

THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH-ALLAHABAD.

T.A.1761 of 1987.

IN

(W.B. No. 225/85).

Sudhir Chandra Dutt..... Applicant.

Versus

The Union of India & others..... Respondents.

Hon'ble Mr. Justice U.C. Srivastava- V.C.

Hon'ble Mr. K. Obayya - A.M.

(By Hon'ble Mr. Justice U.C. Srivastava- V.C.)

This is a transferred case under Sec. 29 of the Administrative Tribunals Act. The applicant ~~who~~ was a permanent lower Division Clerk in the Office of the Central Government Health Scheme. The applicant was not on duty in between 7.3.1980 to 31.5.1980. According to him because of ill-ness he could not attend the duties and submitted an application with Medical Certificate in support of ill-ness for the said period, while according to the respondents he was not attending his duties on medical ground w.e.f. 7.3.1980 as he did not produce any medical certificate in support of his ill-ness. He did not report for duty and sent another application for extension of Medical Leave enclosing therewith medical certificate dated 10.3.80 issued by the private Medical Practitioner. Another application for extension of Medical Leave was moved on 14.4.80 requesting ~~the~~ extension upto 30.4.80. In order to ascertain the genuineness of ill-ness he was directed to appear before the Medical Incharge of the concerned C.G.S. Dispensary for medical examination vide order dated 17.4.80. A letter was also sent to his residential address by registered post, but the applicant did not report himself for medical examination. He was again directed to report for duty vide letter dated 20th May, 1980 but in response to which an application dated 2.6.80 requesting that extension of Medical Leave upto 1.6.1980 was sent. Thus according to the applicant because of ill-ness he did not attend the duty and according to the respondent he was avoiding duties and it is clear that he remained absent deliberately inspite of directions of the Competent Authority, he did not appear before

the Medical Board. According to the respondent a registered letter was sent to the applicant containing the order dated 17.4.80 which was not accepted by him which is evident also from the postal report. On 3.6.1980 the applicant was served with the chargesheet issued by Chief Medical Officer Allahabad charging him for absenting ~~him~~ from duty without prior permission. The applicant submitted his explanation on 10.6.1980 stating that he was under the treatment of the private Medical Practitioner and that his absence is neither intentional nor will-ful and he never deliberately absented himself from duty. The C.M.O. on 20th January, 1984 passed an order that he was not satisfied about his genuineness of un-authorised leave and as such ^{under} ~~per~~ C.C.S. Leave rules he passed an order that the applicant was not entitled to claim leave as a right for the period 6.11.1979 to 5.9.80 and 7.3.80 to 31.5.1980. But at the same time he passed an order that this will not be treated to be break in service though the unauthorised absence will not count as qualifying service for the purpose of increments, pension and ~~earne~~ ^{were} leave & etc.. Subsequently Enquiry Officer was appointed and on 20.1.1981 to inquire against the charge levelled against the applicant. The statement of articles ~~was~~ ^{were} charged which were forwarded to the applicant as follows:-

1. Sri S.C. Dutta is residing at 823, C/1, Tulsipur, Allahabad.
2. He is absenting himself from duty w.e.f. 15.7.80 on Medical ground.
3. He was directed to join his duty immediately viva this office letter no. 5-83/79-Estt/CGHS (AD)/5952 dated 8.12.1980, but he did not follow the orders.
4. He is a C.G.H.S. Beneficiary but submitting medical certificate from a private practitioner of Allapur area whereas he is residing in Tulsipur area. He is also not submitting the Medical certificate from C.G.H.S. Dispensary.
5. He is in the habit of absenting himself from duty un-authorisedly. His details of unauthorised absence during the last 2½ years is given below:-

(i). 89 days from 10.10.78 to 4.1.1979.

(ii). 11 days from 30.1.79 to 9.2.79

(iii). 12 days from 24.3.79 to 4.4.79

(iv). 40 days from 21.6.79 to 30.7.79

(v). From 15.7.1980 onwards.

