

(11) (Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A.No. 10/97

Allahabad, this the 16 th day of ^{Feb} 1999.

CORAM : Hon'ble Mr. S.L.Jain, Member(J)

Sri P.S.Prasad, S/o.R.C.Prasad, r/o. Plant Depot 1425A
Colony, Moghalsarai, Varanasi.

.....Applicant

(BY Shri S.K.Mishra, Advocate)

Vs.

1. Union of India through the General Manager, E.Rly. Calcutta.
2. The Senior Divisional Engineer Co-ordination, E.Rly., Moghalsarai.
3. The Divisional Engineer (l) E.Rly. Moghalsarai.

.....Respondents,

(By Shri A.K.Gaur, Advocate)

O R D E R (Reserved)

(By Hon'ble Mr. S.L.Jain, Member(J))

This is an application under section 19 of the Administrative Tribunal act, 1985 to quash order dated 8-2-1995, appellate order dated 9-5-96 and Revisional order dated 17-10-96 with a direction to the respondents to release his due Passes and P.T.O.s, award Rs.10,000/- as fare invested during 1995 and 1996.

2. The applicant was posted as P.W.I. u/AEN(I) MGS applied for grant of his L.A.P. leave from 10-6-1994 to 19-6-1994 on account of marriage of his niece on 14-6-94. Having performed his duty on 10-6-94 he availed his leave from 11-6-94 to 19-6-94

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and resumed duty on 20-6-94. A charge sheet was issued to him on 21-6-94 for unauthorised absence from 10-6-94 to 20-6-94. He was asked to submit fresh application for grant of 10 days leave and he submitted the same which was granted by the AEN(I)/MGS on 27-7-94. His reply dated 24-6-94 was arbitrarily rejected and he was penalised by the holding of Passes and PTOs. for three years vide order dated 8-2-95, which on appeal was upheld vide order dated 9-5-96 and a revision against the same is also dismissed vide order dated 17-10-96.

3. The allegation of unauthorised absence is not tenable as he moved an application on 20-5-94 for grant of leave from 10-6-94 to 19-6-94. Due to missing of said application he was asked to submit another application. When leave is sanctioned he cannot be held guilty for unauthorised absence. Hence this O.A. for the above said relief alongwith monetary loss amounting to Rs.10,000/-.

4. The respondents defence is that leave to the applicant could not be sanctioned due to administrative reasons and he left the headquarter without taking permission from the competent authority. As he was working as Permanent Way Inspector and safety of passenger was involved, the applicant was informed that two PWIs were sick and he was not permitted to leave headquarter also. His leave was sanctioned on humanitarian ground, but he was guilty, so he was penalised as withholding his Passes and PTOs. for three years. As a literate responsible Inspector he should not have left headquarter without proper sanction of leave. The appellate and revisional orders are speaking one. No body can avail any leave without permission and sanction of leave from the competent authority. Hence prayed for dismissal of O.A. with cost.

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5. In the Rejoinder Affidavit the applicant has stated that after submission of the leave application in the office it was sanctioned. He was given privilege Pass to avail out-journey ^{frm} Mughalsarai. Neither his leave applicatin was rejected, nor he was informed regarding non availability of the leave. Shri Rajendra Pandey resumed his duty on 11-6-94 and then he was allowed to proceed on leave from 11-6-94, whereas he applied for leave from 10-6-94. His leave application was sanctioned as there is no fault, neglect or guilt on his part.

6. The applicant relied on annexure A3 which was his explanation dated 24-6-94 in which it was mentioned by Rajendra Pandey as under :-

"Sahayak Abhiyanta(I) Mughalsarai ko
agrasarit -

Shri Prasad 10/6/94 ko merey fit hone ke
baad chhutti mein gayen hain".

7. The applicant further relied on the averment made by the respondents in para 9 of C.A. which is to the effect that his leave was sanctioned on humanitarain ground, but he was guilty so he was panalised as withholding his passes and PTOs for three years. He argued that as the leave was sanctioned now no penalty can be imposed on him. His contention is that on the one hand to sanction the leave and on the other hand to penalise is contrary to each other.

8. The applicant further relied on annexure A4 which is the copy of the leave application applied for in which there is an endorsement to the effect that "ten days L.A.P. if due". He also relied on annexure A1 application for the said leave. Applicants contention is that he was asked to proceed on leave applied for if another PWI is available and as soon as Shri Rajendra Pandey was

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available after working on 10th - the date for which he applied for leave, he proceeded on leave on 11-6-94.

9. The applicant applied for leave well in advance, his application was not rejected, it appears that he availed the leave on the verbal direction to the effect that on the availability of the another PWI, he can proceed on leave, his leave was later on also sanctioned. Hence I do not find it to be a fit case for holding him guilty for the charges levelled against him.

10. The learned counsel for the applicant relied on (1989) 11 A.T.C. 340 Nathuram Vs. Union of India for the proposition that absence from duty does not *prima facie* involve misconduct. He further relied on (1992) 19 A.T.C. 3 J. Subba Rao Vs. Union of India & Others leaving station after applying for casual leave, Leave neither sanctioned nor rejected, in such circumstances charge of unauthorised absence unsustainable, in the said authority, it has been further held that if leave is not rejected, mere issuance of charge memo for unauthorised absence held would not amount to non sanction of leave. In the present case leave was later on sanctioned. Hence applicant's case is ~~not~~ better one than the case cited. He further relied on (1989) 9 A.T.C. 26 Dr. Puzhankara Kamalan Vs. I.C.A.R. by its Director General and other which lays down that if absence is due to compelling reasons, it cannot be considered as misconduct. The applicant was required to go to attend the marriage ceremony of his niece, he applied in time, application was neither rejected nor allowed. He was already late by a day, in such circumstance it is not a case of misconduct at all particularly when later on leave was sanctioned.

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11. It is a case of no evidence and the further action of the respondents in sanctioning the leave by conduct debars them to hold the applicant guilty for the same.

12. The applicant is not entitled to damages as claimed or any other damage for the reason that he has not established any expenditure and these privileges cannot be even encashed.

13. In the result O.A. deserves to be partly allowed and is partly allowed. Order dated 8-2-1995, appellate order dated 9-5-96, Revisional Order dated 17-10-96 are quashed.

No order as to costs.

Sudhir —
MEMBER (J)

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