CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(16)

REGISTRATION NOS: DATE OF DECISION: 14.1.1992

(1) TA 5/90 (S.No. 59/80).

(2) TA 6/90 (S.No. 306/82).

(3) O.A.706/90.

Om Prakash Sharma. ... Applicant.

Versus

Union of India. ... Respondent.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. P.C. JAIN, MEMBER(A).

For the Applicant. ... Shri Sant Lal, Counsel.

For the Respondents. ... Shri M.L. Verma, Counsel.

JUDGEMENT (ORAL)

(Hon'ble Mr. Justice V.S. Malimath, Chairman)

T.A. 5/90 (S.No. 59/80).

In this case, it is unnecessary to advert to the long history as we are primarily concerned with the validity of the order imposing the penalty of censure on 23.7.1979. The principal grievance of the petitioner is that there has been denial of opportunity of showing cause in the matter, for several reasons. The proceedings were ex-parte and the reasons given by the applicant for not participating in the inquiry are that on account of certain complaints he had made against his own colleagues, they had a grouse against him

and that he had apprehended fear to his life. He had, therefore, made a request to the disciplinary authority not to hold the inquiry at Dehradun, but at some other place having regard to the apprehended danger to his life. His request was turned down and, therefore, he did not participate in the inquiry apprehending danger to his life. If the circumstances were such as to put him in fear or danger to his life if inquiry was held at Dehradun, as contended by the petitioner, we have to draw an inference that there was denial of reasonable opportunity to the petitioner. The question for consideration is as to whether the applicant is right in his stand that there were reasonable grounds to believe that his life would be in danger if he participated in the inquiry at Dehradun. We find that the attention of the disciplinary authority was drawn to this aspect of the matter. He has expressed himself in favour of the applicant. He has held that it cannot be said that there is no substance in the case of the applicant that he had a genuine apprehension that his life would be in danger at Dehradun. The finding of the disciplinary authority itself is sufficient to hold that the disciplinary authority acted most unreasonably in rejecting the request of the applicant and insisting him to attend the inquiry at Dehradun, which resulted in an ex-parte inquiry being held. We are, therefore, inclined to take the view

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that the disciplinary proceedings are vitiated. Hence, the penalty of censure awarded by the disciplinary authority by its order dated 23.7.1979 is liable to be quashed.

2. The next prayer of the applicant is that the period from 27.3.1976 to 4.8.1979 should be treated as spent on duty. As we have quashed the order of censure, learned counsel for the applicant submits that his prayer merits being accepted. The order of the disciplinary authority in this behalf is that the period should be treated as leave due subject to his request for the same. The question, therefore, is as to whether a direction should be issued treating the period from 27.3.1976 to 4.8.1979 as on duty.

3. What is necessary to point out is that in respect of unauthorised absence of the applicant and other misconduct, a disciplinary inquiry was held earlier, which resulted in an order of censure dated 20.10.1976. That order has become final on appeal against it being dismissed on 19.3.1977. Hence, we will not be justified in holding that the period from 27.3.1976 to 19.3.1977 should be treated as on duty. So far as the period from 20.3.1977 to 4.8.1979 is concerned, we are inclined to take the view that it should be treated as on duty. But if there was earned leave on full average pay to his credit, the same shall be adjusted against the said period while calculating the arrears. The arrears of these emoluments flowing from these

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directions should be calculated and paid to the petitioner expeditiously.

T.A.6/90 (S.NO. 306/82).

4. This is a case in which the applicant was subjected to a disciplinary inquiry in respect of three charges. So far as the first charge is concerned, it is held partly proved holding that the applicant had claimed overtime allowance for himself and his colleagues on different dates in December, 1975 even though they did not, in fact, work overtime. The second charge has also been held proved holding that on 23.12.1975 the applicant left the office at 2000 hrs whereas he was entitled to leave the office at 2200 hrs. The third charge was held not proved. The punishment imposed by the disciplinary authority by its order dated 2.3.1981 and subsequently modified by its order dated 3.4.1981 is to reduce his pay by three stages for a period of one year.

5. The principal grievance of the learned counsel for the petitioner in regard to the imposition of penalty on the petitioner is that there has been denial of reasonable opportunity to the petitioner for defending himself inasmuch as copies of several documents, which he had requested on 16.12.1980, were denied to him by a reply dated 1.1.1981. Even the request made for inspection of the papers was also not conceded. It is in this back ground that he was

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prejudiced in his defence and, therefore, the inquiry stands vitiated.

6. So far as the claim of overtime allowance for himself and his colleagues even though they did not work overtime is concerned, the same rested entirely on the acceptance of the oral evidence of the colleagues of the petitioner who were examined as SW-1 to SW-7. It is not disputed that the documents clearly indicate that there were orders regarding overtime work and that these witnesses also received overtime allowance, but they came before the Inquiry Officer and deposed that in fact they did not work overtime and that they were willing to return the overtime allowance. It is, therefore, clear that the findings rested on the basis that the documents clearly support the claim of the petitioner whereas the oral evidence of the colleagues of the petitioner who are said to have worked overtime, is to the effect that they did not work overtime. The Inquiry Officer and the disciplinary authority have accepted the evidence of these seven witnesses. They have come to the conclusion that they have given statements against their own interest. The acceptance of their evidence would result in their being required to refund the same. It is in this background that their evidence has been accepted. As the findings rested on the basis of oral evidence and the applicant was given full opportunity to cross examination, then no prejudice was caused by not furnishing the copies of the documents adverted to in his request

dated 16.12.1980. We have, therefore, no hesitation in holding that there is no substance in this contention.

7. The next contention of the learned counsel for the petitioner is that the Inquiry Officer's report was not furnished to the applicant, and that he was not given an opportunity of persuading the disciplinary authority vis-a-vis the Inquiry Officer's report. But we find that no such plea has been taken in these proceedings. Hence, we will not be justified in permitting such contention there being no pleading about it.

8. The last argument is that sub-rule 18 of Rule 14 of the CCS(CCA) Rules has not been complied with. His contention is that the petitioner should have been generally examined in accordance with the said statutory provision inviting attention to the circumstances against him and giving him an opportunity of explaining the same. But it has to be pointed out ~~that in this case~~ that the petitioner did not participate in the inquiry. But, in fact he has filed a written brief. The disciplinary authority thereafter held the applicant guilty. Hence, we are satisfied that no prejudice has been caused to the petitioner in this behalf. There is no substance in this petition and it is accordingly dismissed. No costs.