6. He is also in the habit of refusing the registered letters from the postman and the same have been received back undelivered.

A perusal of the said charges, it indicates that it could not form part of the charge-sheet. What happened in the past of unauthorised absence which was also although either condoned or waived and in respect of this no action was taken in the past or action was taken in the past could not have been a subject matter of any charge-sheet subsequently as to whether he was residing in a particular area and the certificates which were filed, were issued by the Private Medical Practitioner of different area or that he did not respond to the registered letter and refused the registered letter and did not follow the orders. In fact the subject matter of the charge-sheet earlier in respect of which penalty was already awarded to him in as much as for that period he was not declared entitled to the salary and further although the period was not to be treated as break in service, but it was not to be treated as the period of qualifying service for the purposes of pension and other benefits. The punishment which was awarded to the applicant was a punishment which is also one of the punishment provided under the C.C.S/C.C.A rules. Once a punishment has been awarded in respect of the particular charge by stretching and breaking a charge into number of charges and bringing charges rather than he is in the habit of absenting etc. for the past will not make fresh cause of action of a charge or fresh chargesheet which can be inquired into. It will be a clear double case of jeopardy which is against the constitutional mandate and yet the respondent without taking the same into consideration proceeded with another departmental enquiry.

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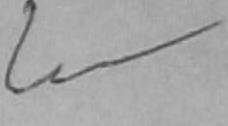
3. Suffice is to say in this case that in the departmental enquiry the applicant has made number of complaints regarding the denial of the reasonable opportunity to defend himself. For same the applicant is responsible, but for the other the respondents are also responsible. It is not that the applicant ~~was~~ fully co-operated with the enquiry, in as much as they were not causes enough to provide full opportunity to the applicant, but it is not necessary to enter into this question as to find out as to which party was at greater fault, but benefit of such thing mostly goes to the delinquent employees. Ultimately the applicant was reinstated on 24.9.87, but by the impugned order dated 1.1.1989 the applicant has been dismissed with effect from 15.7.80. Suffice it to say that no one can be dismissed with retrospective effect and the dismissal order dismissing the applicant, the date of which is 9 years before the date the order was passed, manifestly illegal and this order cannot be sustained. This dismissal order is liable to be quashed on this ground. We have already taken the view that of course the subsequent proceedings adopted is uncalled for as the applicant has been punished. If it is felt by the respondent that the penalty which the applicant deserved, was not given to him, they could have taken a proper proceedings for the same, the same was not done. In the circumstances the application deserves to be allowed and the dismissal order dated 24.4.87 is quashed and the subsequent enquiry proceedings are also quashed. However it is being made clear that the applicant will be entitled to the salary and the allowance under the rules. The respondents will decide this question and will also consider as to what extent leave can be granted during this period. Taking into consideration, the fact that during this period the applicant did no work, but for that he is not wholly responsible as the respondents also did not allow him to work. The salary and allowances for the disputed period will be paid to the applicant deciding the particular period and treating the same as leave. That period will be to the extent to

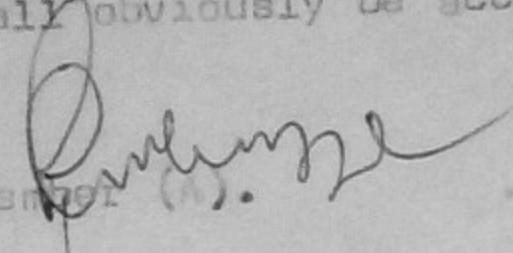
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which leave can be granted and has to be treated as leave, but for the rest salary and allowance, it shall be paid to the applicant. Let a decision in this behalf be taken within a period of three months from the date of communication of this order. In case any salary has been paid to the applicant during the period, the same shall obviously be accounted for.


Vice Chairman.


Member (A).
Dt: August 13, 1992.
(DPS)