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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.888/2004

New Delhi, this the ^{3rd}..... day of March, 2005

**HON'BLE JUSTICE MR. M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

Shri Vijay Pushkarna,
S/o Late Shri A.C. Pushkarna,
R/o 1683, Lodhi Road Complex,
New Delhi – 110 003
(By Advocate : Shri M.S. Ahluwalia)

... Applicant

Versus

1. Union of India
Through the Cabinet Secretary,
South Block, New Delhi
2. The Joint Secretary (Pers.)
& Disciplinary Authority,
Govt. of India,
Cabinet Secretariat, New Delhi
3. The Special Secretary (Pers.)
& Appellate Authority,
Govt. of India,
Cabinet Secretariat,
New Delhi
(By Advocate : Shri Madhav Panikar)

... Respondents

ORDER

BY HON'BLE MR. S.K. MALHOTRA :

This OA has been filed by the applicant with the prayer to quash and set aside the impugned order dated 31.3.2003 and to reinstate him in service with all consequential benefits.

2. The facts of the case, in brief, are that the applicant joined the services of the respondents as a directly recruited Assistant on 19.10.1987. He had applied for 26 days HPL from 5.3.2001 to 30.3.2001 suffixing 31.3.2001, 1.4.2001 and 2.4.2001 being closed holidays on the ground of ill

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health of his wife and also to take care of his two small kids, which was refused by the respondents vide Memo dated 2.3.2001 (Annexure A/2). As the applicant's wife continued to remain sick, he had applied for more leave vide his application dated 2.4.2001. He was issued a notice to show cause on 30.5.2001 as to why the period of absence from 5.3.2001 till the date he joined his duty be not treated as 'dies-non'. He submitted his reply and the respondents vide order dated 3.10.2001 (Annexure-A/5) treated the period of absence as 'dies-non' for all purposes. He preferred a representation dated 22.10.2001 against the said order which was rejected vide order dated 16.7.2002.

3. The applicant was served with a charge memo dated 7.6.2001 under Rule 14 of CCS (CCA) Rules, 1965 firstly, for his unauthorized absence from duty from 5.3.2001 onward and secondly, for evading receipt of official communications. He submitted his reply to the charge memo vide his letter placed at Annexure A/9. The applicant alleges that nothing further survived in the disciplinary proceedings after the respondents vide their letter dated 30.10.2001 had treated the period of absence from duty as 'dies-non' for all purposes.

4. The applicant has contended that while the preliminary enquiry was held on 31.1.2002, the regular enquiry did commence only on 1.8.2002. He further alleges that grave injustice has been caused to him during the enquiry. The disciplinary authority had cited 5 witnesses out of whom 3 were dropped. Further, the documents containing the reasons for not approving the leave were not supplied, despite repeated requests. The Inquiry Officer submitted his report on 4.9.2002 (Annexure A/13), a copy of which was supplied to him on 16.9.2002. He submitted a representation dated 30.9.2002. The disciplinary authority vide impugned order dated 15.11.2002 dismissed him from service (Annexure A/14-A). The applicant thereafter filed a representation to the Special Secretary (Personnel)/Appellate Authority requesting him to reconsider the matter, as he was not given a reasonable opportunity to defend his case and further the penalty imposed on him was harsh and disproportionate in view of the fact

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that he proceeded on leave to take care of his ailing wife and the children. The appellate authority vide its order dated 31.3.2003 dismissed the appeal stating that it was devoid of any merit. The applicant has alleged that the aforesaid order was passed without considering his prayers. It is alleged that non-supply of relevant document has vitiated the enquiry proceedings. It is stated that leave can be refused or revoked only when exigencies of public service so require, as per provisions of Rule 7 (2) of CCS (Leave) /Rules, 1972. When he had applied for leave, he had sufficient leave to his credit and refusal of the same to get his wife treated was not fair. He claims that he had not evaded receipt of dak as alleged by the respondents. According to him no disciplinary action could be taken against him when the matter stood closed with the period of absence having been treated as 'dies-non'.

