CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.280 of 1993

NEW DELHI, THIS THE 15 DAY OF DECEMBER, 1997.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN

HON'BLE MR.S.P.BISWAS, MEMBER(A)

Shri D.K.Kashyap
Steno Grade 'C'
Sector-8, H.No.1237
R.K.Puram
New Delhi-110022. ... Applicant

(BY ADVOCATE SHRI S.D.KINRA)

vs.

1. Union of India
through the Secretary
Government of India
Ministry of Defence
South Block
New Delhi.

2. The Chief Administrative Officer &
Joint Secretary (Admn.)
MInistry of Defence
C-II, Hutments
Dalhouse Road
New Delhi-110011. .. Respondents

(SHRI DUSHYANT PAL, DEPARTMENTAL REPRESENTATIVE ON BEHALF OF THE RESPONDENTS)

ORDER

JUSTICE K.M.Agarwal:

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made a prayer for quashing the impugned order dated 10.1.1992, (Annexure A-1), imposing a penalty of removal from service passed by the disciplinary authority and that of the Ist respondent dated 27.11.1992, (Annexure A-2), informing about rejection of his Memorial dated 1.10.1992 addressed to the President of India, besides making further prayer for

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consequential reliefs.

2. Briefly stated, while working as Steno Grade 'C',the applicant faced a departmental enquiry for unauthorised absence from 14.1.1989 onwards to the date of initiation of departmental proceedings . The enquiry was exparte. The charges were found proved and accordingly the penalty of removal from service was imposed on him, which was affirmed by the President of India. Being aggrieved, the applicant has filed the present application for the said reliefs.

3. After hearing the learned counsel for the applicant and the departmental representative of the official respondents, we are of the view that this application has no substance and deserves to be dismissed. The learned counsel for the applicant argued that after obtaining leave for the period between 12.12.1988 to 13.1.1989, the applicant remained absent from his office. He thereafer applied for extension of leave on medical grounds, which was wrongfully denied on the ground that the medical certificate by a registered medical practitioner could not be accepted. He referred to Rule 19(1)(ii) of the Central Civil Services (Leave) Rules, 1972, (in short, the "Leave Rules") and submitted that the medical certificate could be given by the registered medical practitioner and, therefore, on that ground the extension of leave sought for on medical grounds could not be rejected. He also referred to Government of India's decision at Sl.No.3 under Rule 25 of the

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Leave Rules reproduced in Swamy's Compilation of FRSR, Part III and argued that no case was made out for any action for the unauthorised absence from duty or on the ground of overstayal of leave. We find no substance in the contention. In sub-rule (5) of Rule 19 of the Leave Rules, it is specifically provided that the grant of medical certificate does not in itself confer upon the Government servant any right to leave. Rule 7(1) thereof also provides that leave cannot be claimed as of right. Similarly the decision of the Government of India referred to by the learned counsel for the applicant does not help him or grant any immunity from disciplinary action as contemplated under Rule 25(2) of the Leave Rules.

4. It was next argued that the registered letter containing the show cause notice was never received by the applicant. Relying on decision of the Allahabad Bench of this Tribunal in **Mahendra Singh** vs. **Union of India,** (1997) (1)(CAT) 222, the learned counsel submitted that ex parte order of penalty could not be passed against the applicant.

5. This contention also deserves to be rejected. In Mahendra Singh's case (supra), no enquiry was held on the ground that it was not reasonably practicable and the penalty was imposed and, therefore, it was held that in the circumstances of that case, ex parte departmental enquiry could be

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held but not held before passing the removal order in that case. In the present case, ex parte enquiry was held and thereafter the impugned order of penalty was passed. We are, therefore, of the view that the reliance placed was misconceived and the argument deserves to be rejected.

6. The learned counsel also referred to Rule 14(20) of the Central Civil Services (Classification, Control and Appeal)Rules, 1965 and submitted that unless the articles of charge were served on the Government servant and such Government servant refused to appear in person or did not submit any written statement, the inquiring authority could hold the enquiry ex parte. In the present case, the articles of charge were not served on the applicant and, therefore, there was no question of proceeding ex parte against him.

7. This contention is further devoid of any force. Repeated attempts to serve the applicant failed. The applicant could not be found at the address of Rishikesh given by him. The letter sent to his New Delhi residential address was delivered. In the counter filed by the respondents supported by documents, it has been shown how the applicant avoided service of notice or failed to respond to the show cause notice or the articles of charge framed against him. Under these circumstances, the respondents or the Inquiry Officer had no alternative but to proceed ex parte against the applicant and to pass the impugned order of penalty on the ground that the misconduct was found proved against him.

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8. The learned counsel for the applicant next argued that the authorised officer of the respondents who had signed the counter in the present case was the Inquiry Officer. Inquiry Officer could not be the prosecutor and, therefore, it was submitted that the impugned order deserved to be quashed.

9. The argument is misconceived. No provision of law or any rule could be shown to us, underwhich the Inquiry Officer could not be made officer in charge of a case in which the inquiry report or the disciplinary action on that basis is set aside.

10. Lastly, it was argued that the punishment awarded was not commensurate with the misconduct found proved. He cited **Bhagat Ram** vs. **State of Himachal Pradesh**, AIR 1983 SC 454 = (1983) 2 SCC 442= 1983 SCC (L&S) 342; and **Ranjit Thakur** vs. **Union of India**, (1987) 4 SCC 611 in support of his contention.

11. In Bhagat Ram's case (supra), the Supreme Court held:

> "It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

In Ranjit Thakur's case (supra), the Supreme Court held :

> "Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and

quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In **Council of Civil Service Unions** v. **Minister for the Civil Service**, (1984) 3 WLR 1174 (HL) : (1884) 3 All ER 935, 950, Lord Diplock said :

> Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;..."

In short, the emphasis of the Supreme Court was that all powers have legal limits.

12. Looked from this angle, we are of the view that the punishment awarded in the present case cannot be said to be excessive. In paragraph 4.(a) of his rejoinder, the applicant has stated that he had gone to Rishikesh not for rest and pleasure trip but to seek spiritual pursuits and there he had been wandering from place to place in the company of saints and Sadhus to attain true wisdom and true happiness.

If it were true, the medical certificate was not correct. The applicant was rightly found to have remained unauthorisedly absent from service and accordingly his services were rightly dispensed with in the manner done by the respondents after departmental enquiry.

13. In the result, we find no merit in this O.A. Accordingly, it is hereby dismissed. No costs.

(K. M. Agarwal)
Chairman

(S. P. Biswas)
Member (A)

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