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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1/85  
T.A. No.

198

DATE OF DECISION 20.2.1987

Shri Krishan Murari

Petitioner Applicant

In person

Advocate for the Petitioner(s)

Versus

The Union of India & Others

Respondents

Shri P.H. Ramchandani,

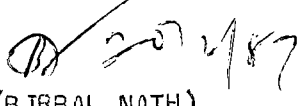
Advocate for the Respondent(s)

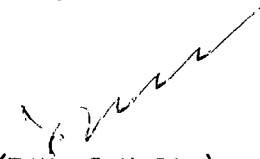
CORAM :

• The Hon'ble Mr. Justice Zaheer Hasan, Vice-Chairman (Judicial)

▲ The Hon'ble Mr. Birbal Nath, Administrative Member.

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. Whether to be circulated to all the Benches.

  
(BIRBAL NATH)  
Member 20.2.1987

  
(ZAHKEER HASAN)  
Vice-Chairman (J)  
20.2.1987

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI.

....

O.A. 1/1985.

Shri Krishan Murari

... Applicant

Vs.

The Union of India & Ors.

... Respondents.

CORAM:

Hon'ble Mr. Justice Zaheer Hasan, Vice-Chairman (Judicial)

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant:

Applicant in person.

For the respondents:

Shri P.H. Ramchandani, counsel.

(Judgment of the Bench delivered by Hon'ble  
Mr. Birbal Nath).

JUDGMENT.

This is Application No. 1/1985 filed before the Tribunal by the applicant, Shri Krishan Murari, Assistant Intelligence Bureau, Ministry of Home Affairs, New Delhi.

2. Before dealing with the reliefs sought and contentions raised on behalf of the parties, it will help if the material facts concerning the case are first sequentially noted because the Application was not filed in the proper format prescribed under the Rules as it was the first case since the inception of the Central Administrative Tribunal.

3. The applicant was employed as an Assistant in the Intelligence Bureau under the Ministry of Home Affairs since 15th April, 1957. He was working in the set up of Subsidiary Intelligence Bureau, Kohima, when he applied for leave on 6th October, 1967. From this date onwards, he was sanctioned leave for a total period of 155 days including 120 days medical leave as follows:-

- i) 9.10.67 to 31.10.67 (23 days)
- ii) 1.11.67 to 30.11.67 (30 days)
- iii) 1.12.67 to 10.12.67 (10 days)
- iv) 11.12.67 to 31.12.67 (21 days)
- v) 1.1.68 to 20.3.68 (80 days)
- vi) 21.3.68 to 20.3.68 (31 days)
- vii) 21.4.68 to 19.6.68 (60 days)

It is the contention of the applicant that he had been admitted in the Nursing Home in the then Willingdon Hospital and he had to seek leave on medical grounds.

4. The respondents asked the applicant to resume duty on the expiry of leave on 19.6.68 (Annexure 1 to the counter) vide Memorandum No. 6/PF/29 dated 4th June, 1968, which reads as follows:

"Shri Krishna Murari Assistant is directed to report to duty positively after the present spell of leave is over. He shall not be granted further extension of leave in any case, beyond the present spell which expires on 19.6.86.

In case he again applies for extension of leave on medical ground, he will be referred to the Medical Board for necessary investigation."

The applicant again applied for extension of leave. It was refused and he was informed vide letter of 16th July, 68

(Annexure 2 to the counter) which reads as under:-

"With reference to his petition,

dated 20.6.68, Shri Krishna Murari, Assistant is informed that the extension of leave beyond 19.6.68 is refused. He is again directed to report for duty immediately."

Once this extension of leave was refused, the applicant submitted resignation from the post of Assistant on 10th August, 1968 in protest and in his resignation letter dated 10.8.1968 (Annexure 'A' of the Application), he, inter alia, stated the following:

"...Meanwhile I should be most grateful for the extension of the leave on half-pay by one month with effect from 20.6.68 on health grounds."

... "Fully disgusted and thoroughly frustrated I hereby tender my resignation from service in PROTEST against this harassment and discriminatory treatment effective from the date of acceptance but not in any case later than November 10, 1968 in which case the intervening period of 3 months may kindly be taken as three months notice period prescribed under the rules. Since I have already been advised by the Civil Surgeon Willingdon Nursing Home, New Delhi and lately by the family doctor at Roorkee, it would not be possible for me to resume duty and would, therefore, request that it may please be treated as leave of the kind due."

The above resignation of the applicant was not accepted by the respondents who replied him on 13th January, 1969 as follows:

"With reference to his petition dated 10.8.1968, Shri Krishna Murari, Assistant is informed that before his resignation could be considered by the I.B., New Delhi, he is directed to refund to the Government the following amounts due from him: .

