(25)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.858 of 2004

New Delhi, this the 28th day of October, 2005

HON'BLE SHRI JUSTICE B. PANIGRAHI, CHAIRMAN
HON'BLE SHRI M.K. MISRA, MEMBER (A)

Sanjay Kumar, Driver,
Through Labour Commissioner,
Govt. of NCT of Delhi,
5, Sham Nath Marg, Delhi-110054. .....Applicant.

(By Advocate : Shri O.P. Gehlot)

Versus

1. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Govt. Secretariat,
Player's Building,
I.P. Estate, New Delhi.

2. Labour Commissioner
Govt. of NCT of Delhi,
5, Sham Nath Marg, Delhi –54. .....Respondents.

(By Advocate : Mrs.Rashmi Chopra)

O R D E R

Shri M.K. Misra, Member (A) :

Applicant - Shri Sanjay Kumar working as a Driver since 25.2.1993 in the Labour Department of Govt. of NCT of Delhi, filed this OA with the prayer for quashing the impugned penalty order dated 25.3.2003, appellate order dated 30.9.2003 and penalty proceedings and order dated 13.1.2005 with all consequential benefits.

2. Penalty order dated 25.3.2003 reads as under:-

"ORDER

WHEREAS, Sh. Sanjay Kumar, Driver, was proceeded against Departmentally under Rule 14, of the Central Civil Services (Classification, Control and appeal), Rules, 1965 for his unauthorised and willful absence from duty vide this Office Memorandum of Even No. Dated 19/7/2000.

AND WHEREAS, on his having denied the charges framed against him Sh. R.K. Sharma, assistant Labour Commissioner and Sh. Param Jeet Singh Gulati, Grade II DASS Inspector, (presently working as Superintendent in the Education Department) were appointed as inquiry officer and presenting officer respectively to enquire into the charges levelled against the said Sh. Sanjay Kumar, Driver.

AND WHEREAS, the Enquiry Officer vide his Report Dated 10/2/2002, has held that the charges levelled against the said Sh. Sanjay Kumar, Driver stand partly proved.

AND WHEREAS, as required under Rule 15 (2) of the C.C.S. (C.C.A.) Rules, 1965 a copy of the Inquiry report was forwarded to the charged official Sh. Sanjay Kumar, Driver to submit his representation if any within fifteen days vide this Office Memorandum dated: 23/9/2002.

AND WHEREAS, Sh. Sanjay Kumar, Driver Submitted his reply vide his letter dated 8/10/2002.

Now, therefore, after considering the charges levelled against the official, the report of the enquiry officer viz-a-viz his representation against the same, the undersigned is of the view that ends of justice would be met if a penalty of withholding of four increments with cumulative effect with effect from the next date of increment is imposed on him and I order accordingly."

3. The appellate authority vide its order dated 30.9.2003 decided against the applicant and the order of the disciplinary authority was confirmed by the appellate authority.

4. The factual matrix relevant to this case is that the applicant was working as a Driver w.e.f. 25.2.1993 on regular basis in the Labour Department of Delhi Government. He was served with the Memorandum dated 19.7.2000 for his misconduct on account of unauthorized absence from duties frequently. The inquiry officer was appointed and conclusion drawn by the inquiry officer resulted into the conduct of the applicant being treated as unbecoming of a Govt. servant and also with the charges of violation of Rule 3(1) (ii) and (ii) of the CCS (Conduct) Rules, 1964 and Rule 25 of the CCS (Leave) Rules, 1972. The conclusion of the inquiry officer was as under:-

"(iv) CONCLUSION

In the above background, after giving due opportunities to the C.O. as well as the Presenting Officer to present their case. I have come to the conclusion that the C.O. was absent from duty for long

periods of time without intimation or sanction of leave and did not reply to memo for remaining absent after marking attendance and thus has failed to maintain devotion to duty and has put up his conduct in such a manner as unbecoming of a Government Servant and thus has violated Rule 3(1) (ii) and 3(i) (iii) of C.C.S. Conduct Rules, 1972 as per the Articles of Charges."

