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CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH ALLAHABAD

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T. A. No. .... 994 of 1987.  
(W. P. No. .... 2344/82)

R. P. Singh .... Applicant.  
vs.  
Union of India & Ors. .... Respondents.

Hon'ble Justice Mz K. Nath, V.C.  
Hon'ble Miss Usha Sevra, A.M.

( By Hon. Usha Sevra, A.M.)

The application has been received on transfer from the High Court, Allahabad, where it was registered as Civil Petition No. 2344 of 1982. On receipt in the Tribunal, it has been registered as T.A. No. 994 of 1987.

2. The petitioner was appointed as 'Tiler' by General Manager, Ordnance Parachute Factory, Kanpur on 11.02.63 on casual basis. Due to reduction of work, the department asked for his willingness to work in lower post of Labourer by letter dated 11.10.66 to which the petitioner gave his consent.

3. Shri G.K. Singh, learned counsel for the petitioner, submitted that the petitioner had proceeded on Medical Leave on 01.12.66 due to his illness, and had sent his leave application and Medical Certificate by registered post. He remained on medical leave upto 03.04.67, and went to join duty on 09.04.67, when he was not allowed to resume duty and was informed that there were some proceeding against him.

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He had received charge-sheet dated 13.02.67, but due to his illness, had not replied to it. He sent his explanation (Annexure-4) stating that he had been ill and had nervous breakdown, therefore, could not join on duty. Thereafter, he made an appeal on 13.08.77 for his reinstatement, but no order was communicated to him. Since no enquiry had been held, and no Enquiry Officer had been appointed, the petitioner had been discharged without any opportunity to defend himself. Shri Singh prayed that such a termination being illegal, may be quashed, and the petitioner be reinstated.

4. Shri K.C. Sinha, learned Counsel for the Respondents, submitted that the petitioner left his duties without applying for any leave on 01.12.66. When he did not resume after expiry of 3 months, he was deemed to have resigned from service, and ceased to be in Govt. employment with effect from 28.02.67, in accordance with the provisions of Rule-14(c) of Revised Leave Rules, 1933. After the expiry of 3 months' Extra-ordinary Leave, the orders that he was deemed to have resigned from service and ceased to be in Govt. employment from 28.02.67, was published vide O.P.F. <sup>factory</sup> order phk II No. 198 dated 11.03.67, and a copy of same was forwarded to the petitioner by post. His whereabouts were not known; as there had been no communication from him, therefore, it was considered, not to pursue the disciplinary action, initiated against him, and the charge-sheet for unauthorised absence was not pursued.

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5. Shri Sinha further submitted that the petitioner filed an appeal dated 13.08.77 to the authorities, after a lapse of 10 years. In the circumstances, his request was not acceded to, and he was so informed on 02.05.78. Against the above orders, the petitioner had filed W.P.No. 3950/80 before the High Court, Allahabad, ~~xxxxxxxxxxxxxxxxxx~~ and the same was dismissed on 27.10.80, as the petitioner's counsel stated that he had an alternative remedy of filing an appeal under the rules. The petitioner's appeal was filed on 22.11.80, but the Ministry of Defence also rejected this after going through the relevant documents. A fresh W.P.No. 2344/82 was filed before the Hon'ble High Court, Allahabad, which was transferred before the Central Administrative Tribunals. Shri Sinha argued that the petitioner's case was devoid of merit, and the Respondents had acted strictly within the rules, and the principles of natural justice have not been violated. Shri Singh had placed reliance upon the case of Jai Shankar vs. State of Rajasthan H.L.R. 1966 SC 492, which laid down that removal from service without giving opportunity to show cause is illegal. However, Shri Sinha distinguished the facts of the case under consideration; in Jai Shankar's case, the plaintiff had proceeded on leave - duly sanctioned by the prescribed authority, and had applied for extension of leave on medical grounds. He further applied for leave by registered post, supported by a medical certificate. In fact, he applied for extension of leave 4 times, and each time leave was asked for before the last leave had expired. Unfortunately, the petitioner never

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applied for leave, and was continuously absent for over 3 months, and, therefore, came within the purview of the provisions of Rule 14(a) of Revised Leave Rules - 1933. Moreover, the petitioner did not even reply to the charge-sheet which was served upon him, and which would have enabled him to show cause against the proposed enquiry. Therefore, Shri Sinha reiterated that the judgment did not cover the facts of the instant case.

6. We have heard the counsel and perused the annexures filed by them. The facts are undisputed. The applicant remained absent from 01.12.66. His claim that he sent a leave application by registered post duly supported by Medical Certificate is unsubstantiated. There is not an iota of evidence to support his claim, which appears to be false; <sup>he took contradictory stand from time to time.</sup> Again, he claims to have sent a letter to the authorities, explaining why he could not reply to the charge-sheet (Annex.-5), but this letter is dated 30.07.78 i.e. more than 11 years after the charge-sheet was served upon him. The judgment cited by Shri Singh does not come to his aid as it is not applicable to the facts of the case.

7. In view of the peculiar facts and circumstances of the case, we have no option, but to dismiss the application as being devoid of merit; no order as to costs.

*M. Lewand*  
MEMBER (A)  
January <sup>11</sup>, 1991.  
Allahabad.

*DR*  
VICE-CHAIRMAN  
14.1.91