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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

...
Dksgd AUGUST , 1989

1299 of 1988.
Registration O.A. No. 94 of 1986

V.K. Kakkar Applicant

Vs.

Union of India & ors ... Respondents

Hon' Mr. K.J. Raman, A.M.

Hon' Mr. D.K. Agrawal, J.M.

(By Hon' Mr. D.K. Agrawal, J.M.)

This application under section 19 of the Administrative Tribunal's Act No. XIII of 1985, is for a direction to quash the impugned order of removal from service dated 2-7-1984 and the order dated 23-11-1984 rejecting the appeal against the order of punishment.

2. The facts are that the above named applicant was employed as Permanent Auditor in the Office of the Controller of Defence Accounts (Pensions) Allahabad under the Controller General of Defence Accounts, Ministry of Defence, New Delhi. He fell ill and remained ill for number of years. It is said that he was laid-down initially with dengue fever, then typhoid and later on suffered with jaundice and cirrhosis of liver and ultimately died on 26-8-88 at the age of 38 years. After his death, his wife and children got themselves substituted and they are pursuing the present application. The charge against the deceased is that he remained unauthorisingly absent w.e.f. 17-3-1983. Therefore, the Department passed an order of removal from service dated 2-7-1984 under

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Rule 19 of C.C.S. (C.C.A.) Rules, 1965 treating the applicant as absconder (Annexure-'C' at page 83 of the application).

3. The applicant preferred an appeal on 19-9-1984 to Controller General of Defence Accounts, New Delhi. It was also dismissed on 23-11-1984 (Annexure-I). The applicant then preferred a review appeal on 31-3-85 to the Financial Adviser, Government of India, Ministry of Defence (Finance). South Block, New Delhi. It is said that there was no provision of the review appeal to the said authority, hence the applicant was accordingly informed vide a communication dated 1-10-1985 to that effect. Thereafter, the applicant filed the present application on 3-1-1986 before the Principal Bench at New Delhi which was lateron transferred to this Bench.

4. The applicant's contention is that, he has been submitting applications for medical leave. Photostat copies of some certificates of posting have been filed by the applicant contained at pages 87 to 90 of the original application. Medical certificates and prescriptions have been filed which are contained at pages 39 to 73. The respondents deny having received the applications for medical leave from the applicant. The respondents have also denied the receipt of an application for medical leave alleged to have been personally delivered by the applicant to one Mr. Ajit Kumar, Section Officer in C.D.A. (Pensions) Allahabad. Therefore, the respondents wants to justify the order of removal on the ground that the applicant was absent from duty

for the period from 17-3-1983 to the date of the order of removal i.e. 2-7-1984. Therefore, the short question for adjudication is, as to whether the order of removal from service vide Annexure-'C' page 83 of the application dated 2-7-1984 was in accordance with law.

5. We may mention at the out set that the applicant was not absconding as mentioned by the respondents in the impugned order of removal dated 2-7-1984 and again reiterated in para 7 (VIII) of the counter affidavit. Even assuming that the applicant was unable to submit applications for medical leave, it remains a fact that it was his long illness that prevented him from resuming his duty. The failure of the applicant in joining his duty was thus involuntary and due to circumstances beyond his control. It may also be pointed out that the respondents resorted to provisions of Rule 19 of CCS (CCA) Rules, 1965. No inquiry was conducted as warranted by Rule 14 of CCS (CCA) Rules, 1965 on the ground that the applicant was absconding. To our mind Rule 19 was not attracted for the obvious reason that the applicant was not absconding. A regular inquiry was desirable against the applicant before passing the order of removal. It would appear that the Railway Establishment Code, Rule 731(1), note 3, provides for automatic termination of service in case an employee fails to report for duty within a certain period. The said rule was the subject matter of consideration before High Court of Allahabad in the case of Balwant Rai Vs. Union of India, A.I.R.

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1968 Allahabad 14. Their lordships held that the courts must point out if an employee failed to report for duty voluntarily i.e. whether the absence of an employee was deliberate or not. They further held that it cannot apply to a servant who fell ill, because it cannot be said that in such a case the servant deliberately absented himself from duty. It was held ~~that~~ that the alternative interpretation that even a sick man must be deemed to have resigned his job, if his period of illness happens to be long one is not only against the spirit of Article 41 of the Constitution, but will make the employer one of the callous minded employer of the State. In the case of Jai Shankar Prasad Vs. Rajasthan, AIR 1966 S.C. 492, their lordships of Supreme Court in some what similar circumstances held that even in the case of automatic termination of service for continuous absence over a period of 5 years, Article 311 of the Constitution would be attracted. In the case of Devki Nandan Prasad Vs. State of Bihar A.I.R. 1971 S.C. 1409, their Lordships held that it was imperative to grant an opportunity to the government servant to show cause against the proposed action, particularly when he contended that failure to join duty was involuntary and due to circumstances beyond his control. Thus, on the ground of over stayal of leave, the punishment of removal of service awarded to the applicant in the facts and circumstances of this case cannot be sustained. We are, therefore, inclined

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to quash the said order of removal dated 2-7-1984. We allow this application, set aside the order of removal dated 2-7-1984 and the order passed in appeal dated 23-11-84 and hold that the deceased must be deemed to have died in harness. The period of absence from 17-3-83 to the date of death shall be treated by competent authority as leave period, with or without pay at his discretion and in accordance with the rules of the service of the employee. There will be no order as to costs.

DK
MEMBER (J) 4.8.89

BRAMM
MEMBER (A)

(sns)

August 4, 1989

Allahabad.