1) Balance of House Building Advance.	.. Rs. 8,150.00
2) Balance of Pay/TA advance.	.. Rs. 530.00
3) Over paid Sikkim Allowance.	.. Rs. 401.55
4) Over drawn out fit Allowance during his stay at Gangtok.	.. Rs. 450.00
	<hr/>
	Rs. 9,531.55
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Thus, the applicant was asked to deposit Rs. 9,531.55 to enable the respondents to accept his resignation. This resignation thus remained un-accepted and the applicant remained absent from duty. The applicant then withdrew his resignation vide his letter dated 4.3.1978. This request of the applicant was not accepted by the respondents who replied him vide letter of 29th March, 1978 as under:

"Subject: Request for withdrawal of resignation.

...

With reference to his letter dt. 4.3.78 addressed to the Director, IB on the subject mentioned above, Shri Krishna Murari is informed that as per rules, he has ceased to be in Govt. service immediately after 5 years of his absence from duty. As such the question of withdrawal of his resignation does not arise. "

The respondents had sent the aforesaid communication without knowing that the relevant rule under which five years of absence, a Government servant was considered to have ceased in service, had been amended. This rule was amended in 1972 when the revised Leave Rules had come into force. When the new situation came to the light of the respondents, they in consultation with the Department of Personnel & Administrative Reforms, informed the applicant on 30.5.1980 that it had been decided to allow him to resume duty at I.B. HQtrs. He reported for duty on 11.6.1980 accordingly. Once he reported for duty, the disciplinary proceedings were initiated against him for his alleged unauthorised absence from duty with effect from 1968 onwards. The Enquiry Officer, vide his finding of 5th May, 1981, held that the charge against the applicant had not been proved beyond doubt. He also remarked that the disciplinary proceedings in respect of unauthorised absence from duty from 19th June, 1968 should not have been initiated as late as 14th

March, 1980 as the rules stipulated that such disciplinary proceedings should have been initiated immediately. The Disciplinary Authority did not accept the aforesaid finding and the proceedings were remitted to the said Enquiry Officer for further enquiry. In his second report dated 7th January, 1982, the Enquiry Officer again concluded that he found no grounds to change the conclusion already arrived in his original report of 5th May, 1981. The disciplinary authority disagreed with this finding of the Enquiry Officer and vide its order of 28th July, 1982, imposed the penalty of reduction of the pay of the applicant by 10 stages from Rs. 580/- to Rs. 425/- in the time-scale of pay of Assistant for a period of three years with effect from 28th June, 1982. The applicant thereafter filed an appeal against the aforesaid order of the disciplinary authority (Director, Intelligence Bureau). The President considered the appeal in consultation with the Union Public Service Commission and vide order dated 22nd June, 1984, modified the penalty of reduction in pay by 10 stages imposed on the applicant to that of censure only.

5. Against the above factual background, the applicant has prayed for the following reliefs:

- (i) to quash order No. 412-M/83 dated 1.9.1983 regarding treatment of his absence from 20.6.68 to 10.6.80.

The substantive portion of this order reads as under:-

"Shri Krishan Murari, Assistant of Intelligence Bureau was on unauthorised absence w.e.f. 20.6.1968 to 10.6.1980. The period of absence is regularised by granting him leave as under:-

- i) 160 days half average pay leave from 20.6.68 to 26.11.68.
- ii) The period from 27.11.68 to 10.6.80 is treated as dies-non which is not to constitute break in service

2. The regularisation of leave period is in accordance with the decision of the Department of Personnel and Administrative Reforms' Estt. (Leave) U/O No. 535/83/Estt(L) dated 27.6.83."

The above order was further supplement<sup>ed</sup> by Office Order No.

432-M-85 dated 24.7.1985.

