RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the 10th May 2004

QUORUM: HON. MR.JUSTICE S.R.SINGH, V.C.
HON. MR.D.R.TIWARI, A.M.

O.A. No. 294 of 1998

Ashok Kumar Mishra
Son of Shri Shiv Hari Mishra,
resident of F-14, Armapur Estate,
Kanpur.

..... Applicant.

Counsel for applicant : In person

Versus

1. Union of India, through the Secretary,
Ministry of Defence, Govt. of India,
New Delhi.
2. Chairman/Director, General
Ordnance Factories Board,
10-A, Auckland Road, Calcutta.
3. General Manager,
Ordnance Factory, Kanpur.

..... Respondents.

Counsel for the respondents: Shri Amit Sthalekar.

O R D E R (ORAL)

By Hon'ble Mr. D.R.Tiwari, A.M.

By the instant O.A. filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 06.9.1995(Annexure B) and order dated 10.3.1997 (Annexure B) by which a penalty of removal from service has been imposed and has been upheld by the Appellate Authority. He has further prayed for reinstatement to the post of orderly with all consequential benefit including the arrears of pay.

2. The present O.A. traces its origin to two earlier O.A. Nos. 747 of 1987 and 732 of 1992 filed by the applicant. The 747 of 1987 was allowed with the direction to the respondents to reinstate the applicant with the liberty to hold the fresh enquiry. The respondents reinstated the applicant and placed him under deemed suspension under Rule 10(4) of CCS(CCA) Rules 1965 which led to filing of O.A. No. 732 of 1992. This O.A. was allowed and suspension was declared illegal. The respondents filed SLP in Supreme Court and granted stay. However, the Supreme Court dismissed the SLP. Pursuant to direction of the Tribunal in O.A. No. 747 of 1987, the respondents held the fresh enquiry and after conclusion the disciplinary proceedings, the applicant was removed from service and his appeal was also rejected.

3. It is in the above background that the present O.A. has been instituted. The applicant, at the relevant time, was working as orderly in the Ordinance factory, Kanpur. The disciplinary proceeding under Rule 14 of the CCS(CCA) Rules 1965(in short the Rules 65) was initiated against the applicant by issue of chargesheet dated 15.11.1973(Annexure No.1). He was chargesheeted for the offence of gross misconduct to wit irregular attendance in that he availed of 199 days leave on 44 occassions during the period from January 1972 to 22.10.1973. On denial of charge, a Court of inquiry was constituted wherein the charge was proved. The enquiry report was issued to him. Considering this reply, the Disciplinary Authority imposed the penalty of Removal from service. The appeal preferred was rejected by order dated 07.12.1984. He filed an O.A. to C.A.T., Allahabad which was allowed and the applicant was reinstated in service and was placed under deemed

suspension from the date of his removal. The enquiry was again started and the applicant and he did not attend the enquiry proceeding as he insisted on his being reinstated first coupled with revocation of suspension order. However, exparte enquiry following the usual procedure in this regard, he was imposed the penalty of Removal from service by the order dated 06.9.1995. He preferred an Appeal dated 12.10.1995 which was rejected by order dated 10.3.1997.

4. The applicant has challenged the impugned orders on the following grounds:-

"(i) The charge sheet is vague and based on false allegations.

(ii) The misconduct is transgression of definite rules. The misconduct and negligence are differentenotions. The Spirit of "Res Ispa loquitor" may be applied to infer negligence but it cannot be applied to infer misconduct.

(iii) He was denied the facility of his defence assistance as the respondent did not agree to the request of applicant for extending the date of hearing of enquiry .

(iv) Leave taken by him has already been sanctioned by the competent authority.

(v) The fresh enquiry as per the direction of the Tribunal suffers from illegality as much as the brief submitted by the applicant was not taken into account. The brief was submitted within time fixed by the enquiry officer and the report submitted was submitted a day earlier vide para 4.34 & 4.35 of the O.A. (Annexure Nos. 8 & 9). This fact was specifically brought to the notice of the Disciplinary authority which has been averred in para 4.38 of the O.A."

