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Central Administrative Tribunal
Principal Bench, N. Delhi
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R.A. No. 98/95 with
M.A. No. 857/85 in
O.A. No. 2558/89

New Delhi, this the 28th Day of April, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

1. Lt. Governor/Administrator
Union Territory of Delhi
Delhi Administration,
Delhi.
2. The Director of Technical Education,
Dayal Singh Library Building,
Din Dayal Upadhyay Marg,
New Delhi.

Review applicants.

(By Shri B.S. Gupta, Govt. counsel)

Versus

Shri S.L. Gupta s/o Shri Devi Sahai
R/o 1/1, Aryabhat Enclave,
Sawan Park Extension,
Phase-III, Ashok Vihar,
New Delhi- 110 052.

Opposite party

(By none)

JUDGEMENT

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

U.O.I. has filed this R.A. against the order dated 11th November, 1994 passed in the Original Application No. 2558/89 by which the relief claimed by the opposite party Shri S.L. Gupta in that O.A. be allowed and the order of punishment dated 23rd November, 1984 be set aside and the benefit of withheld increments be directed to be given.

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The R.A. was filed on 2.3.1995 and barred by time. There being delay of 1½ months, as the R.A. should have been filed by 6th of January, 1995. In view of this fact, considering the affidavit of Mr. V.K. Jha, Joint Director-cum-Deputy Secretary, Directorate of Technical Education, on the grounds mentioned in the M.A. and affidavit, we condone the delay in filing this R.A.

We have gone through the grounds taken by the Review applicant. There can be no two opinions about the ratio laid down by the Hon'ble Supreme Court of India in the case of Union of India Vs. Parmanand (1989(10)ATC 30) that the Tribunal cannot sit as an Appellate authority over the findings of the Enquiry Officer. The rival contentions have been duly considered on the above law. The contention of the Review applicants that the finding of the Enquiry Officer was not perverse, cannot be accepted in view of the categorical reasoning giving in para 6 of the judgement. Regarding the ground that Shri S.K. Mitra was not impleaded as a party to the O.A., he was not a necessary or proper party in the case. It was in view of the fact that the memo. was issued by Shri S.K. Mitra, was not produced before the Enquiry Officer but he was a key witness. When the key witness was called to support the allegations levelled in the charge against the delinquent then there could be such adequate convincing available material which could give a finding acceptable on the analysis done by reasonable authority. This is

not the case here. The Review applicant has also taken the stand that the reasoning given in the judgement that Article II of the charge could not be said to be framed against the applicant is directly against the decision in the case of State of Madhya Pradesh Vs. Harihar Gopal reported in 1969 SLR 274. This reported case was not cited at the time of arguments by the respondents, however, we have considered the ratio of the aforesaid reported case. In the reported case the order granting leave was made after the order of termination of the employment. There the charge was that the respondent of that case remained unauthorisedly absent after availing of joining time of transfer till Feb., 1959 and further from December '59 to 24.1.60 to evade the orders of posting to another place. The Hon'ble Supreme Court remanded the case to the High Court for decision on certain points. In the case in hand, the absence of the applicant was on medical ground for a few period i.e. for the period from 14.12.1976 to 17.12.1976, 20.12.1976 to 23.12.1976, 4.1.1977 to 7.1.1977, 5.3.1977, as well as on 27.3.1977, from 1.12.1977 to 9.12.1977; 9.1.1978 to 13.1.1978 and from 9.2.1978 to 6.3.1978 and lastly from 7.3.1978 to 18.3.1978. Again in the year 1978, the applicant absented for the period from 27.3.1978 to 28.3.1978; 29.3.1978 to 8.4.1978; 10.4.1978 to 22.4.1978; 1.5.1978 to 10.7.1978. In that case the applicant had filed the leave application in time supported with medical certificates which was accepted. The Article II of the charge is that he availed leave frequently as per his convenience ignoring the public interest. The charge was not that he unauthorisedly absented himself from duty. In view of this, the authority relied upon by the Review applicant cannot

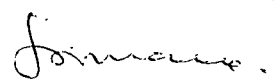
applied to the present case. Therefore, the conclusion has been drawn that the article 2 of the charge does not amount to misconduct at all.

The review applicant has taken a ground that the Tribunal has interfered with the finding of the fact or that certain other facts has not been taken into account like the Officers Association but all these facts have been fully covered in the judgement under review.

The decision is based also on certain other facts that the adequate opportunities was not afforded to the delinquent by the enquiry officer. Certain documents were not supplied and even inspection was not allowed.

Therefore, there is no error apparent on the face of the judgement. The review application is totally devoid of merit and is dismissed with no order as to costs.


(B. SINGH)
MEMBER (A)


(J. P. SHARMA)
MEMBER (J)

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