

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 939
T.A. No.

1991

DATE OF DECISION 12.10.1995

Sh. Manmohan Singh _____ Applicant (s)

Shri C.B.Pillai with Shri
Surinder Singh _____ Advocate for the Applicant (s)
Versus
U.O.I. & Others _____ Respondent (s)

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Acting Chairman

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

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

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

N.V. Krishnan
(N.V. Krishnan)
Acting Chairman

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPLE BENCH: NEW DELHI

O.A. NO. 939/91

New Delhi, this the 12th day of October, 1995

Hon'ble Shri N.V. Krishnan, Acting Chairman
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri Manmohan Singh,
s/o late Sardar Ishar Singh,
R/o 1453, Outram Lines,
Guru Teg Bahadur Nagar,
Delhi-110009.

... Applicant

By Advocate: Shri C.B. Pillai with
Shri Surinder Singh

Vs.

1. Union of India,
through
Director General (Works), CPWD Nirman
Bhavan, New Delhi.

2. The Chief Engineer(Elect.),
CPWD, Vidyut Bhavan,
Shankar Market,
New Delhi.

3. The Suptdg. Surveyor of Works(Elect.) I,
Office of the Chief Engineer(Elect.),
CPWD, Vidyut Bhavan,
Shankar Market,
New Delhi.

... Respondents

By Advocate: None

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant, who was working as D/Man Gr.II
in the office of Respondent No.3, the Superintending
Surveyor of Works(Elect.), CPWD, is aggrieved by the
order dated 21.12.88 dismissing him from the post
with immediate effect and treating the period of alleged

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unauthorised absence from 5.8.86 to date as dies-non.

2. The brief facts of the case are that the applicant had sought and was granted permission to visit his sister in U.S.A. by the order dated 3.3.86. He was granted 120 days leave w.e.f. 7.4.86 to 4.8.86 with the following conditions:-

(i) He shall not resign from his post while abroad.

(ii) He shall not extend his leave.

(iii) He shall not join any Institution for higher studies.

The applicant states that due to domestic circumstances he had to extend his leave by another four months upto 4.12.86. Vide respondents' memo. dated 1.10.86, the applicant was directed to report for duty immediately, to which he again requested for extension of leave i.e. upto 4.12.86 vide his letter dated 1.11.86. By the office memo. dated 26.11.86, the respondents reminded the applicant that he was allowed to visit New York on the specific conditions mentioned above and he was again required to join duty forthwith without prejudice to the department ~~for~~ taking action against him for non-fulfilment of his undertaking. By another memo. dated 29.12.86, the applicant was asked to explain the reasons for disobedience of the instructions to join duty, in which they had indicated that disciplinary action will

be initiated against him if he fails to join duty within 15 days. The applicant again applied for extension of leave till 3.8.87 in which he stated that he has enclosed a copy of the medical certificate.

3. Thereafter, by memo. dated 6.7.87, a chargesheet had been framed against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The charge is reproduced below:-

"That the said Shri Man Mohan Singh while functioning as D'Man, Grade-II absenting himself unauthorisedly during the period from 5.8.86 till date. He took leave from 7.4.86 to 4.8.86 and had given written undertaking that he will not extend his leave and that he will also not resign from the post while abroad, contrary to this undertaking and commitments, he is going on requesting to extend the leave on piece meal basis despite instructions by this office to report back immediately."

Shri Man Mohan Singh has acted in manner unbecoming of a Government servant and also disobeyed, the instructions of superior authority."

The applicant vide his letter dated 10.8.87 denied violation of any rules and regulations governing his service, but the copy of this letter is not on record.

The applicant claims ^{that} because of his extremely bad health as he was suffering from severe chest pain etc. he could not stand by the undertaking given by him while proceeding on leave to U.S.A. He attributes this also to his domestic circumstances, that he did not have sufficient funds to pay for the ticket. The respondents while acknowledging the letter dated 10.8.87 specifically

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called upon the applicant to admit or deny each charge within 30 days from the date of issue of memo. "otherwise it will be presumed that he has admitted the charges levelled against him and ex parte decision in the matter will be taken resulting in either dismissal or removal from service."

