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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 21 ²¹ of 1995.

ORIGINAL APPLICATION NO. 485 OF 1988.

Shri Niaz Ahmad, aged about 44 years,
S/o Late Shri Mohammad Shabrati Khan,
Superintendent B/R Grade I, G.E. (Air Force) Gorakhpur,
24 M.E.S. Colony, P.O. Kundara Ghat,
Gorakhpur.

By Advocate Sri B.P. Srivastava. Applicant.

Versus

1. Union of India through Secretary,
Ministry of Defence,
New Delhi.

2. The Engineer in Chief,
Army Head Quarters, Engineer in Chief's Branch,
New Delhi.

3. The Chief Engineer,
Central Command,
Lucknow.

By Advocate Sri Ashok Mohiley. Respondents.

CORAM: Hon'ble Mr. Justice B.C. Saksena, VICE CHAIRMAN.
Hon'ble Mr. K. Muthukumar, MEMBER (A).

ORDER (RESERVED)

By Hon'ble Mr. K. Muthukumar, MEMBER (A)

1. The applicant, in this case, is a Superintendent
B/R Grade I in the office of the Garrison Engineer

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10

(Air Force) Gorakhpur. The disciplinary proceedings were initiated on 14.8.1981 (Annexure-30) to the application under Rule 14 of the CCS &(CCA)Rules 1965. The charges were that he left the temporary duty station, Lehra Camp, without permission of the Garrison Engineer, proceeded to his home village and that he had remained absent without ~~prayer~~ permission/ sanction of leave and failed to comply within the instructions of the Garrison Engineer to appear before the Civil Surgeon or authorised Medical Attendant and produced necessary Medical Certificate.

On the basis of the Inquiry Officer Report, the Disciplinary Authority namely Chief Engineer of the Engineering Branch, Head Quarter, Central Command, Lucknow, imposed the penalty of reduction of pay by two stages from Rs750/- to Rs700/- for a period of two years with cumulative effect and the period of unauthorised absence was treated as leave without pay. His appeal against the order was disposed of by the Engineer-in-Chief, the Appellate Authority by an Appellate Order and the appeal was rejected. Aggrieved by this, the applicant has approached this Tribunal with a prayer for quashing the punishment order as well as the appellate order as Annexure-7 and 9 to the application.

2. The applicant had advanced the following grounds:-

i) Despite his denial in the inquiry that he had received any ^{gram} or letter stated to have been sent to him by the respondents, directing him to appear before Civil Surgeon and produced documents/^{Certificate} application for leave on medical grounds, the Inquiry Officer had concluded wrongly that the said ^{gram} and Letters

A2
11

must have been received by him and, therefore, the conclusion of the Inquiry Officer that he had wilfully disobeyed the directions of the respondents, is not arrived at fairly.

ii) He had sent the numbers of applications informing the respondents of his illness and about his treatment under a Local Doctor, had produced a certificate dated 1.4.1981 and later on a certificate of fitness from the same Doctor dated 22.8.1981 and when he rejoined duty.

iii) He was in fact sanctioned earned leave w.e.f. 16th April 1979 to 30th April 1979 and thereafter from 1.5.1979 Extra Ordinary Leave for 845 days and to 28.8.1981 by the respondents Part II Order no. 37 dated 7.11.1983-Annexure-10 to the application. But the said order was modified by the respondent's Part II Order dated 10.2.1986 i.e., after a period of almost 2½ years by deleting the period of Earn Leave from 16.4.1979 to 30.4.1979 and E.O.L from 1.4.1979 to 22.8.1981.

In view of this fact that his leave was originally and sanctioned, it can not be said that he was on unauthorised absence and the cancellation of the order sanctioning his leave and subsequently by another order dated 10.2.1986 was done behind his back and no reasons were disclosed for such cancellation.

iv) He was suffering during this period from 15th April 1979 to 22nd August 1991, he was suffering from number of diseases and he was a chronic patient of diabetes and subsequently was hospitalised

in the Medical Hospital Gorakhpur had also certified about about the patient of Diabities and Buber Culosis by certificate dated 17th September 1983 that he was a patient of Diabities and Buber Culosis and needed can be medical treatment.

v) Inspite of the fact that the opposite parties fully knew that the petitioner had been ~~nowhere~~ ill and had ~~been~~ sent application for medical leave, The chargesheet had been falsely and wrongly framed against him with a view to punish him.

