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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.81/1993

New Delhi: this the 24th day of September, 1998.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

H.K.Lal,
S/o Shri Vishwanath Mangal,
Asstt. Central Intelligence Officer,
Grade-I (Retd),
R/o C-369, Vikaspuri,
New Delhi -110018

.... Applicant.

(By Advocate: Shri D.C. Whra)

Versus

1. Union of India,
through
Director,
Intelligence Bureau,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Deputy Director,
Subsidiary Intelligence Bureau,
Bombay,
C/o Director Intelligence Bureau (MHA),
North Block,
New Delhi

..... Respondents.

(By Advocate: Shri N.S.Mehta)

ORDER

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents Disc.order dated 12.3.90 (Annexure-A); the appellate order dated 1.7.91 (Annexure-B); and the revisionary order dated 3.12.92 (Annexure-C) and seeks regularisation from 8.3.88 to 11.3.90 and to treat the period from 12.3.90 as on duty, with payment of arrears of pay and allowances.

2. Applicant who was an ACIO Gr.I, Intelligence Bureau with an All India posting liability, was transferred from Delhi to Bombay vide order dated 3.2.83

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He was to join at Bombay after availing of earned leave from 7.2.83 to 15.2.83 but he does not deny in rejoinder to para 4.7 of respondents' reply that as he did not join⁷ duties at Bombay, disciplinary action was initiated against him on 8.9.83 for unauthorized absence resulting in his removal from service w.e.f. 8.2.84. Applicant challenged that order, in SLP No. 12848/84 in the Hon'ble Supreme Court who by their order dated 6.8.85 (Ann-D) took note of the Addl. Solicitor General's statement on instructions from I.B. that upon reconsideration they had decided to reinstate applicant in service provided he reported for duty immediately at Bombay as per original departmental orders and would serve there and such other places as required by them. Applicant was given a week's time to give a written undertaking that he would join duty as above, and was given 2 weeks' time to join duty at Bombay and the SLP was disposed of accordingly.

3. Applicant joined duty at Bombay on 19.8.85, but he does not deny in his rejoinder to paras 4.9 and 4.10 of respondents' reply that in his tenure at Bombay ~~for~~⁷ approx. 4 years 5 months between 19.8.85 and 12.3.90, he remained absent from duty on various pretexts for nearly 3 years 9 months, in almost all cases by proceeding on C.L. for short duration and then extending the leave/remaining absent on medical grounds.

4. He was proceeded against departmentally vide Memo dated 1.3.89 on the charge that (i) while functioning as ACIO-Gr.I in Bombay he absented himself from duty without permission or intimation w.e.f. 8.3.88, viz. the date he was to report for

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duty on the expiring of C.L. and restricted holiday from 22.2.88 to 7.3.88 and that he had not reported for duty till 1.3.89 viz. the date on which the charge sheet was finally issued to him; (ii) while functioning as ACIO Gr.I at Bombay reported to be in the habit of proceeding on leave for short duration frequently and then overstaying the leave and/or absenting himself from duty without permission for long spells and (iii) was also noticed to be awiding to accept official communications sent to him or to reply to them or to keep the office informed of his whereabouts.

5. The Disciplinary Authority's impugned order dated 12.3.90 which is a detailed, reasoned, and speaking order describes in detail the efforts made by respondents to serve the chargesheet upon applicant compelling the I.O. to proceed exparte, who in his report dated 11.9.89 held that all the three Articles of Charge had been proved, which after full application of mind was accepted by the Disciplinary Authority resulting in the issue of the impugned order dated 12.3.90 compulsorily retiring applicant from service w.e.f. 12.3.90, which order was upheld in appeal vide impugned order dated 1.7.91 and revisionary order dated 3.12.92.

6. We have heard applicant's counsel Shri Vhra and respondents' counsel Shri N.S.Mehta. We have also perused the materials on record including the relevant D.E. file which contain the various communications sent to applicant from time to time through registered AD post to participate in the inquiry which were received back undelivered. Under the circumstances it cannot be said that in the

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facts and circumstances of the case, respondents' action in conducting the disciplinary proceeding ^{ex parte} was illegal, arbitrary, mala fide, or ^{was} a denial of the principles of natural justice by not giving applicant full opportunity to defend himself, or ^{was} in any way violative of Articles 14 and 16 of the Constitution. Manifestly the fact that applicant challenged the disciplinary authority's order in his appeal and the appellate order in his revision petition lends support to respondents' contention that applicant was fully aware of the disciplinary proceedings initiated against him, but was intentionally avoiding to accept official communications sent to him.

7. We are also not persuaded to accept that the penalty imposed on applicant is grossly disproportionate to the gravity of the misconduct.

8. The OA is therefore devoid of merit and is dismissed. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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