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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 158 of 1988 ~~198~~

~~T.A. No.~~

DATE OF DECISION 12-8-1988

Shri N. K. Pandya Petitioner

Shri B. B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri J. D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

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JUDGMENT

OA/158/88 12-08-1988

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

The petitioner challenges the order dated 10-9-1987 by which the Superintendent of Post Offices, Junagadh division punished him by withholding his next increment for a period of one year without cumulative effect. This punishment is a minor penalty and was imposed after considering the representation of the petitioner in reply to the Memo dated 19/24.6.1984. In that memo the petitioner was charged for willfully absenting himself without authority or permission on 5th to 8th December, 1986. His appeal against this order was also rejected by the order dated 1-1-1988. The disciplinary authority held that the petitioner had willfully absented himself on production of a medical certificate though he was informed of the acute shortage of Signaller and that his abrupt action of sending a fitness certificate by Regd.Post to get relief for relieve violates provisions of Rule 62 of Vol.II of P & T Manual and Rule 19(5) of C.C.S.(Leave) Rules, 1972. The petitioner further had not applied for Casual Leave from 5-12-1986. The petitioner had asked for a second medical opinion and contended that no prior approval was necessary on the ground taken was medical sickness caused suddenly. The appellate authority in its order has stated that the circumstances and facts have caused the conclusion that the petitioner deliberately absented himself as a reaction of refusal to grant a leave as established.

2. No inquiry has been made as the respondents considered that in imposing minor penalty no inquiry is necessary under the rules.

3. It is true that Govt. servant often abuse the facility of taking Casual Leave or remaining absent on the plea of sickness for which no prior permission is sought on the ground that the sickness is sudden and

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if there is any objection shown by the competent authority, a sickness certificate from non-Govt. practitioner is produced on which the competent authorities granting the certificates have suspection about such certificates being given without due sense of responsibility. This, however, does not excuse the ready conclusion that all such certificates are spurious or fraudulent or curruptly obtained. For the present case the petitioner has raised the plea of sudden sickness for which he has produced a medical certificate and has asked for a second medical opinion if such a certificate is doubted. The respondents have not chosen to hold an inquiry or to make any attempt to test the plea of the petitioner whether his sickness was genuine or whether any competent medical authority had opined on the nature of his disability and the days for which the disability lasted. No doubt the rules annexed at Annexure 'A/5' and Rule 162 at Annexure 'A/4' lay down in detail regarding the circumstances in which absence from duty on the ground of sickness will be excused and how permission has to be obtained before the absence as far as possible. The respondents have relied upon Rule 16 which states that "no order imposing on a Government servant any of the penalties specified in clause (1) to (iv) of rule 11 shall be made except after -

a) informing the Govt. servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

b) holding an inquiry in the manner laid down in sub rule (3) to (23) of rule 14 in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

c) taking the representation if any, submitted by the Govt. servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

d) recording a finding on each imputations of misconduct or misbehaviour; and

e) consulting the Commission where such consultation is necessary."

In this case as no major penalty is sought to be imposed. The respondents have taken the plea that the holding of an inquiry is not considered necessary and that the disciplinary authority has the prerogative of forming an opinion if an inquiry is necessary.

4. It has been well established that it is not for courts to appraise the evidence or sit as an appellate forum in matters concerning domestic inquiries. We, therefore, would not like to form any conclusion whether in the facts and circumstances of this case a disciplinary authority and the appellate authority have been justified in finding that the petitioner willfully absented himself and resorted to the ruse of obtaining medical certificate when he found that he could not get Casual Leave. The important question is whether the defence of the petitioner as contained in his representation was brushed aside without considering the possibility of its being justified and without testing it in any manner. The record does not show that this has been done. Both the disciplinary and the appellate authority have come to their conclusions without examining and then dismissing the plea of the petitioner that he was actually sick and that he was suddenly sick and that the medical certificate was improper. It is possible that the preponderance of circumstances might raise a presumption against the petitioner but, this can be done only after examining the plea in detail. Had the respondent authorities taken care to make an independent inquiry by bringing the medical certificate on record and by examining, if possible, by means of second medical opinion whether the plea of the petitioner was valid or not, the respondents' contention that resort to an inquiry is not necessary might have been accepted. Merely because in the case of minor penalties an inquiry is not regarded as necessary under the rules does not mean that minor penalties can be awarded in a cavalier or casual fashion. Although the direct loss might not be significant, there is no doubt that such penalty blots the character rolls and comes in the way of further promotions. For this reason whenever the explanation of the delinquent

Govt. servants shows that there is any kind of defence, the disciplinary authority has to look into that defence as seriously as if there is a departmental inquiry. Only after this obligation is properly performed by the disciplinary authority and is reflected in his order can the plea that an inquiry was not resorted to for good reasons can carry any weight.

5. In the facts and circumstances of this case, therefore, we find that there is justification to direct the respondents to inquire into the circumstances of the plea of sickness of the petitioner and to hold an inquiry against him. The respondents would be free to pass such orders as are justified if the petitioner is held guilty.

6. With this direction, the petition is found to have merit. The case is remitted to the respondents' disciplinary authority for taking necessary action and the petitioner is at liberty if he is left with any grievance after exhausting his remedy against the fresh orders passed by the appellate authority to approach the Tribunal. We direct that the disciplinary authority's order be passed after holding such an inquiry within four months from the date of this order. There shall be no order as to costs.

(P. H. Trivedi)
Vice Chairman