3. The respondents in their averments have contested the grounds advanced by the applicant. They have averred that the applicant proceeded to his Home Village during the period of temporary duty without performing any duty. Secondly, although he was asked telegraphically to rejoin duty or in the alternative report to the Chief Medical Officer for medical opinion he did not comply with the above order. Several letters annexed as Annexure-10, 11 and 12 of the Counter reply, had been sent to him but there had been no response and, therefore, his continuous unauthorised absence resulted in the initiation of the disciplinary proceedings against him. On the basis of his submission in reply to the article of charge and on the basis of the findings of the Inquiry Officer, he was found guilty of the charges and was accordingly imposed the punishment of reduction of his pay by two stages. The respondents have averred that there had been no malafide in the proceedings and that in his

A2
5

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written reply, he had also submitted that he might be excused for his long absence. The application of the petitioner requesting for leave were not supported with Medical Certificate and as such he was directed to resume duty and he was clearly informed that the leave was not granted by the letter dated 13th April 1979, 14th May 1979, 8th July 1979, 27.10.1979 and 7.5.1980 and these letters have not been received ~~sent~~ back from the Postal Authority as undelivered and, therefore, the averments of the applicant that he had not received the letters of the respondents, can not be accepted. The applicant was also informed by the respondents letter dated 27.10.1979 to report to the Civil Surgeon, Gorakhpur, to get himself examined and to obtain the medical certificate for the period of leave required. As the petitioner did not comply with this requirement, the disciplinary proceedings had to be initiated against him for unauthorised absence. The respondents have further averred that ^{the} only medical certificate dated 1.4.1981 submitted by the applicant, was not in order as it covered the period from 1.4.1979 to 31.3.1981, whereas the applicant was on duty from 2.4.1979 to 15.4.1979 before submitting the leave application dated 16.4.1979. The contention of the applicant is that he had not received the letters of the respondents cited above, can not be accepted as the letters were sent to the known address of the applicant and had not been returned undelivered by the Postal Authority. The learned counsel for the applicant forcefully argued that the respondents had ^{ed} in fact sanctioned the leave of the applicant by issue of Part II Order dated

7.11.1983 annexed as Annexure-10 to the application.

The said part II order indicates that the period of ~~casualty~~ was shown casualty for the period from 16.4.1979 upto 30.4.1979 as Earn Leave and period from 1.5.1979 upto 22.8.1981 as Extra Ordinary Leave for 845 days without pay and allowances. The Part II order also indicates that the period was on Medical Certificate. However, the said entries were deleted by an amendment issued in Part II Order dated 10.2.1986. The learned counsel for the applicant argued that this amendment was clearly ^{an} after-thought and was issued prejudicially against the interest of the applicant. We have perused the averments made by the respondents in the counter reply. We also find that this aspect has been specifically gone into by the Appellate Authority who had stated that the full period of alleged absence was regularised by the Garrison Engineer (A.F.) in Part II Order dated 7.11.1983 erroneously during the pendency of the disciplinary case but was subsequently cancelled in February 1986 when the irregularity was pointed out by the Chief Engineer to the Garrison Engineer who had issued the Original Part II order. From this averments, we find that the argument of the learned counsel is not tenable. The fact remains that the disciplinary action had been initiated against the applicant for a period of unauthorised absence from 16th April 1979 as indicated in Article 3 of the statement of the imputations, issued with chargesheet. The applicant himself has admitted that he had filed a Medical Certificate only on his ~~extending or back~~ rejoining duty on 24th August 1991

and the Medical Certificate was also found to be defective as this indicated his sickness from 1.4.1979 when in fact he had ~~been~~ attended to his duties from 2.4.1979 to 15.4.1979 before submitting his leave application dated 16.4.1979. In view of the fact that the disciplinary proceedings were initiated in August 1981 itself, the averments of the respondents in regard to the erroneous issue of the Part II order indicating the regularisation of the absence by the order dated 7.11.1983 and its subsequent cancellation when the error was detected, is not unconvincing. We find that the disciplinary proceedings have not suffered from any irregularities or denial of opportunity to the applicant. In disciplinary matters, the Tribunal/Court can examine only whether the decision-making process by the Disciplinary and Appellate Authority had been vitiated or have been conducted in violation of the Rules and Procedures and, therefore, the Tribunal does not sit in appeal against the decision of the Disciplinary/ Appellate Authorities, on the correctness of the punishment imposed. We find that the Appellate Authority has given a detailed and speaking order while rejecting the appeal of the applicant. In the light of this, we find that our interference with the decision of the Disciplinary Authority is not be called for.

4. In view of the above discussions, we find that the application lacks in merit and is, accordingly, dismissed. No order as to costs.

MEMBER (A)

VICE CHAIRMAN

ALLAHABAD: DATED:

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