary, Ministry of Health and Family Welfare and Others, 1992 (2) ATJ 401, and
- (ii) Mangay Ram Vs. Commissioner of Police & Another, 1992 (2) ATJ 148.

A perusal of both the cases shows that they are distinguishable from the facts of the case before us.

We have given our careful consideration to the rival contentions and observe that the petitioner was punished by the Disciplinary Authority by imposing the penalty of reduction in rank from ASI to that of Head Constable. He filed an appeal to the Additional Commissioner of Police. The Appellate Authority reconsidered the entire matter and moderated the penalty by reducing it from reduction in rank to that of forfeiture of two years' approved service permanently. The Revisionary Authority too considered the case but upheld the reduced penalty approved by the Appellate Authority. Having regard to the above facts and the rival contentions, we are of the opinion that the case does not merit our interference. The OA is accordingly dismissed. No costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER(J)
15.10.1992

I. K. Rasgotra

(I.K. RASGOTRA)
MEMBER(A)
15.10.1992