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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 254/91  
T.A. No.

198

DATE OF DECISION 7.6.91

Shri K.L. Anand Applicant (s)

Shri Mukesh Kumar Gupta, Advocate for the Applicant (s)

Versus

C.S.I.R. Anr. Respondent (s)

Ms. Sheel Sethi Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J)

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *M*
4. To be circulated to all Benches of the Tribunal ? *M*

JUDGEMENT

(of the Bench delivered by Hon'ble Member  
Shri B.N. Dhoundiyal)

This application has been filed by Shri K.L. Anand under Section 19 of the Administrative Tribunals Act 1985 against denial of the next higher grade pay scale of Rs.1640-2900 to him w.e.f. 01.02.1981 and against the award of two penalties on him pursuant to the inquiry held against him under Rule 14 of the CCS(CCA) Rules, 1965.

2. The applicant is the senior most Junior-Engineer of the 1970 batch. He proceeded on sanctioned leave from 15.04.1981 to 15.07.1981

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on a private visit to Libya, as a tourist. According to the version of the respondents, he perhaps got some job there and went on extending his leave. According to the applicant, he suffered from kidney and heart troubles and kept on requesting for extension of his leave. He was never informed about the refusal of leave. He received a memo dated 07.06.1984 along with articles of charges intimating the intention of the respondents to proceed against him in a departmental enquiry under Rule 14 of the CCS(CCA) Rules 1965. The charge framed against him was as under:

"That the said Shri Kundan Lal Anand while functioning as Junior Engineer, CSIR Engineering Unit, during the period from 17.07.1970 proceeded on leave sanctioned vide CSIR O.M.No.8(621)/70-E.III dated 14.04.1981 for the period from 15.04.1981 to 15.07.1981 for his private visit to Libya. Thereafter, he applied for extension of leave beyond 15.07.1981 from time to time on medical grounds without production of proper medical certificates and on other reasons. Shri Anand was directed repeatedly to produce the medical certificate from the Hospital of the Government of Libya in support of his ailment and to report for duty after treatment for his first ailment was over, with certificate of fitness. But he did not pay any heed to the above.

Shri Anand has, therefore, contravened the provision of Rule 25 of the CCS (Leave) Rules, 1972 as amended from time to time, and has been wilfully remaining absent and overstaying the leave without any authority.

Shri Anand has thus committed misconduct and acted in a manner unbecoming of a Council Servant and showed lack of devotion to duty, thereby, contravening Rule 3(i)(ii)(iii) of the CCS (Conduct) Rules, 1964, as made applicable to the employees of the C.S.I.R."

3. The inquiry officer did not find the applicant guilty.

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4. The disciplinary authority, however, disagreed with the findings of the inquiry officer and awarded on him the punishment of removal from service by order dated 16.04.1986. Later the appellate authority modified the penalty of removal to reduction by three stages in the scale of pay (Rs.425-700) for a period of three years with cumulative effect. The period from the date of removal from service i.e. 16.04.1986 to the date of reinstatement i.e. 31.10.1986 was to be regularised as extraordinary leave.

5. The applicant was assessed for next higher grade by the Assessment Committee on 18.07.1985 under the new recruitment and assessment scheme which was brought into force w.e.f. 01.02.1981. The said committee kept the assessment about him in a sealed cover as disciplinary proceedings were pending against him in 1985.

6. On 28.09.1990, an order was issued allowing the applicant to the next higher grade in the pay scale of Rs.550-900 (Rs.1640-2900 as revised) w.e.f. 31.10.1989. The applicant repeatedly represented that he should have been given the next higher grade w.e.f. 01.02.1981 which did not receive favourable response.

7. The applicant has contended that, had the assessment committee met in time to consider grant of revised scale of pay w.e.f. 01.02.1981, there would have been no punishment coming in his way. He has also challenged the validity of

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the decision of the respondents to treat the period of absence as Dies non.