5. Thereafter the disciplinary authority imposed the penalty of withdrawal of four increments with cumulative effect, i.e., with effect from the next date of increment vide order dated 25.2.2003. On an appeal filed by the applicant on 26.5.2003, the appellate authority confirmed the order of the disciplinary authority. The above orders of the disciplinary authority as well as appellate authority are under challenge on the ground that principles of natural justice was not followed by way of non-considering the evidence offered by the applicant during the course of the inquiry proceedings and by way of not confronting the evidence used against the applicant by the inquiry officer. The above said order was also challenged on the ground that disciplinary authority as well as appellate authority did not apply their mind while passing the order as it is not a speaking order. But it is a confirmation of the conclusion drawn by the inquiry officer by the disciplinary authority as well as appellate authority. Thus, there is an element of non-application of mind by the competent authority. The punishment is also appeared to be disproportionate to the charges mentioned in the Articles/Memorandum as alleged by the applicant.

6. The vital documents such as attendance register copies of orders sanctioning and allowing the leave etc. which were demanded by the applicant and allowed by the inquiry officer were not produced by the respondents. It was further submitted that even the CTO was not confronted on whose report penalty was considered to be imposed by the inquiry officer/disciplinary authority. In fact the applicant was not absent in an unauthorised manner. He was sanctioned leave from time to time. Thus, this prejudicial attitude of the inquiry officer

vitiated the inquiry. The learned counsel for the applicant further averred that Rule 25 of the CCS (Leave) Rules, 1972 is not applicable in this case because the said Rule relates to the unauthorised absence after expiry of leave. The learned counsel for the applicant also observed that there is a difference between the charges framed against the applicant and the findings given by the inquiry officer inasmuch as there is a difference between willful absence and unauthorised absence. Willful absence is a misconduct whereas every unauthorised absence may not be a misconduct, if it is under compulsion and with reasons not under the control of the applicant. The inquiry officer did not examine the applicant under Rule 14 (18) of the CCS (Conduct) Rules, which is mandatory specially when the applicant did not offer himself to be examined as a defence witness. This being a statutory right of the applicant which was denied by the inquiry officer, particularly, when he made a defence statement after closer of the departmental evidence as required under Rule 14 (16) of the Rules ibid. Further it was submitted that the applicant was illegally and unauthorisedly was forced to be cross-examined by the Presenting Officer which is against the rule of principles of natural justice. Thus, the inquiry officer acted in a baised manner in favour of the department. The inquiry officer also did not ask departmental witness, i.e., CTO to give proper and specific answer during his cross-examination. The inquiry officer allowed the CTO to get away with the evasive reply. It was also averred by the learned counsel for the applicant that the inquiry officer did not discuss in his report of the arguments and pleas taken by the applicant in his defence statement and argument. Thus the findings of the inquiry officer are perverse and are not based on evidence. The disciplinary authority did not apply his mind, as he did not pass the speaking order. He only confirmed the findings of the inquiry officer. Thus, there is non-application of mind by the disciplinary authority which is again the violation of principles of natural justice.

Learned counsel for the applicant also challenged the order of the appellate authority inasmuch as that the appellate authority did not discuss the various arguments taken by the applicant in his appeal, in his representation/statement and defence proof was rejected without any basis. The appellate authority rejected the appeal of the applicant on the ground that he remained absent willfully and in an unauthorised manner absent from duty. Thus attitude of the appellate authority indicates non-application of mind and bias against the applicant. It was further averred on behalf of the applicant that there was a discriminatory treatment by the respondents with the applicant because other persons similarly placed in the office committed the same mistake were not punished in the manner in which the applicant was punished. Shri S.K. Garg against whom the allegations were made in writing and who was the only witness in this case and on whose report these proceedings were initiated, no question were asked from him and no inquiry was made against him in this respect. The learned counsel for the applicant further averred that the order dated 13.1.2005 was passed after this OA has been filed before this Tribunal.