To this letter, the applicant has sent the letter dated 31.10.88 explaining that because of his physical and financial problems he was not able to discharge the duties as D/Man Grade II and he, therefore, sought voluntary retirement. Respondent No.3 after examining all aspects of the case and reply sent by the applicant came to the conclusion that his request for voluntary retirement cannot be agreed to. He has also stated that in the circumstances, the reasons given by him are not convincing and that he had not applied for extension of leave beyond 5.11.87. In the circumstances he held that the charge against him was proved and he passed the impugned penalty order of dismissal with immediate effect and the period of unauthorised absence from 5.8.86 to date be treated as dies-non for all the purposes.

4. We heard Shri C.B. Pillai, learned counsel for the applicant at great length. None appeared for the respondents though called twice.

5. The main contention of Shri Pillai, learned counsel for the applicant is that the conditions attached to the permission granted to the applicant for going abroad were unconscionable and bad in law. He submits that the O.M.No.VI/401/40/83 dated 14.6.85 relied upon by the respondents for imposing on him the conditions, which the respondents termed as 'undertaking' are not supported by the O.M. The other ground taken by Shri Pillai is that no Inquiry Officer had been appointed to carry out the inquiry which is contrary to the rules. In this connection, he has referred to the reply filed by the respondents in which they have stated that the disciplinary authority had taken the decision *ex parte* since the applicant neither appeared in person nor represented his case before the Inquiry Officers. According to learned counsel, this shows that there were Inquiry Officers, although he was not informed of ^{any P.} having been appointed as per the rules. The next point he has taken is that the respondents have also admitted that he had given a reply to the memo. of charges by his letter dated 10.8.87 and, therefore, reply of the respondents to the fact that he did not make any representation in his case before the Inquiry Officers is wrong. He also relies on the judgements in the matter of UOI Vs. Giriraj Sharma reported in (1995) SSC (L&S) 290 and in the matter of Dr. Puzhankara Kamalam Vs. D.G.

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ICMR reported in 1989 ATC (9) 26 CAT, Madras. We have carefully considered the arguments of Shri Pillai and perused the records.

6. In this case, the impugned penalty order has been passed by Respondent No.3 who is the competent disciplinary authority in this case. It is seen that the memos. dated 26.11.86 and 29.12.86 and the chargesheet dated 6.7.87 have been issued by Respondent No.3 himself. The replies and representations to the chargesheet and for extension of leave submitted by the applicant have also been addressed to the same authority. In the circumstances, the disciplinary authority has, after perusal of the replies, passed a detailed and speaking order giving reasons for arriving at the conclusion that the applicant's request for voluntary retirement cannot be agreed to and that the charges have been proved. Under Rule 14(4) of the CCS (CCA) rules it is not mandatory for the disciplinary authority to appoint an Enquiry Officer in all cases. In this case, the disciplinary authority had himself passed the penalty order after perusing the relevant documents. Merely because in the reply the respondents have loosely referred to the fact that the applicant had not represented his case before the 'Inquiry Officers' does not necessarily mean in the circumstances of the case that an Inquiry Officer had been appointed. The

disciplinary authority has himself inquired into the matter and passed an appropriate order. Therefore, there is no legal infirmity in the procedure adopted by the disciplinary authority and the impugned order is valid.

7. The conditions given in the undertaking before the applicant was sanctioned the leave have been accepted by the applicant. In the circumstances, it is not open to him at this stage to challenge the validity of the same. Further these conditions are neither arbitrary or unreasonable. We do not also find the cases relied upon by the applicant relevant to the facts in this case.

8. In the facts and circumstances of the case, we find that there is no ground to warrant any interference in the matter. The application is without any merit and it is accordingly dismissed. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

12/4/11
(N.V. KRISHNAN)
ACTING CHAIRMAN

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