8. The respondents have contended that the applicant was found guilty by the disciplinary authority after a full fledged inquiry. The order of the disciplinary authority dated 18.4.86 was modified by the appellate authority on humanitarian grounds on 30.10.1986. These orders cannot be challenged at this belated stage. He is in fact challenging the order dated 28.9.90 ✓ allowing him the next higher scale. Though initially the applicant proceeded on sanctioned leave, no proper medical certificate was submitted by him while requesting for extension from time to time. Photo copies of medical certificates covering the period of unauthorised absence from 16.07.1981 to 31.10.1981 and 01.11.1981 to 01.12.1982 were submitted but there were no medical certificates for the period from 01.01.1983 to December 1983. The inquiry officer did not apply his mind properly to the evidence on the file and the disciplinary authority were justified in holding the applicant guilty. The recommendations of the Assessment Committee were kept in a sealed cover as the departmental proceedings were pending against the applicant. As the applicant was not exonerated, he could not be given assessment promotion from 01.02.1981. No employee on whom penalty has been imposed in departmental proceedings can claim promotion to the next higher grade during the pendency

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of the period of penalty. The respondents have also contended that Rule 25 of the Leave Rules provides that after the conclusion of the disciplinary action, the period of absence may be treated as unauthorised, resulting in loss in pay and allowances for the period of absence and the question whether the break should be condoned or not and treated as Dies non should be considered only after concluding the disciplinary proceedings and that too after the Government servant represents in this regard.

9. We have gone through the facts of the case and heard the contentions of the rival parties. As regards the validity of the departmental inquiry, it is now well settled that the Court or Tribunal cannot act as an appellate body to scrutinise whether the evidence before the inquiry officer was sufficient or adequate to sustain the findings. There is nothing on record to indicate that there was any lacunae in the procedure followed in the departmental inquiry. We, therefore, find no reason to interfere with the departmental proceedings and the penalty imposed upon the applicant on the basis of such proceedings.

10. In the final orders passed by the DGSIR on 30.10.1986 (Annexure A5), no mention has been made as to how the period of unauthorised absence from 1981 to 1986 would be treated. The order only mentions that the period from the date of removal from service i.e. 16.4.86

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to the date of reinstatement will be regularised as EOL as a special case. According to Rule 25 of the Leave Rules, whether such break should be condoned or not and treated as dies non should be considered after concluding the disciplinary proceedings and after the Government servant represents in this regard.

11. In our opinion, the respondents should have given a Show Cause notice to the applicant before treating any period of absence as dies non. No such notice was given in the instant case and this is contrary to the principles of natural justice.

12. There was no illegality in resorting to the sealed cover procedure in the instant case, as disciplinary case was pending against the applicant at the time of the meeting of the DPC. The disciplinary proceeding did not end in exoneration of the applicant. In such a case, where a penalty is imposed on a Government servant after the conclusion of the inquiry, his claim for promotion should normally be considered by a review DPC as on the original date in the light of the results of the sealed cover as also the penalty imposed. In the instant case, the Assessment Committee which met in 1985 had considered the fitness of the applicant for the grant of the higher grade as on 1.2.81, when no departmental proceeding was pending against

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the applicant. As the Assessment Committee had found him fit for the grant of the higher grade, we are of the view that the applicant would be entitled to the grant of higher grade from 01.02.1981. After the conclusion of the disciplinary proceedings ending with the award of a penalty on the applicant, it will, however, be open to the respondents to review the matter by constituting a review DPC/Assessment Committee in the light of the penalty imposed on the applicant.

13. In the conspectus of the facts and circumstances of the case, the application is disposed of with the following orders and directions:-

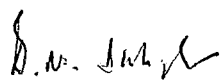
(1) In case the Assessment Committee which met in 1985 had assessed the applicant fit for promotion to the grade of Rs.550-900 (pre-revised) w.e.f. 01.02.1981, he should be promoted to the said grade w.e.f. 01.02.1981. However, the respondents will be at a liberty to review the promotion after the conclusion of the disciplinary proceedings against the applicant and the imposition of penalty on him. This could be done by convening a review Assessment Committee/DPC. The question whether the applicant would be entitled to arrears of pay and allowances and other consequential benefits would depend on the findings and recommendations of such committee.

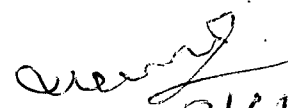
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2. We see no reason or justification to interfere with the penalty imposed on the applicant after the departmental inquiry which was conducted in accordance with the Rules.

3. We set aside and quash the impugned order dated 27.03.1987 at Annexure A6, whereby the respondents decided that the unauthorised absence of the applicant for the period from 16.07.1981 to 07.08.1984 from duty, be treated as dies non for all purposes. The respondents will be at liberty to take an appropriate decision in this regard after giving him a Show Cause notice and considering his reply to the notice and giving him a hearing, including personal hearing, if he requests for the same.

14. There will be no order as to costs.

  
(B.N. DHOUNDIYAL)  
MEMBER(A)

  
(P.K. KARTHA)  
VICE CHAIRMAN(J) 2/6/87