7. In support of his contention, learned counsel for the applicant referred to the following decisions:-

1. ***R.S. Saigal v. Director General, Post and Telegraphs and others***, 1983 (2) SLR 473;
2. ***Jagat Singh v. The Asstt. Commissioner, Delhi & Ors.***, 2995(20 SLJ (CAT) 1;
3. ***S.N. Mukherjee v. UOI***, 1991 (1) SLJ 1
4. ***Union of India v. K.A. Kittu and others***, JT 2000 (Suppl.3) SC 17
5. ***State of M.P. Vs. Chintamansadashiva***, AIR 1961 SC 1623
6. ***State of U.P. v. Shatrughan Lal***, 1998 (6) SCC 651
7. ***B.B. Gupta v. UOI***, ATC 1996 (32) 563

8. ***Ministry of Finance v. S.B. Ramesh***, JT 1998 (1) SC 319

8. In the above decisions, the principles of natural has been dealt with as well as what is a speaking order, its nature and manner has been discussed at great length. According to the applicant's learned counsel, the principles as laid down with regard to natural justice and in respect of speaking order have not been followed by the concerned authorities in the case of the applicant.

9. Lastly, the applicant submitted that grant of leave should be encouraged as per Govt. of India instructions issued from time to time.

10. Learned counsel for the respondents in their counter reply averred that the inquiry officer gave the findings that the applicant was absent in an unauthorised manner as under:-

1.	24.5.1999	to	24.6.1999
2.	10.3.2000	to	20.3.2000
3.	11.4.2000	to	23.4.2003

11. Thus the applicant was absent unauthorisedly for a long period of time without intimation without formal sanctioning of leave. Therefore, in Article-1, the charge is that the applicant was in the habit of taking leave frequently and that too without any prior intimation or sanction of leave by the competent authority. Thus, this amounts to willful absence. Hence, it is a misconduct under Rule 3(1) (ii) and (iii) of the CCS (Conduct) Rules, 1972. Whatever documents relied upon by the inquiry officer were supplied to the applicant. Thus there is no violation of principles of natural justice. It was also submitted on behalf of the respondents that record did not indicate that the applicant had ever objected to the cross-examination by the Presenting Officer. The conduct of the applicant was treated to be unbecoming of a Govt. servant because he lacked devotion to duty and, therefore, he has violated Rules 3 (1) (ii) and (iii) of CCS (Conduct) Rules, 1972 although, the inquiry officer did not find part (ii) of Article as

proved but his unauthorised absence was still the subject matter of misconduct. Whatever statement/evidence/submissions made before the inquiry officer, the disciplinary authority and the appellate authority were considered in a proper way by them and after their consideration, the necessary orders were passed in this case against the applicant. The inquiry was also conducted as per Rules and instructions. Therefore, there is no violation of principles of natural justice in any manner.

12. The applicant filed the rejoinder to this counter reply by way of mentioning that the respondents distorted the facts because on the basis of CTO's report the chargesheet was issued to him. The applicant was on medical leave on different dates. The copies of documents of vital evidence to the applicant's defence were not provided by the respondents.

13. The respondents submitted the amended counter reply wherein it has been clarified that the applicant did not defend himself properly before the inquiry officer but he levelled charged against the CTO. Rule 14 (18) of the Rules ibid was fully complied with as he did not object to his cross-examination by the Presenting Officer. It was further clarified that from time to time Memos were issued against the applicant but he did not amend his ways. Therefore, his absence from 24.5.1999 to 24.6.1999 was treated as 'dies non'. The chargesheet was issued only when the applicant failed to amend his conduct by way of improvement.

14. The rejoinder to the amended counter reply was also filed by the applicant which is in the nature of reiteration and repetition.

15. The learned counsel for the respondents took the shelter and support of the Apex Court decision in the case following case:-

1. ***State of M.P. v. Harihar Gopal***, 1969 SLR (SC) 274;
2. ***Union of India v. Sardar Bahadur***, 1972 SLR (SC) 355; and

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3. ***Mithilesh Singh v. Union of India and Ors.***, JT 2003 (2) SC 264

16. The respondents also referred to the decision of the Hon'ble Delhi High Court in the case of ***Sudesh Kumar v. Union of India and Ors.***, 2003 (68) DRJ 321 (DB).

