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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 694 of 1986 (T)  
(O.S. No. 758 of 1977)

Ram Gopal ..... Plaintiff

Versus

Union of India & Another .... Defendants

Hon. S. Zaheer Hasan, V.C.  
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

Suit No. 758 of 1977 Ram Gopal Versus Union of India & Another has been received on transfer from the Court of Munsif Jhansi under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff was working as a Chowkidar in the office of Assistant Garrison Engineer, Bag Dogra when he was served with a memorandum of charges on 21.1.75 <sup>3/</sup> for the absence without permission from 2.3.74 till the date of the filing of the suit. Ultimately he was removed from service on 11.6.76. According to the plaintiff the order removing him from service was illegal, unconstitutional and against the principles of natural justice, <sup>3/</sup> as no reasonable opportunity was given to him, he <sup>3/</sup> is remaining sick throughout the period. The medical certificate submitted by him have also not been considered. The plaintiff had proceeded to Jhansi on leave upto 1.3.74 and thereafter he applied for

extension of leave on the ground of sickness but he received no orders. According to him in the ex parte enquiry no statements were taken and no copy of the proceedings of the enquiry was sent to the plaintiff and there was no evidence, that he willfully absented himself from duty, was obtained. The plaintiff has been serving the Department since 1965 and he has come with prayer for relief that the order dated 11.6.76 removing him from service be declared void and that he may be considered to be continuing in service of the defendants and may be given all consequential benefits.

2. The defendants' case is that the plaintiff was granted 50 days earned leave w.e.f. 25.12.73. He applied for further 16 days extension on medical grounds. It was sanctioned and he was due to report on 2.3.74. He was advised of his unauthorised absence beyond 2.3.74 by a letter dated 31.10.74 but no reply was received from him. A chargesheet dated 21.1.75 was also sent to him. In reply to which he sent an application on 10.4.75 covering the period from 10.7.74 to 10.4.75 by a medical certificate dated 10.4.75. Another application was received dated Nil supported by another medical certificate from a different Doctor dated 11.4.75 saying that the individual was unfit to attend duties for five months as he was suffering from chronic dysentery. A third application was received supported by a medical certificate from the second Doctor dated 12.9.75 declaring that the individual was unfit for a duty for a further period of five months and a last application was received again

dated nil praying for leave without mentioning the period and this was supported by a medical certificate from Medical College Hospital dated 24.3.76. According to the defendants he was given reasonable opportunity to submit his reply against the charges and show cause notice etc. He neither submitted his statements nor appeared before the Enquiry Officer on 22.2.76, Inspite of the intimation from Enquiry Officer that if he would not appear the enquiry would be held ex parte and before the final decision was taken a show cause notice was given to him to submit his representation against the proposed penalty of removal on 22.4.76 but he did not submit any reply.

3. We have heard the learned counsel for both parties. <sup>3</sup> In the memorandum of charges issued on 21.1.75 was addressed to his residential address at Jhansi. The removal notice was also sent to him at the same address. The learned counsel for the plaintiff has filed the copy of the show cause notice dated 22.4.76 in which the Garrison Engineer have proposed to impose the penalty of removal from service. The plaintiff chose not to reply to either the chargesheet or the show cause notice or to utilize the chance of appealing against the order of removal when the same was communicated to him at his Jhansi address. A chargesheet is meant to call upon the employee to give his explanation. He cannot be compelled to do so but if he failed to submit explanation it <sup>3</sup> was entitled <sup>3</sup> the authorities to proceed against him ex parte. A chance is given to the delinquent to make an appeal against a punishment imposed on him. In an

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appeal the whole thing is open and the appellant's guilt is examined with an open mind. Unfortunately the plaintiff has failed to make use of both these opportunities by remaining silent on the documents served on him. We do not find that there was any bias or vindictiveness in the process leading to his removal. He had been given fair and reasonable opportunities to defend himself which he did not make use of it. <sup>3/</sup> Another matter ~~which~~ <sup>3/</sup> that the plaintiff was not well or that he took the whole process lightly because it was only in March, 1976 that a medical certificate was received from the Medical College Hospital when perhaps he was hospitalized otherwise he was at his residence suffering from Chronic dysentery which in our opinion could not have prevented him from sending reply to the chargesheet or sending a representation against the enquiry that was being held or even availing the chance of appealing against the punishment of removal.

4. We therefore find that the plea taken by the learned counsel for the plaintiff that the enquiry report was not sent alongwith the punishment order or that the enquiry was held ex parte and he was not given <sup>reasonable 3/</sup> any opportunity to defend his case is not on solid grounds.

5. However, we are not able to understand why after the defendants had received the medical certificates from the plaintiff they have not taken action to advise

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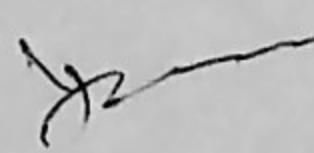
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him of the non-acceptance of the medical certificates and neither asked him to join duty forthwith. The chargesheet given to the plaintiff was for an absence without leave/permission from 2.3.74 till 20.1.1975. The first medical certificate covers his absence from 10.7.74 onwards. There is no documents to show what happened from 2.3.74 to 10.7.74. There was also vagueness in the application submitted by the plaintiff as they neither indicated the date nor the period for which he was applying for leave. It was pleaded before us that the show cause notice sent to the plaintiff did not enclose the enquiry report and that the order of imposing the punishment was not a speaking order. From the papers submitted it is clear that the enquiring authority was also the disciplinary authority and that the final punishment order was a speaking order. It has mentioned of the enquiries made by it through the police ~~reports~~ and the efforts made by it by publishing the article of charges in the Newspapers as also the documents available in the file. Perhaps the medical certificates sent by the plaintiff were received in a different office and the disciplinary authority was not aware of their receipt. On the removal order of 11.6.76 there is an endorsement that it was received in Jhansi on 15.11.76. Therefore even if the plaintiff had received the removal order the period for filing appeal had expired and he could not use this opportunity and sought recourse of court of law to seek redressal

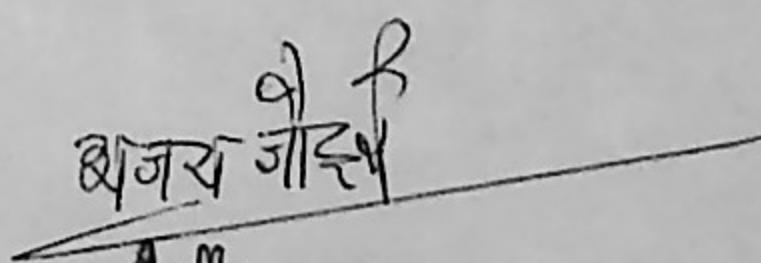
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of his grievance. His plea has been that it was not a willful absence of duty on expiry of his leave and that the period of the absence could be treated as leave without pay and the removal from service was too harsh a punishment for something for which he was not entirely responsible. It was a plaintiff's carelessness and negligence that he did not even bother to find out what had happened to his leave applications. He could not take it for granted that after their submissions his responsibility ceased and his leave would automatically be sanctioned. Considering his 11 years of service to his credit and that the time limit for filing an appeal had expired and he had not made use of the opportunity of appealing against the order of removal the plaintiff if he so wishes may now submit an appeal against the order of removal to the appropriate authority who may consider it according to the rules condoning the delay. The suit is disposed of accordingly. Parties will bear their own costs.



V.C.

  
A.M.

Dated the 18<sup>th</sup> Dec., 1986.

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