

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.1182/87

Date of decision

Dr. Rabindra Nath

.....Petitioner

V.
s.

Union of India & Others

.....Respondents.

For the petitioner

.....In person.

For the respondents

..... Shri P.P. Khurana,
Counsel

CORAM:

THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN(A)

(The judgment of the Bench delivered by
Hon'ble Shri S.P. Mukerji, Vice Chairman(A))

The applicant, who has been working as Senior Research Officer, Prospective Planning Division in the Planning Commission and retired on 31.7.86 has filed this application under Section 29 of the Administrative Tribunals Act, 1985 praying that the impugned order dated 25th July, 1986 (Annexure-B to the application) by which the respondents have treated the period between 1.5.85 and 31.7.86 as extraordinary leave without pay be declared as void and that the respondents be directed to pay salary for this period with interest. While the applicant's contention is that the respondents did not assign any

work to him during the period in question, as a result of which he used to sit in the Library of the Planning Commission and marked his presence regularly in the Register maintained by the Library, the respondents case is that the applicant has not been attending office, was reported to be a person of unbalanced mind and since despite several written warnings and memoranda to join duty and appear before the Medical Board and apply for leave, he did not join duty, he was retired on 31.7.86 and the period of absence between 1.5.85 to 31.7.86 was treated as leave without pay.

2. The applicant's case is that the respondents were harassing him either by declaring him to be of unsound mind or by treating him to be absent from duty. He has argued that during the said period, he was regularly sitting in the Library and submitted 5 detailed analytical papers on Export promotion, Energy in crises, Future of energy, Economic Development of Brazil and Bonus payment, to his immediate senior officer Dr. Padam Singh, Joint Advisor, Planning Commission. According to him, Dr. Padam Singh made no complaint regarding his being ill or sick ^{or being absent} and since he was not given any show cause notice before he was denied pay for the above period, the order is unwarranted and illegal. The respondents have stated that the applicant was given an opportunity ^{of defence} in the Planning Commission's Memorandum dated 20.6.85 asking him to report for duty, apply for

leave, explain his absence and appear before the Medical Superintendent for medical examination as directed on 10.4.84 earlier. This memorandum has been acknowledged to have been received by the applicant in his representation dated September, 1985 at Annexure-E. According to the respondents, the applicant was reminded of the memorandum to and comply with the same vide the Planning Commission's memorandum dated 20.5.85 and advised to resume duty. They have referred to the applicant's representation to Deputy Chairman, Planning Commission dated 6.9.85 stating that he had been attending office and since no work was assigned to him, he has been spending his time in the Library.

A memorandum dated 3rd March, 1986 was sent to the applicant that it had ^{not} been established that he has been attending office except on rare occasions and he was directed to join duty immediately. He was also warned in another memorandum dated 20.3.86 that failure to comply with the orders may result in administrative/disciplinary action against him. According to the respondents since the applicant did not report for duty, the period of his absence was treated as leave without pay. The respondents have denied the allegation of harassment, but have recalled that the Intelligence Bureau had in 1981 intimated that he was a mentally disturbed man and also that he had been a source of nuisance to his neighbours. The Residents Welfare Association of his locality according to the respondents in May, 1984 had complained about

his misbehaviour with the neighbours and that he did not attend office. The Area Welfare Office had also intimated that there was something wrong with the applicant, that he occasionally turned violent and jeered at the residents especially the ladies and children, who happened to pass by his flat. The Planning Commission on 19.4.84 asked him to appear before the Medical Superintendent for medical examination, but the applicant did not comply. The respondents have stated that absence of applicant from duty had been verified from his senior officers. They have refused to accept the explanation that the applicant has been spending his time in Library and marking his attendance in the Register maintained by the Library. The five papers prepared by him were not a part of his official duty. The Work Study Unit also found him to be absent from his seat on 35 occasions between 1.5.85 and 31.7.86. Since his explanation was not satisfactory, the period was treated as on leave without pay as his was a case of unauthorised absence. In the rejoinder, the applicant has stated that since he was attending office regularly and sitting in the Library, the question of his applying for leave did not arise. He did not appear before the Medical Board as he was of a perfectly sound mind. He has argued that if any work had been assigned to him and he did not fulfil that ~~assignment~~ ^{supervisory} assignment, his officers should have called for his explanation. Since the respondents have not annexed any letter from his higher officers or administration

