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(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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Registration No. 8 of 1986 (T)

Union of India and others . . vs. . Rama Shankar Tewari

Hon'ble S.Zaheer Hasan, Vice Chairman,
Hon'ble Ajay Johri, Member (A).

(Delivered by Hon'ble S.Zaheer Hasan, V.C.)

This Civil Appeal No. 267 of 1984, pending in the court of District Judge, Allahabad was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (No. 13 of 1985). On 3.3.1983 Rama Shankar Tewari, who was working as Khalasi under defendant no.2 at Chunai, filed a suit in the court of Munsif, West, Allahabad for declaration that the order dated 3.3.1980 regarding his removal from service was illegal.

Rama Shankar Tewari, to be referred as plaintiff, joined as Khalasi in the year 1959. He took leave on 19th and 20th of October, 1974. He did not report for duty from 21.10.1974 onward. It is said that on 17.11.1974 he came to the office and produced an application for leave without pay for indefinite period. Mr. P.N.Khare (examined as P.W.1 in the inquiry proceedings hence hereinafter referred to as P.W.1) told the plaintiff that he should go and the application would be granted in due course. According to the plaintiff,

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his grand-father was murdered and there were several complications regarding litigation, so he could not join the duty and applied for leave without pay for indefinite period. On 14.1.1976 the plaintiff reported for duty and ultimately was put back on duty on 21.1.1976. A charge-sheet regarding his absence from duty from 21.10.1974 to 14.10.1976 was submitted against him. Statement of Mr. P.N.Khare (P.W.1) was recorded on 23.11.1977. The plaintiff submitted his defence note on 10.1.1978. On 8.2.1978 the Inquiry Officer came to the conclusion that the charge has been proved against the plaintiff who maintained no regard or devotion to his duty and committed an act which was unbecoming of a railway servant; and that since he was totally responsible for his unauthorised absence from 21.10.1974 to 14.1.1976 he violated Rule 3 of the Railway Service (Conduct) Rules 1966. A show cause notice was issued and was admittedly received by the plaintiff. Ultimately he was removed from service on 3.3.1980. According to the plaintiff, he filed an appeal on 28.4.1980 which was not decided, therefore, he was compelled to file a civil suit after giving notice. The opposite parties denied the various allegations and their case was that the plaintiff was absent during the aforesaid period and his services were rightly terminated. Learned Munsif held that ~~the~~ certain papers demanded by the plaintiff during and the inquiry were not supplied to him, rules of natural justice were violated; and he decreed the suit. Aggrieved by this order, the Union of India and others filed the present appeal which has been transferred to this Tribunal,

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as stated above.

Learned counsel for the plaintiff made the following arguments before us:-

1. The application dated 17.11.1974 which was moved for leave without pay for indefinite period, the Muster Roll from 19.10.1974 to 10.10.1976 and the copy of the report dated 11.8.1975 were not supplied to the plaintiff during the inquiry and he was prejudiced in his defence; and
2. The plaintiff was not given an opportunity to cross-examine the witness as he was made to sit outside the office.

So far as the second contention of the learned counsel for the plaintiff is concerned, the counsel for the plaintiff was there, so it is ^{ir} immaterial that the plaintiff was not permitted to cross-examine and he was made to sit outside the room. There is nothing to suggest that the plaintiff expressed his desire to cross-examine the witness ignoring his own counsel. So, we could not find anything to suggest that the plaintiff was prejudiced on this score.

As regards the first contention, there is no doubt that the application dated 17.11.1974 and the report dated 11.8.1975 stating that the plaintiff was absent from 21.10.74 were not supplied to the plaintiff. So far as the report dated 21.10.1974 is concerned, the same was produced before us and a perusal of the same shows that it was an innocent report in which it was simply stated that the plaintiff Rama

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Shankar Tewari was on unauthorised absence from 21.10.1974.

So, if a copy of this document was not supplied, we do not think any prejudice could be caused to the defence of the plaintiff. We are told that the Muster Roll was summoned simply to show the dates on which the plaintiff was absent.

There is no dispute regarding the period during which the plaintiff remained absent. There was no question of ^{Causality} prejudice by not producing the Muster Roll. So far as the application dated 17.11.1974 is concerned, it is on the file marked as 'P-17'. P.W.1 was cross-examined regarding this application and he stated that when he submitted his report dated 14.1.1976, which is at page '76' on the file, he mentioned therein that the plaintiff gave an application for leave for indefinite period and that application was 'P-17'.

