

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 338/1991

Date of decision: 31.07.1992

Shri Karam Chand II

...Applicant

Vs.

Union of India through the Secretary,
Min. of Health and Family Welfare and
Others

...Respondents

For the Applicant

...Shri M.L. Chawla
& Shri S.L.
Lakhanpal, Counsel

For the Respondents

...Shri P.P. Khurana,
Counsel

CORAM:

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

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant who has worked as Dresser in C.G.H.S. Dispensary, Timarpur, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To set aside and quash the impugned order of punishment dated 22.07.1988 and the appellate order dated 20.07.1990; and
- (ii) To direct the respondents to settle the period of 3 years and 7 months and grant full pay and allowances to him together with penal interest.

2. According to the version of the applicant, he was granted earned leave for 40 days from 15.3.1983 to 22.4.1983 with permission to leave the headquarters. While on leave, he met with an accident and remained under the treatment of the medical authorities for 38 days with effect from 23.4.1983 for which he submitted medical certificates issued by the authorities from time to time. While undergoing treatment, he was implicated in F.I.R. No.100 dated 31.5.1983 pertaining to an alleged incident which happened on 18.5.1983 between the complainant and the applicant's cousins in their village in Jalandhar District, Punjab. On 31.5.1983, the applicant was taken into police custody and was released on bail after 27 days of detention in the judicial lock up. Intimation about this was given to the respondents through the Medical Officer in-charge, Shakti Nagar Dispensary from time to time.

3. On 19.4.1985, the respondents issued to the applicant a charge-sheet containing the allegation that he had been absenting himself from duty unauthorisedly w.e.f. 24.4.1983. After holding an enquiry, the Disciplinary Authority passed the impugned order dated 22.7.1988 whereby the penalty of withholding of two annual increments with cumulative effect was imposed on the applicant. The impugned order further stated that "the period of his unauthorised absence from duty from 24.4.1983 to 31.12.1986 be treated as extraordinary leave without pay".

4. By the impugned order dated 20.07.1990, the appellate authority modified the penalty as withholding of two increments without cumulative effect.

5. The respondents did not issue an order of deemed suspension under Rule 10(2)(a) of the CCS(CJA) Rules, 1965. Instead, they issued Memos to him on 3.8.1983 and 20.3.1984 asking him to join duty. In the meanwhile, on 29.08.1986, the Judicial Magistrate 1st Class, Jalandhar discharged the accused involved in FIR No.100. There was delay in obtaining a copy of the same. He reported for duty on 26.12.1986.

6. The applicant has argued that the respondents were bound to place him under deemed suspension as he was arrested and kept in custody in the criminal case. That was not done. The version of the respondents is that they came to know about his arrest only through his statement of defence dated 28.4.1985 in the disciplinary proceedings.

7. We have gone through the records of the case carefully and heard the learned counsel of both parties. For the disposal of the present application, we do not consider it necessary to deal with all the contentions and submissions of both parties.

8. The Enquiry Officer has stated in his report dated 23.2.1988 that the charges against the applicant have not been substantiated and exonerated him. The Disciplinary Authority disagreed with the findings of the Enquiry Officer for the reasons indicated in the Memorandum enclosed with the

impugned order dated 22.7.1988. No show cause notice was issued to the applicant by the disciplinary authority in order to conform to the principles of natural justice. Another aspect of the case is that the Disciplinary Authority while imposing the penalty of withholding of two annual increments with cumulative effect, also passed an order that the period of his unauthorised absence from duty from 24.4.1983 to 31.12.1986 be treated as Extra ordinary leave without pay.

9. It is well settled that before the disciplinary authority disagrees with the findings of the Enquiry Officer^a and records its own findings based on reasons, the delinquent officer should be given an opportunity of representation to show cause as to why the finding in his favour should not be disturbed for the reasons given in the show cause notice. In Narayan Mishra Vs. State of Orissa, 1969 SLR 657, the Supreme Court has held that in a case where the delinquent official has been acquitted of some charges and the punishing authority differ from the findings of the Enquiry Officer and holds him guilty of charges, notice or opportunity should be given to the delinquent official by the punishing authority in order to conform to the principles of fairplay and natural justice. As no such notice was issued to the applicant in the instant case, the impugned orders dated 22.7.1988 and 20.7.1990 are liable to be set aside and quashed on this ground alone.

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10. In G. Papaiah Vs. Assistant Director (Medical Services), AIR 1976 AP 75 at 77, it has been held that when once leave is granted to a public servant, in respect of a particular period, it must be considered that he is permitted to absent himself from duty for that period. In such a case, it is not permissible or open to the employer or any other authority to proceed against him for absence from duty for the same period and punish him. In Bhur Singh, Hari Singh Rajput Vs. The State of Gujarat, 1982(1) SLJ 697 at 698, it was held that once the leave is sanctioned of whatever character it might be, the sting from that absence is taken away. It was held that in such a case, the disciplinary authority cannot impose punishment on the Government servant concerned.

11. In the instant case, though the disciplinary authority had found that the applicant had unauthorisedly absented from duty, he decided to treat the period during which the applicant remained absent as extra ordinary leave without pay. In view of this decision, we are of the opinion that the impugned orders of punishment dated 27.7.1988 and 20.07.1990 are not legally sustainable.

12. In the light of the foregoing discussion, we set aside and quash the impugned orders dated 27.7.1988 and 20.07.1990. We further direct that the applicant shall be paid full pay and allowances from 24.4.1983 to 29.08.1986 when he

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was discharged by the criminal court in the criminal case launched against him. The respondents shall comply with the above directions as expeditiously as possible and preferably within three months from the date of receipt of this order.

There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 31/7/92
MEMBER (A)
31.07.1992

P.K. Kartha
31/7/92
(P.K. KARTHA)
VICE CHAIRMAN (J)
31.07.1992

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