- |                                                                                                          |                                                                                                |
|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| "(a) 15 days Extra-Ordinary leave from 14.4.81 to 28.4.81 (O.O.No. 322-M-81 dated 2.5.81                 | (a) 2 days E.L. from 14.4.81 to 15.4.81 and 13 days Half Pay leave from 16.4.81 to 28.4.81.    |
| (b) 15 days Half Pay leave from 1.7.81 to 15.7.81 (O.O. No. 527-M-81 dt.12.7.81 (No.571-M-81 dt.18.7.81) | (b) 15 days Earned leave from 1.7.81 to 15.7.81.                                               |
| (c) 3 days E.L. from 16.7.81 to 18.7.81 (O.O.No.571-M/81 dt. 18.7.81)                                    | (c) 2 days Half Pay leave from 16.7.81 to 17.7.81 and 1 day's Exten.ordinary leave on 18.7.81. |
| (d) 3 days E.L. from 28.10.81 to 30.10-81 (.O. No. 739-M/81 dt. 2.11.81                                  | (d) 3 days Extra ordinary leave from 28.10.81 to 30.10.81.                                     |
| (e) 2 days E.L. from 12.11.81 to 13.11.81 (.O.No.766-M/81 dt. 30.11.81.                                  | (e) 2 days Extra ordy. leave from 12.11.81 to 13.11.81.                                        |
| (f) 2 days E.L. from 23.12.81 to 24.12.81 (O.O. No. 799-M/81 dated 18.12.81).                            | (f) 2 days Extra-Ordinary leave from 23.12.81 to 24.12.81.                                     |
| (g) 2 days E.L. from 28.12.81 to 29.12.81 (.O. No. 799-M/81 dated 18.12.81.).                            | (g) 2 days Extra-Ordinary leave from 28.12.81 to 29.12.81.                                     |
| (h) 12 days Half Pay leave from 18.11.82 to 27.11.82 (O.O. No. 517-M-82 dt. 3.11.82).                    | (h) 13 days Earned leave from 16.11.82 to 27.11.82."                                           |

(page 93 of the counter- Annexure 6).

and to treat him as on duty from 20.6.68 to 10.6.80.

The second prayer of the applicant is that he should be promoted as Section Officer from 4.4.1970, the date from which his junior has been so promoted in view of acceptance of his appeal by the President vide order dated 22nd June, 1984.

6. The applicant argued his case in person. His main contention was that he had to apply for leave on medical grounds and the respondents were not competent to reject the same in the manner they had done. He also challenged his stay at Kohima from one year to 2½ years as his transfer to Delhi had been approved in 1967. He pleaded that he had received medical advice on 22.3.1968 advising him to avoid humid climate. He had received this advice from a Board of Doctors of the then Willingdon Hospital on 22.3.1968. His letter of resignation, he argued, was more a letter of effort protest and a last ditch/to secure redressal of his grievances. He further argued that he was within his rights to withdraw his resignation at any time in view of the judgment of the Hon'ble High Court of Orissa in Abhey Charan Patnaik Vs. State of Orissa 1971 OJC 235. He claimed that he had not been allowed to resume duty in 1978. He contended that he will be covered by the Government of India decision under F.R. 54-8 which permits even the period of suspension to be treated as period spent on duty for all purposes and he argued that in view of this Rule, his entire period of absence should be treated as duty and he should be paid arrears of past service. He further contended that the order depriving him of the wages for the period of absence is not in conformity with the rules and since he had been exonerated by the Enquiry Officer, he should be paid full wages. He also contended that the President's order of June, 1984 was erroneous as he has been held guilty of a different charge which is



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distinct from the original charge on which he was proceeded against and for which the penalty had been modified. He argued that he was charge-sheeted for unauthorised absence from 20th June, 1968 but he has been held guilty of not vigorously pursuing the matter in regard to extension of his leave and the acceptance of his resignation etc. He, therefore, also questioned the propriety of the President's order modifying the penalty to that of censure.

7. On the question of non-promotion as Section Officer, the applicant argued that he was recommended four times for promotion by his superior officers but he was not approved by the D.P.C. due to extraneous considerations. He also questioned the non-consideration of his case for promotion as Section Officer in the period 1976 to 1979. He contended that there should not be a mere pretence of consideration and the consideration should be genuine and free from extraneous influences. In this connection, he invited our attention to the judgment of the Patna High Court in the case of Dr. C.M. Srivastava Vs. State of Bihar and others, 1968 CWT 273.

8. The learned counsel for the respondents sought to rebut all these arguments of the applicant on the ground that the applicant had been informed very clearly by the respondents vide their Memorandum dated 16th July, 1968 that the extension of leave beyond 19th June, 1968 had been refused to him. He was thus duty-bound to resume duty. His contention that it had been decided to post him at Delhi was correct only to the extent that a decision had been taken but no transfer order had been issued.

He further argued that even by order dated 4th June, 1968, the applicant had been directed to report for duty after the expiry of his leave and that no further extension of leave beyond 19th June, 1968 was possible. The applicant had made no attempt to resume duty.

Concerning the argument that the Union Public Service Commission had exonerated the applicant, the learned counsel for the respondents invited our attention to the averment made in paragraph 11 of their counter to the effect that the UPSC had observed that there was undoubtedly failure on the part of the applicant to vigorously pursue the matter in regard to grant of extension of leave and acceptance of his resignation. He further argued that once he had resumed duty on 11th June, 1980, his case for promotion to the post of Section Officer was properly considered by the D.P.Cs held from time to time but he was not approved for promotion. The applicant's memorial to the President against his non-promotion as Section Officer in the Intelligence Bureau was examined, duly considered and rejected by the competent authority on 17th May, 1985. It was denied that the applicant could not be promoted due to the destruction of his Confidential Report file.