This was the reply of this witness to question no. 6. He admitted in answer to question no.1 that the plaintiff moved an application dated 17.11.1974 for leave for indefinite period which he rejected and returned the same to him. When he was asked if this application was returned to the plaintiff, how it was on the file, the witness replied that when the plaintiff came on 14.1.1976 for reporting to duty he moved that application which is 'P-17', and on 14.1.1976 he submitted a report in which the application 'P-17' was mentioned. So, from the above it would appear that this application 'P-17' was before the counsel for the plaintiff when this witness was being cross-examined. Thus, it does not appear that any prejudice was caused by non-production of this application.

The plaintiff was on leave on 19th and 20th October 1974 and he did not report for duty from 21.10.1974 till 17.11.1974. It is admitted case that on 17.11.1974 the

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plaintiff came and moved an application for leave for indefinite period. According to Mr. Khare (P.W.1), the plaintiff gave an application for leave for indefinite period on 17.11.1974 and he returned the same to him with the remark that he had no right to grant such leave. The case of the plaintiff is that this application was retained by Mr. Khare who told him that it would be granted in due course, so, he went away because his grandfather was murdered and he was also worried about various litigations. He returned on 14.1.1976 and requested the authorities to give him job and, therefore, on 21.1.1976 he was put back on duty. There is no doubt that an application for leave for indefinite period was moved by the plaintiff on 17.11.1974. The main question to be seen is as to whether it was returned as alleged or it was retained by Mr. Khare (P.W.1) as asserted by the plaintiff. The application 'P-17' bears no date, but an recommendation is endorsed thereon bearing the date '17.11.1974'. So, this application was not in existence ~~before~~ ^{on} 17.11.1974. From the contents of this application it appears that it was a first application demanding leave without pay. In the application 'P-24' dated 14.1.1976 it is mentioned that the ~~pk~~ applicant has already moved an application dated 18.11.1974. The application 'P-17' bears no date, but the endorsement thereon is dated 17.11.1974. So, it may be that the ~~app~~ plaintiff mentioned '18.11.1974' in his application ~~dated~~ 'P-24' due to lapse of time and memory. As already stated, in his application dated 14.1.1976 'P-24' the plaintiff stated that he had already moved an application for leave without pay for indefinite period

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and now he was in a position to join the duty, therefore, he may be permitted to join duty; and ultimately on 21.1.1976 he was put back on duty. When the plaintiff reported for duty on 14.1.1976, he moved an application 'P-24' as already stated. On the same day a report, which is on page '76' on the file, was submitted to higher authorities at Allahabad mentioning therein that the plaintiff had moved an application for leave for indefinite period which was 'regretted'.

Question No.1 was put to Mr. Khare (P.W.1), stating that on 17.11.1974 the plaintiff moved an application for leave for indefinite period and in that connection what the witness had to say. The witness replied that the plaintiff moved an application for leave for indefinite period and he rejected the same. The witness further admitted that he ~~had~~ returned that very application to the plaintiff without passing any order thereon. When he was asked as to how that application was on the file, he replied that when on 14.1.1976 the plaintiff reported for duty he produced the aforesaid application which is marked as 'P-17', and this 'P-17' was sent to Allahabad along with his report dated 14.1.1976, referred to above. So, it is common case of the parties that on 17.11.1974 the plaintiff came to the office and moved an application for leave without pay. The version given by P.W.1 Mr. Khare that he returned the same without making any endorsement thereon and without noting down this fact anywhere that this application was returned, is clearly absurd. When this very application which is said to have been returned was produced again on 14.1.1976 ~~had~~ very willingly accepted the same which is further not at all appealing. The plaintiff's

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grand-father was murdered. He was involved in some litigations. So, his version that when he came on 17.11.1974 and gave that application to P.W.1 who replied that the order would be passed in due course, stands to reason and is well corroborated by x various applications and attending circumstances referred to above. The plaintiff ~~xx~~ was on leave on 19th and 20th Oct. 1974. His grand-father was murdered, some litigation started, so he could not attend to his duties; and ultimately he came to the office on 17.11.1974 and admittedly moved an application for leave without pay. No order on this application was passed nor does it ~~xxxx~~ appear that in 1974 or till 11.8.1975 any action was taken on this score. It was only on 11.8.1975 that a report was submitted that the plaintiff was absent from 21.10.1974. When an application for leave is given and no leave is permissible, it is rejected and the applicant is informed. This is the normal practice. We are made to believe that this application was moved by the plaintiff on 17.11.1974, but Mr. Khare (P.W.1) orally rejected it and asked the plaintiff to take it back. He did not write any order on this application nor did he note anywhere that this application was moved on that date, and ^{was} returned the same to the plaintiff. So, it is a clear case in which the application dated 17.11.1974, which was moved on that very date, was kept lying somewhere and no attention was paid to the same. When on 14.1.1976 the plaintiff came and reported for duty and mentioned that he had already moved such an application, he was permitted to join the duty from 21.1.1976 without any objection. The application dated 17.11.1974 of the plaintiff