17. We have heard the learned counsel for both the parties and perused the records.

18. Relevant leave rules are as under:-

> "14. Application for leave
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> Any application for leave or for extension of leave shall be made in Form I to the authority competent to grant leave.
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> 19. [Grant of leave on medical certificate to Gazetted and non-Gazetted Government servants]
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> (1) An application for leave on medical certificate made by –
>
> (i) A Gazetted government servant, shall be accompanied by a medical certificate in Form 3 given by an Authorized Medical Attendant;
>
> (ii) A non-Gazetted Government servant, shall be accompanied by medical certificate in Form 4 given by an Authorized Medical Attendant or a Registered Medical Practitioner;
>
> defining as clearly as possible the nature and probable duration of illness.
>
> NOTE – In the case of non-Gazetted Government servant, a certificate given by a registered Ayurvedic, Unani or Homoeopathic medical practitioner or by a registered Dentist in the case of dental ailments or by an honorary Medical Officer may also be accepted, provided such certificate is accepted for the same purpose in respect of its own employees by the Government of the State in which the Central Government servant falls ill or to which he proceeds for treatement.]
>
> (2) A Medical Officer shall not recommend the grant of leave in any case in which there appears to be no reasonable prospect that the Government servant concerned will ever be fit to resume his duties and in such case, the opinion that the Government servant is permanently unfit for Government service shall be recorded in the medical certificate.
>
> (3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a

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Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date.

(4) It shall be the duty of the Government Medical Officer referred to in sub-rule (3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose may either require the applicant to appear before himself or before a Medical Officer nominated by himself.

(5) The grant of medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.

(6) The authority competent to grant leave may, in its discretion, waive production of a medical certificate in case of an application for leave for a period not exceeding three days at a time. Such leave shall not, however, be treated as leave on medical certificate and shall be debited against leave other than leave on medical grounds."

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25. Absence after expiry of leave

(1) Unless the authority competent to grant leave extends the leave, a Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action..."

19. The main contention of the applicant is with regard to not following the principles of natural justice and in respect of not passing the speaking order by the disciplinary and appellate authorities. Regarding principles of natural justice, relevant case law is ***Canara bank Appellant v. V.K. Awasthy***, 2005 SCCL.COM 249. In this case, the Hon'ble Apex Court held as under:-

"Service – termination – Challenge in this Appeal is to correctness of the judgment rendered by a Division Bench of the Kerala High Court holding that the order directing respondent's dismissal from service was in violation of the principles of natural justice – it was held that the order was passed without proper application of mind regarding the findings recorded by the Disciplinary Authority on the basis of report of the enquiry officer,

and relating to imposition of punishment – principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice – the conclusion arrived at by the division Bench that there was violation of principles of natural justice cannot be maintained – the various allegations as laid in the departmental proceedings reveal that several acts of misconduct unbecoming a bank official were committed by the respondent – the decisions of the learned Single Judge on the quantum of punishment and of the Division Bench regarding alleged violation of the principles of natural justice cannot be maintained and are, therefore set aside. The inevitable conclusion is that the order of dismissal as passed by the Appellant – Bank does not suffer from any infirmity."

"10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principles is what is commonly known as adi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time give for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic documents was made at Runnymede in 1215, the first statutory recognition of this principles found its way into the 'Magna Carta'. The classic exposition of Sir Edward Coke of natural justice requires to 'vocate interrogate and adjudicate'. In the celebrated case of Cooper vs. Wandsworth Board of Works (1963 (143) ER 414), the principles was thus stated:

> "Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "Where are thou has thou not eaten of the tree whereof I commanded three though should not eat".
>
> Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

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18. As was observed by this Court we need not to go into 'useless formality theory; in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the

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appellant unless failure of justice is occasioned or that it would not be in public interest to do so in particular case, this Court may refuse to grant relief to the concerned, employee. (See **Gadde Venkateswara Rao vs. Govt. of A.P. and others** (AIR 1966 SC 828). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See **Charan Lal Sahu vs. Union of India etc.** (AIR 1990 SC 1480).

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20. Inevitably, the conclusion arrived at by the Division Bench that there was violation of principles of natural justice cannot be maintained.

21. Coming to the question whether the punishment awarded was disproportionate, it is to be noted that the various allegations as laid in the departmental proceedings reveal that several acts of misconduct unbecoming a bank official were committed by the respondents.

