

15

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. 9/91

Date: 9.7.1993

Shri R.D. Sharma Applicant

Versus

Union of India Respondents

For the Applicant Shri B.B. Chaturvedi, Advocate

For the Respondents Shri M.L. Verma, Advocate

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judl.)

1. To be referred to the Reporters or not?

Single Bench Judgement

(By Hon'ble Mr. J.P. Sharma, Member (Judl.))

Shri R.D. Sharma, the applicant, is employed as a Lower Division Clerk in the Central Ordnance Depot, Agra and at that time was also President of the Ordnance Depot Karamchari Union, Agra. The applicant, as alleged, had fallen ill and he reported for duty after recovery on 23.1.1988 along with medical fitness certificate. Instead, the applicant was again directed for second medical opinion on 25.1.1988. He was again declared medically fit to resume duty. However, instead of allowing the applicant to mark his attendance of his presence in discharge of his duties, it is alleged by the applicant that he was directed orally to resign from the office of the Union which he was holding.

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The applicant did not concede to that. The Personnel Officer thereafter, directed the applicant to produce the necessary prescriptions and other cash memos and empty containers of medicines which he used in his treatment. However, the applicant continued to report daily to the office of the respondents. Ultimately, on 5th February, 1988, the matter was reported to the Director General of Ordnance Service and the Commandant, Central Ordnance Depot. On 13th February, 1988, the Secretary of the Union, Shri B.B. Chaturvedi, informed Lt. Col. R.K. Chawla, respondent No.4, that the applicant has since resigned from the office of the President of the Union and on that, the Personnel Officer issued a letter dated 13.2.1988 and allowed the applicant to report on duty forthwith. Subsequently, on 2nd and 10th March, 1988, similar letters were issued directing the applicant to report for duty, but the applicant was denied entry in the office. Thereafter, the applicant again met Lt. Col. R.K. Chawla, respondent No.4. Then, he was allowed to resume duty and also promised that the period from 23rd January, 1988 to 18th March, 1988 shall be treated as a period spent on duty. However, on 27th March, 1989, the Personnel Officer issued a letter regularising the period of absence of the applicant from 16.2.1987 to 21.1.1988. For the rest of the period from 22nd January, 1988 to 18th March, 1988, the regularisation

6

has been made subject to applying leave application by the applicant and to consider the same. The grievance of the applicant arises at this stage on his averment that from 22nd January, 1988 to 18th March, 1988, there was no fault of the applicant and he was purposely withheld from joining his duties and deliberately kept out of work by the respondents.

2. In this application, the applicant has prayed that the period from 23rd January, 1988 to 18th March, 1988 be treated as duty and the pay, etc., for the said period be ordered to be paid along with interest and also compensation be allowed for non-payment of dues. The present application was filed in December, 1990 and on 11th January, 1991, notices were directed to be issued to the respondents. On 7th November, 1991, Shri M.L. Verma, appeared for the respondents. By the order dated 2nd December, 1991, the respondents were directed through the counsel, Shri M.L. Verma, to file their counter-affidavit within four weeks. Since then, on a number of dates the matter was listed and the respondents were directed to file their counter, but they did not care to do so. The matter was, therefore, ordered to be listed on Board and came for hearing. Shri B.B. Chaturvedi appeared for the applicant on 7.7.1993, but none appeared for the respondents. So, the matter has been heard in the absence of the respondents.

18

3. The contention of the learned counsel for the applicant is that once after recovering from illness, the applicant reported for duty, he should have been allowed to join as is evidenced by the letter of the Personnel Officer dated 25th January, 1988 (Annexure A-2). The applicant was directed for second medical opinion. There is no provision whatsoever to discredit the opinion of the Medical Officer and only the respondents were free to refer the applicant to the Medical Board whether he at that time was actually fit to join and discharge his duties or not. Now again, by the letter dated 27th Jan., 1988, the Personnel Officer adopted another unknown procedure asking the applicant to submit vouchers and prescription chits and the cash memos for the medicines purchased by him. This goes to show that the medical certificate of fitness of the applicant given by an expert body, was desired to be verified by prescriptions, etc. This was not open to the respondents. Though the applicant did not furnish some of these documents, yet on 13th February, 1988, he was allowed to report for duty. All these go to show an arbitrary act on behalf of the respondents, particularly the Personnel Officer in adopting a procedure which is not prescribed.

4. Since the respondents have not contested this application, the contention of the applicant that he was

forced to resign from the post of the President of the Union, has to be accepted. It is only after the applicant had resigned and the Secretary of the Union, Shri B.B. Chaturvedi, informed that the applicant had resigned. Thus, it is not a case where the applicant has deliberately kept himself out of employment, but it was only the act of the respondents which did not allow the applicant to join and discharge his duties. The applicant has also alleged that he has daily reported for duty. In such circumstances, there is no need for the applicant to apply for leave for the intervening period from 22nd January, 1988 to 18th March, 1988. For all purposes, he shall be deemed to be on duty and shall be entitled for continuance of service and salary and wages along with allowances for this period.

5. In the above circumstances, the application is allowed and the respondents are directed to treat the period from 21st January, 1988 to 18th March, 1988 as the period spent by the applicant on duty and pay him the salary, etc., due to him and the applicant need not apply for leave for that period. The claim for interest is disallowed. In the circumstances, the applicant shall bear his own cost. *The respondents to comply with the judgment preferably in 2 months from date of receipt of the copy of the order.*

for name
(J.P. Sharma)
Member (J)