for not doing any work, the charges now levelled against him are baseless. He indicated that he was never asked by the Estate Officer to vacate the Government accommodation because of ^{any} complaint of his neighbours. He has indicated that the complaint was engineered under the influence of Shri Keshwani. He further explained that in his Confidential Report for the year 1984-85, he had mentioned that no work was assigned to him. If this was wrong, he should have been called upon to explain. He prepared the 5 papers at his own initiative as no higher officer assigned him any work. He has also argued that his immediate reporting officer Dr. Padam Singh did not submit any report against him for (the applicant) not attending office or not doing any work. He had joined Planning Commission in February 1956 and had 30 years of service behind him.

3. I have heard the arguments of the applicant in person and the learned counsel for the respondents and gone through the documents carefully. It is true that the applicant had been warned several times and called upon to join duty. It also has ^{to} be conceded that he was not assigned any duty and ~~not given~~ any work. It was surely wrong on the part of the applicant to be absent from his seat and of duty ^{and} spend his time in the Library or elsewhere. It is, however, surprising that the respondents have not produced any documentary evidence to indicate that his immediate superior officer Dr. Padam Singh reported about his unauthorised absence or the applicant's not doing any work. If the explanation given by the applicant was not

satisfactory and he did not comply with the directions to join duty or appear before the Medical Board, it was incumbent on the part of the respondents to proceed against him. It was not appropriate to ^{peremptorily and unilaterally} deny pay and allowances to ^{him} the applicant without giving ^a show cause notice and without framing charges against him. The memoranda served on the applicant are more in the nature of warnings and directions than in the nature of a charge to show cause why he should not be ^{punished or} denied pay and allowances for the period of ^{unauthorised} absence. It has been held by the Supreme Court in L. Robert D'Souza Vs. E.E. S. Railway, AIR 1982 SC 854, that "absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and inquiry or at any rate without complying with the minimum principle of natural justice". The respondents have not denied the fact that the applicant has been marking his presence in the Library Register which shows that he has been coming to office. The respondents ^{written} have not produced any complaint or report by his immediate superior officer ^{indicating his absence} seeking a substitute in his place so that his work may not suffer. This shows that the applicant's contention that he has been attending office and sitting in the Library with the tacit approval of his superior officer cannot be disregarded.

4. In Jai Shankar Vs. State of Rajasthan, AIR 1966

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SC 492. The Supreme Court dealt with the case of unauthorised absence in following terms:-

" The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by over-staying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plead succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. A removal is a removal and if it is punishment for over-staying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here."

5. Even though the ratio of the above ruling is related to removal and the requirement of Article 311 of the Constitution, the ruling underlines the principle that the Government servant must be given an opportunity of showing the cause why a particular punishment should not be inflicted on him for unauthorised absence so that he is entitled to move against the punishment.

6. In State of Orissa V. Dr. (Miss) Binapani Dei and Others, AIR 1967 SC 1269 ^{The Supreme Court held} that "if there is a power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is


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a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case". Since in this case, the applicant was never asked to show cause why his pay should not be withdrawn for unauthorised absence, the order of withdrawal of pay violates the principles of natural justice and is a nullity.

7. The learned counsel for the respondents showed me the Confidential Report for 1984-85 on which the reporting officer Dr. Padam Singh without filling up the various columns, indicated inter alia that the applicant was not assigned any work. This shows that it was not the fault of the applicant that he did not do any work. It was incumbent on the part of the superior officer to utilise his services and if his services could not be utilised for the fault of the applicant to take disciplinary or corrective action. The grant of extraordinary leave without pay without the applicant's applying for it is not permissible under the Leave Rules

8. In the circumstances, I allow the application and direct the respondents to pay full salary and allowances for the period between 1.5.85 and 31.7.86 within a period of 3 months from the date of communication of this order. There will be no order as to costs. This will be without prejudice to any action which the respondents may take against the applicant in accordance with law.

S.


(S.P. MUKERJI)
VICE CHAIRMAN