5. The respondents in their counter reply have submitted that the applicant was absent from duty w.e.f. 29.1.2001. Earlier he submitted his application dated 5.2.2001 for grant of 26 days EL w.e.f. 29.1.2001 to 23.2.2001 on the ground of children's illness. This was refused vide Memo dated 26.2.2001. However, the said absence period was regularized as 26 days EL. The applicant had meanwhile applied for grant of another 26 days HPL w.e.f. 5.3.2001 to 30.3.2001, which was refused and the same was communicated to him vide Memo dated 2.3.2001. In spite of communication of refusal of leave, the applicant remained unauthorizedly absent and did not report for duty on 5.3.2001. He sent another leave application dated 4.3.2001 addressed to the JS(Pers), without routing the same through his Controlling Officer, in connection with the treatment of his wife. There were no details regarding the period and kind of leave. Thereafter he again submitted a leave application dated 2.4.2001 requesting for grant of extension of leave for 103 days w.e.f. 5.3.2001 to 15.6.2001.

6. The request of the applicant for grant of leave was rejected by the competent authority vide memo dated 11.4.2001 and he was directed to report for duty immediately. He was again directed to resume duty vide Memo dated 3.5.2001, but he did not report for duty. These communications were sent at his residential address by Registered Post,

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Speed Post and by Special messenger but these were returned with the remarks "the addressee not at home, family members refused to accept the cover". The communication sent through the special messenger also could not be delivered, as it was intimated by the lady (wife) of the applicant that he was out of station. The communication was again sent on 5.5.2001 through special messenger, which also could not be served on him due to the same reason. The disciplinary authority accordingly issued the show-cause notice dated 30.5.2001 to the applicant and served the same at his residential address as to why his period of absence cannot be treated as 'dies-non' and also decided to initiate departmental proceedings for imposition of major penalty for the unauthorized absence since 5.3.2001. The applicant submitted his reply to the show-cause notice on 28.6.2001. His reply was considered by the competent authority and found that he had no justification for remaining absent unauthorizedly for such a long period. The competent authority accordingly treated the unauthorized absence from 5.3.2001 to 17.6.2001 as 'dies-non' for all purposes in accordance with the provisions of FR-17(A). Simultaneously, disciplinary proceedings were also initiated against the applicant for his unauthorized absence and wilfully evading official communications under Rule 14 of CCS (CCA) Rules. The departmental proceedings ended in his dismissal from service.

7. As regards the allegation of the applicant that there was no relevance to initiate disciplinary proceedings against him as the period of absence had already been treated as 'dies-non', the respondents have contended that the action to treat the period of unauthorized absence as 'dies-non' is a purely administrative action; whereas the departmental proceedings under Rule 14 of CCS (CCA) Rules are in respect of violation of specific provisions in the CCS (Conduct) Rules. The mere fact that the misconduct alleged in the charge sheet also included the charge of unauthorized absence would not, in any manner, violate the departmental proceedings. Regarding non-supply of document containing the reasons for not approving the leave, the respondents have stated that the Inquiry Officer did not find the relevance of the document in the case since the refusal of leave was communicated to him.

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8. The respondents have further stated that in terms of Rule 7 (i) & (2) of CCS (Leave) Rules, 1972, leave cannot be claimed as a matter of right and in the exigency of public service, leave of any kind can be refused or revoked by the authority competent to grant it. It is not mandatory on the part of the competent authority to communicate the reasons for refusal of leave to the official. They have also contended that the applicant was habitual in remaining unauthorizedly absent. They have given the details of his unauthorized absence from duty during the period 2000-01 in the counter reply. Regarding denial of principle of natural justice, they have vehemently denied the allegation, as at no point of time it was violated.

9. Finally, the respondents have argued that it is the duty of the official concerned to ascertain from the competent leave sanctioning authority whether the leave applied for by him was sanctioned or not. When the exigencies of service so require, discretion to refuse or revoke leave of any kind is reserved to the authority empowered to grant it. It was wrong on the part of the applicant to sit at home unauthorizedly after the leave had been refused. The residence of the applicant is merely 1 km away from the office premises and if he had acted in a bonafide manner, he would have visited the office premises on any working day to know the position of his leave application. On the other hand, he had been evading receipt of communications sent to him at his residence.