9. We have given very careful thought to the first relief regarding treating the applicant on duty and payment of wages for the period June, 1968 to 1980 when the applicant had actually resumed duty. It is clear that the applicant has not worked against any post during this period. He had been clearly informed by the respondents vide their orders of 4th June, 1968 and 19th July, 1968 that no leave extension beyond 19th June, 1968

that no leave extension beyond 19th June, 1968 will be permitted. He had been asked to resume duty. The decision taken by the respondents in 1967 that after one year service in Kohima, the applicant would be brought to Delhi cannot be treated as an order of transfer as no formal order of transfer had been issued. Therefore, the applicant's plea that he stood transferred to Delhi cannot be accepted. We also gave thought to the question whether the statutory rules permit the applicant to remain away from duty on applying for leave. Rule 7 (1) of the Central Civil Services (Leave) Rules, 1972, clearly says that the leave cannot be claimed as of right. Sub-rule (2) of the said Rule 7 reads as follows:

"7.(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant."

Again Rule 25 of the said Leave Rules reads as under:-

"25(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 render a Government servant liable to disciplinary action."

The refusal of leave to the applicant was, therefore, covered by the rules

It is, also, clear that for failure to resume duty after

expiry of leave, the competent authority could take two actions

against the applicant (i) order how the period of absence will be

treated and (ii) disciplinary action for wilful absence. So

far as action under clause (1) of rule 25 is concerned, the

applicant has been conveyed the decision of the Government as to how the leave will be treated. We do not find that Government order is in violation of the statutory provisions of Rule 25 (1), of the Central Civil Services Leave Rules. Accordingly, there is no case to interfere with the same so far as the absence after expiry of leave is concerned. However, the applicant had withdrawn his resignation vide his letter dated 4.3.1978. He had, therefore, expressed his willingness to resume duty on that date. It is unfortunate that the authorities took a decision only in May, 1980 to <sup>mit</sup> pay him to join duties. It has to be noted that this resignation had not been accepted by the competent authority on the ground that he had to pay a sum of Rs. 9,531.55. Since this resignation had not been accepted, the applicant had a right to withdraw his resignation at any stage. As the resignation was withdrawn on 4.3.1978, it is obvious that he had made himself available for services from that date. The authority did not allow the applicant to resume duty on the ground that because of his absence from duty for five years, he had ceased to be in Government service. This decision of the disciplinary authority was unsupported by rules since amended. In view of this position, we find that not treating the applicant on duty from 4.3.1978 to 10.6.1980 is unjust and illegal. As such, we direct that the respondents should modify their order No. 412-M/83 dated 1.9.1983 (Annexure Y of the application), wherein the period of his absence from 4.3.1978 to 10.6.1980 has been treated as dies-non. We direct that the applicant will be treated on duty

for this period from 4.3.1978 to 10.6.1980 for all purposes and he will be entitled to consequential benefits.

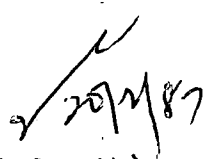
10. So far as the disciplinary action taken against the applicant in terms of Rule 25 (2) of the Leave Rules is concerned, the penalty of reduction of pay has been modified to censure vide order dated 24th June, 1984 issued on behalf of the President. The applicant has also not challenged this penalty in his application filed before the Tribunal though he argued at length that he had been charged with the offence of unauthorised absence from duty but he has been punished on account of a different charge, i.e. not pursuing his leave and resignation, as advised by the UPSC. Since the order of the President has not been challenged by the applicant, there is no need for us to return a decision on the matter.


11. The second relief which the applicant has sought is that he should be considered for promotion for the post of Section Officer from 4.4.1970 when his junior had been promoted. We find from the counter filed by the respondents that the applicant was regularly considered for promotion by the D.P.C. in various years. However, the D.P.C. had not found him fit to be promoted. The applicant has a right only to be considered for promotion but he cannot claim promotion as of right. His argument that the DPC proceedings were a mere pretence of consideration and not a real consideration cannot be accepted because the DPC in the years subsequent to the modification of the order of punishment, had also found him unsuitable for promotion. As such, we find no justification to

interfere with the decision arrived at by the DPC.

12. In view of the foregoing, the application is allowed to the extent that the respondents will treat the period from 4.3.1978 to 10.6.1980 in respect of the applicant as on duty and he will be entitled to emoluments as per the rules. All other reliefs sought by the applicant are hereby rejected, being without merit.

There will be no order as to costs.

  
(Birbal Nath)  
Member 20.2.1987

  
(Zaheer Hasan)  
Vice-Chairman (J)  
20.2.1987