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was there, no order was passed thereon, the plaintiff was not informed about the fate of his application, and, as already stated, when he came on 14.1.1976 and asked the authorities to permit him to join duties, he was permitted and he actually joined the duties on 21.1.1976. To repeat, in his report dated 14.1.1976, paper marked as page '76', it is clearly mentioned by Mr. Khare (P.W.1) that application for leave for indefinite period was made by the plaintiff and it was 'regretted'. If that application was regretted, we mean to say it was rejected, then this fact should have been endorsed on that very application and should have been sent to the authorities concerned along with that endorsement.

In the application 'P-17' it is admitted that ~~the~~ leave without pay be given. In the application dated 14.1.1976 (P-24) a reference of 'P-17' has been made and it is also stated that the plaintiff has moved for leave without pay for indefinite period. Mr. Khare (P.W.1) has admitted in answer to question No.1 that he rejected the application of the plaintiff for leave for indefinite period and returned the same to him. When he was confronted with the fact that inspite of the fact that he returned that application to the plaintiff how the application was on the file, he coined a new story that it was enclosed subsequently when the plaintiff turned up on 14.1.1976. He further admitted that on 14.1.1976 he referred the matter to Allahabad mentioning therein that the plaintiff has applied for leave for indefinite period and that leave application was the same which is marked 'P-17'. So, it has been clearly established that the application for leave was given by the plaintiff on 17.11.1974 and no order was passed thereon, that it was not rejected, nor was it returned to the plaintiff as alleged, and it appears that it was kept lying somewhere and no order was communicated to the plaintiff.

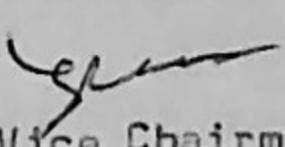
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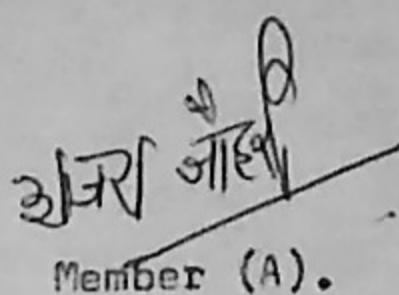
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Plaintiff's grand-father was murdered, he was involved in litigations, so he reported for duty on 14.1.1976 and ultimately he was permitted to join on 21.1.1976. In the circumstances, the finding of the Inquiry Officer that there was no proof of submission of any application for leave for indefinite period is perverse and he was also not justified in holding that due to the alleged absence mentioned above, the plaintiff had no regard or devotion to duty and he committed an act unbecoming of a railway servant so he violated Rule 3. In the circumstances referred to above, we find no good ground to interfere with the order passed by the learned Munsif.

This application (Civil Appeal No. 267 of 1984) is dismissed with costs on parties.

August 20, 1986.
R.P.


Vice Chairman


Member (A).

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Misc. Application No. of 1987

In

T.A.No.8 of 1986.

Union of India & others ... Applicants.

Vs.

Sri Rama Shanker Tiwari ... Respondents.

Hon'ble A.Johri, A.M.
Hon'ble G.S.Sharma, J.M.

By this miscellaneous application the applicants in the Civil Appeal, which was dismissed with cost on parties on 20.8.1986, are seeking legal opinion on the subject whether the plaintiff in the ~~by the arrears of salary~~ original suit is entitled for the period in question mentioned. It has been said that the plaintiff has written to the appellants that in case payment is not made, he shall move a contempt application and this application has been made with a view to avoid complications and that is why the clarification has been sought.

2. We have heard Sri G.P.Agarwal, we do not agree that an application ~~to~~ ^{by} the nature which has been placed before us is maintainable. The plaintiff's suit which was subject matter to the Civil Appeal decided by this Tribunal on 20.8.1986 stands decreed in his favour and now it is for the defendants in that suit to implement that judgment. We are of the

view that no direction can be given and clarification
can't also be given as prayed in this application.

The application is, therefore, rejected as not
maintainable.

Subrahmanya

MEMBER (J)

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MEMBER (A).

Dt. Jan. 9th, 1989.

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