22. It is to be noted that the detailed charge sheets were served on the respondent – employee who not only submitted written reply, but also participated in the proceedings. His explanations were considered and the Inquiry Officer held the charges to have amply proved. He recommended dismissal from service. The same was accepted by the Disciplinary Authority. The proved charges clearly established that the respondent-employee failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the interest of the bank. In the appeal before the prescribed Appellate Authority, the findings of the Inquiry Officer were challenged. The Appellate Authority after analyzing the materials on record found no substance in the appeal.

23. The scope of interference with quantum of punishment has been the subject – matter of various decisions of this Court. Such interference cannot be a routine matter."

20. In the case of the applicant, an opportunity of being heard was provided to him and his explanation was well considered by the inquiry officer as well as by the concerned authorities. Further by the conduct of the applicant remaining habitual absentee from the duties without proper sanction of leave and in the light of the fact that various Memos were issued from time to time, as a matter of motivating the applicant to be regular in his duties and when not finding any improvement in him, the period was treated as 'dies non', it is quite indicative

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that the applicant remained willfully absent from duty because he could not explain his unauthorised absence with the reasons beyond his control. Thus, it is a misconduct. It is also indicative that the explanation/ statement/ defence evidence were considered by the inquiry officer as well as by the concerned authorities. Therefore, there is no violation of principles of natural justice in this case.

21. Regarding the contention of the applicant that the disciplinary authority did not pass the speaking order, it is observed that the copy of the inquiry report was given to the applicant and the applicant had no opportunity to be prejudiced by way of not affording an opportunity of being heard by the disciplinary authority. Therefore, by way of repeating the charges in the penalty order would not make the said order a non-speaking one. In fact, the disciplinary authority came to the conclusion independently. There was a misconduct on the part of the applicant by remaining absent willfully from duties. The relevant case law is ***Mithilesh Singh Vs. Union of India and Ors.***, JT 2003 (2) SC 264, wherein the Apex Court held that :

> "There is prohibition on any member of the force to leave station even on holidays without specific permission of the authority empowering to grant casual leave. These modalities have been enumerated in Rule 104 clearly bring out the essence of discipline, which is required to be observed. Absence from duty without proper intimation is indicated to be a grave offence warranting removal from service. Therefore, mere making an application for leave cannot be construed to be of any consequence in the background of the strict requirement of giving proper intimation. Even if it is accepted that there was intimation, that by no such imagination can be construed to be a proper intimation for diluting the requirement of obtaining permission before absenting from duty. Stress is on the expression "proper". It means appropriate, in the required manner, fit, suitable, apt. The mere making of a request of leave, which has not been accepted is not a proper intimation. It cannot be said that the said word is a surplusage. The intention of legislature is primarily to be gathered from the language used, and as a consequence a construction which results in rejection of words as meaningless has to be avoided. It is not a sound principle of construction to brush aside word(s) in a statute as being inapposite surplusage; if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In the

interpretation of statutes the Courts always presume that the legislature inserted every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain. The authorities were, therefore, justified in holding that he was guilty of the offence of absence from duty without proper intimation.

Penalty of removal of service is statutorily prescribed. It is for the employee concerned to show that how penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show, as to how the punishment could be characterized as disproportionate and/or shocking. On the contrary as established in the discipline proceedings, the appellant left the arms and ammunition unguarded and not in any proper custody. This aggravated the aberrations. Therefore, the order of removal from service cannot be faulted. There is no reason to interfere with the orders of the Division Bench of the High Court."

22. It is observed from the above that in the above case, the penalty was imposed by way of removal from service whereas in the present case of the applicant, only a penalty of withholding of four increments with cumulative effect with effect from the next date of increment was imposed. It appears that the disciplinary authority was lenient in this case by awarding the lesser punishment of lesser gravity.

23. In the light of the above discussion, we are of the confirmed view that no interference is called for by this Tribunal as OA suffers from merits. OA is, therefore, dismissed with no order as to costs.

(M.K. MISRA)
MEMBER (A)

(B. PANIGRAHI)
CHAIRMAN

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