10. The applicant has filed a rejoinder wherein he has more or less reiterated the same grounds.

11. We have heard the learned counsel for both the parties and have also gone through the pleadings on record.

12. During the course of discussion, the learned counsel for the applicant raised two main points. One was that while refusing leave, the respondents have not indicated any reason. Secondly, the documents based on which the leave was refused were not made available to him during the course of

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enquiry. The learned counsel for the respondents stated that it is not always possible for the department to communicate to the employees the reason for refusing leave, as according to the Rules, leave can be refused or revoked in the exigency of public service. He stated that in an organization like Intelligence Bureau in which the applicant is working, it was not possible to grant leave to all those who want leave at a particular point of time and there is a limit beyond which the leave to staff cannot be granted. It was a gross misconduct on the part of the applicant to remain unauthorizedly absent for months together without sanction of leave by the competent authority. The conduct is all the more grave when he absented himself despite the fact that his leave was specifically refused. He had been deliberately evading the receipt of communications sent to him at his residence.

13. After hearing the rival contentions of both sides, there is no doubt that the applicant has behaved in a very irresponsible manner by remaining himself unauthorizedly absent especially after the leave was refused. On our two specific queries, we were informed that during his unauthorized absence, which is stated to be due to illness of his wife and children, or even thereafter the applicant had not produced any medical prescription or any other proof in support of his contention that his wife was ill. It was stated that he was getting the treatment of his wife at Haridwar. Even then, he could have produced certain prescriptions from the private doctors from whom his wife was getting the treatment, which he did not do. This does put a question mark on the genuineness of the reason for which the applicant remained unauthorizedly absent. The department had initiated disciplinary proceedings against him in which the applicant had participated and was given due opportunity to defend himself. It was not mandatory for the respondents department to communicate him the reason for refusal of the leave nor there was any need for supply of documents being asked for by him. The allegation against him was proved in the enquiry and a copy of the enquiry report was furnished to him. The representation made by him was duly considered and the disciplinary authority, after taking into consideration all the relevant factors, imposed the penalty of dismissal from

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service. His appeal was also rejected after due consideration. We do not find any legal infirmity in the conduct of disciplinary proceedings.

14. It is a well settled law that the jurisdiction of the Tribunal in the matter of judicial review of the orders of the disciplinary authority is quite limited. In a series of decisions, the Apex Court has ruled that where the Tribunal had not found any fault with the proceedings conducted by the enquiring authority, it has no jurisdiction to reappreciate the evidence and to interfere with the order of punishment. In this connection, a reference may be made to the decisions of the Apex Court in the cases of B.C. Chaturvedi vs. Union of India and Others, (1995) 6 SCC 749, State of T.N. Vs. T.V. Venugopalan, (1994) 6 SCC 302, Union of India Vs. Upendra Singh, (1994) 3 SCC 357, State of T.N. & Another Vs. Subramaniam, (1996) 7 SCC 509, Government of T.N. Vs. A. Rajapandian, (1995) 1 SCC 216 and U.P. State Road Transport Corporation Vs. Basudeo Chaudhar and Another, (1997) 11 SCC 370. Judicial review is not an appeal against a decision but a review of the manner in which the decision is made. In the case of Commissioner and Secretary to the Government and Others Vs. C. Shanmugam, (1998) 2 SCC 394, it has held that this Tribunal cannot sit as a Court of appeal over the decisions based on the findings of the enquiring authority in disciplinary proceedings. The Tribunal cannot find fault with the orders passed by the disciplinary authority or of the appellate authority or of the revisional authority by reappreciating the evidence, unless it is found to be perverse or malafide. In the present case, no such irregularity or illegality has been found.


15. The Learned counsel for the applicant during the course of discussion also stated that punishment of dismissal from service awarded to the applicant for his unauthorizedly absence is dis-proportionate to the charge against him. We do not agree with the contention of the learned counsel. In an organization like Intelligence Bureau, the Government cannot afford to have a person who is so irresponsible like the applicant. His unauthorized absence is a grave act of misconduct, which cannot be taken lightly. In our opinion, it will not be in public interest to continue with the service of such

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an irresponsible employee in Government and especially in a sensitive Organization like I.B. The punishment awarded to the applicant is not considered to be shockingly disproportionate to the charge proved against him. We will not, therefore, like to interfere in the matter.

16. Taking into consideration all the relevant facts and circumstances of the case, we do not find any merit in the OA and the same is accordingly dismissed without any order as to costs.


(S.K. Malhotra)
Member (A)


(M.A. Khan)
Vice-Chairman (J)

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