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5. The respondents, on the other hand, has opposed the contentions of the applicant. They have argued that the charge sheet is based on the documents i.e. Foreman, L.B. Note 1214/MJST/L.B./NIE (Class-N) dated 13.11.1973 mentioned in Annexure - 3 of the chargesheet dated 15.11.1973. They have further contended that this has been decided in O.A.No. 747 of 1987 vide its judgment dated 17.5.1991. They have stated that misconduct committed is that he availed leave for 199 days on 44 occasions during the period between January, 1972 amd 22.10.1973 causing inconvenience to smooth running of work by his irregular attendance and it amounts to lack of devotion to duty and conduct unbecoming of Government servant. They have further submitted that his defence assistant was informed through the Superintendant of Post Office, Jabalpur and given sufficient time and he could not come. Even the applicant was given reasonable opportunity but he evaded appearance on some pretext or the other which resulted in ex parte enquiry as per rule. They have argued that sanctioning of leave was not in dispute. He has been charged for irregular attendance, which amounts to conduct unbecoming of Government Servant (Para 20 of C.A.). The question of his brief not being taken up has been denied by the respondents. They have pleaded that it is true that he was given time to submit the brief by 30.6.1995 but the applicant by his letter dated 19.6.1995 requested the enquiry officer to provide him fresh opportunity to appear before him for his defence. The respondents have contended that he has been given more than four times on earlier occasions. In view of this, they were left with no alternative and the enquiry was completed ex parte as per rules.

6. We have heard the applicant in person and the counsel for the respondents and perused the pleadings. We have given anxious consideration to the submissions of the parties.

7. The Central controversy requiring adjudication revolves round the fact whether the irregular attendance constitutes one of the misconducts under CCS(Conduct) Rules, 1964. Rule 3 of this rule is extracted below :-

"3 - General (I) Every Government Servant shall at all times -

i) maintain absolute integrity.

ii) maintain devotion to duty and

iii) do nothing which is unbecoming of a Government servant."

Government of India instruction No.23 below this rule mentions the acts and conducts which amount to misconduct andwhich has been published by G.I. M.H. A. D.P.&A.R. 3rd addition 1980 - notes on CCS(Conduct) Rules, 1964. Under this heading as many as 10 acts and conduct have been enumerated. Further in this rule itself, 9 acts and ommissions have been enumerated which amount to misconduct -

1. .....
2. .....
3. .....
4. .....
5. .....
6. Habitual late attendance.
7. .....
8. Habitual absence withoutpermission and overstaying leave.
9. .....

8. From the above, it is evident that irregular attendance is not a misconduct. It is not the case of the respondents that he was found habitual late in or attendance or he was habitually absent without permission and overstayed the leave. Once it is found that his leave has been duly sanctioned by the competent authority, we cannot say that availing of leave by the applicant would amount to misconduct. It is true that the CCS(Leave) Rules, 1972 vide Rule 7 clearly stattes that leave cannot be claimed as of right and further Rule 23 stipulates the provision for recall to duty before expiry of leave. If the respondents felt that his attendance in the office was causing inconvenience, it was open for the respondents to resort to Rule 23 and they could have recalled the applicant to duty before expiry of leave. The records clearly show that no such action was taken for recalling the applicant to duty. Vide para 8 of the C.A., the respondents have simply stated that the misconduct committed by the applicant is that he availed leave for 199 days on 44 occasions during the period from Jan.1972 to 20.10.1973 which shows frequent irregularity in attendance resulting in inconvenience in smooth running of work which amounts to lack of devotion to duty. It is undisputed that whenever he availed of leave, his leave was duly sanctioned. Vide para 22 of the C.A., it has been clearly stated 'whether leave was sanctioned or not' is not the point of dispute. This shows that he was duly sanctioned the leave he has availed.

9. Respondents have stated that the applicant should not be allowed to raise the issue of leave account which has since been decided in O.A. No.747/87 vide judgment dated 17.5.91. We Have gone through the above judgment very carefully and find from the facts stated in the order leave no room for doubt that the question which has been agitated here did not arise for consideration in that order.

The O.A. was allowed simply on the ground that both the removal order and appellate order were non-speaking orders. (Annexure No.2).

10. From the above discussion, we find that the irregular attendance is not one ofthe misconduct enumerated vide G.I. Instruction No.23 (Supra). We get support from the judgment of theSupreme Court in the case of Rasik Lal V. Patel Vs. Ahmedabad Municipal Corporation & others (AIR 1965 SC 504). The Supreme Court held as under :-

> "It is necessary for the employer to prescribe what would be the misconduct so that the workman/ employee knows the pit fall he should guard against If after undergoing the elaborate exercise of enumerating misconduct, it is left to the un-briddled discretion of the employer to dub any conduct as misconduct, the workman would be on tenterhooks and he will be pubished by ex-post facto determination by the employer."

11. In view of the legal position propounded by the Supreme Court in the case of Rasik Lal (supra) and also in view of the fact that the charge sheet which we have held to be vague and invalid, the penalty based on this is also illegal and invalid and the O.A. is liable to succeed.

12. In view of the facts and circumstances mentioned above, the O.A. is allowed. The impugned orders dated 6.9.95 and 10.3.97 are quashed. Respondents are directed to reinstate the applicant in service with all consequential benefits within a period of two months from the date of receipt of a copy of this order.

No order as to costs.

A.M. V.C.

Asthana/