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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.2881/2004

**Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri A.K. Agarwal, Vice-Chairman (A)**

New Delhi, this the 14th day of December, 2005

Naren Kumar Baruah
S/o Sh. Bisheshwar Baruah
R/o Flat No.12
Nirman Apartments
Mayur Vihar Phase-I
Delhi – 110 091.

Applicant

(By Advocate: Sh. A.K.Sinha)

Vs.

1. Union of India
Through
Special Secretary
[Aviation Research Centre]
Cabinet Secretariat
R.K.Puram, Block-5 (East)
New Delhi – 110 066.

2. Director General of Security
(Aviation Research Centre)
Cabinet Secretariat
R.K.Puram, Block-5 (East)
New Delhi – 110 066. Respondents

(By Advocate: Sh. Sushil Kumar Shukla, proxy of Mr. Satya Siddiqui)

ORDER

By Justice B. Panigrahi, Chairman

In this case, a prayer has been made by the applicant for quashing of the order passed by the disciplinary authority dated 11.6.2004 and also order passed by the appellate authority dated 23.8.2004 whereby and whereunder the

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applicant was dismissed from service. He further sought a direction against the respondents to reinstate him in service with all consequential benefits.

2. Factual scenario leading to filing of this case is as follows:

◦ 2.1. The applicant was appointed as Field Assistant [G] in the scale of Rs.950-20-1150-EB-25-1400 at ARC, Doom Doma Assam. It is stated that he worked there for a period of four years. Thereafter, he was transferred to ARC, New Delhi. Subsequently, he was posted as Assistant Field Officer [Photo-Lab Service]. The applicant has claimed to have discharged his functions with great diligence, sincerity and honesty for which he was promoted to the post of Deputy Field Officer (Photo Lab). He has availed Earned Leave for a period of 12 days with effect from 23.7.2001 to 3.8.2001 vide letter dated 26.7.2001. Since 4th and 5th August, 2001 being holidays, the applicant was supposed to resume duty on 06.08.2001. However, all of a sudden, he suffered from severe hypertension. As a result, he further submitted an application seeking an extension of his leave from 21.9.2001 to 20.10.2001. A copy of the Medical Certificate issued by the Dr. Ram Manohar Lohia Hospital, New Delhi is enclosed along with the Original Application (Annexure A-2). His prayer for Half Pay Leave from 22.10.2002 to 21.4.2003 was rejected. The applicant could not join his duties because of his continuous illness.

3. On 27.1.2003, the applicant was issued a show cause notice wherein, the charges for his unauthorized absence had been framed. As the applicant could not get any notice with regard to the date of fixation of inquiry, he could not participate in the proceeding. After conclusion of the proceeding, when a show cause notice was issued to the applicant, he submitted his reply by stating that a chance may kindly be given to him. But, instead of giving him a further chance,

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the disciplinary authority dismissed the applicant from service, which was further affirmed by the appellate authority.

4. The respondents-authorities have stated, in their counter that the applicant was unauthorisedly absent from duty with effect from 06.08.2001 till 25.2.2003.

5. On the last occasion, the applicant was denied the grant of Half Pay Leave. The applicant was fully aware of the development of the proceeding but intentionally he avoided to attend the inquiry, as he was fully conscious that he would not be able to justify his absence. Therefore, the respondents-authorities were within their power to take appropriate steps by issuing an order of dismissal.

6. The learned counsel appearing for the applicant has submitted that all through the applicant was present and had been discharging his functions properly but unfortunately, for few months, he failed to attend office as he was prevented from coming to the office on account of his ill-health. He has also submitted that in support of his illness, a certificate issued by the Dr. Ram Manohar Lohia Hospital had been enclosed, whose authenticity cannot be disputed. It is further submitted that only Half Pay Leave from 22.10.2002 to 21.4.2003 was rejected but there was no communication with regard to either grant or refusal for the other period. Therefore, it was presumably assumed that such leave has been granted.

7. From his submissions, it has further transpired that the authorities have taken ex parte decision in this case as he was not able to participate because he could not know the development of the disciplinary proceedings.

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8. The learned counsel appearing for the respondents has repelled the aforesaid contention by stating that at every stage the inquiry officer has sent necessary information to the applicant and there was no fault committed by the inquiry officer at any stage. Therefore, if the applicant was not vigilant if his own responsibilities and duties prosecuting his own case before the inquiry officer, he could have no grievance at a latter stage that he was denied proper opportunity.

In support of his submission, he has relied upon a judgement reported in 1998 (2) SCC 400 in the case of Nagar Palika, Nataur Vs. U.P. Public Services Tribunal, Lucknow and Others. On a careful perusal of the Judgement passed by the Hon'ble Supreme Court, we found that the facts of that case are distinguishable from the facts of the present case. In this case, there is nothing on record to show that the applicant was served with the notices of inquiry. The learned counsel produced the departmental file and on verification of the same we found that on some occasion notice was returned back by his wife on the plea that the applicant was away on some personal commitment. On some other occasions, notice of inquiry was returned 'unserved'. Therefore, from the aforesaid factual circumstances, we have no other way left except to presume that there was no proper service of notice upon the applicant.

9. On one occasion, after conclusion of inquiry, a notice was sent to him to which, he replied by stating that further opportunity should be given to him.

10. In the aforesaid circumstances, we, therefore, set aside the order of punishment of dismissal passed against the applicant with a direction to the disciplinary authority to dispose of the same from the stage of notice. The disciplinary proceedings can be concluded within a period of four months from the date of communication of this order. The applicant is cautioned that if he fails

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to participate in the inquiry, no further grievance can be entertained at a latter stage.

11. With the above observation, the application succeeds.



(A.K. AGARWAL)
Vice-Chairman (A)



(B. PANIGRAHI)
Chairman

/Rao/