

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

NO  
regularisation  
of unauthorised  
absence

(1)

O.A. No. 43 of 1990  
T.A. No.

DATE OF DECISION 2-12-1992.

Shri M.P. Mamtora Petitioner

Party in Person Advocate for the Petitioner(s)

Versus

Shri Union of India and Others Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan Vice Chairman.

The Hon'ble Mr. R.C. Bhatt Member (J)

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 ? ✗

Shri M.P. Mamtora

Qtr. No. 425

Block M-5-54, A.G. Office Officers  
Qtrs. Shastrinagar, Ahmedabad.

Applicants.

Advocate Shri M.P. Mamtora (Party in Person)

Versus

1. Union of India

Notice to be served through  
Accountant General (A & E)  
Rajkot.

2. The Accountant General (A&E)  
Race Course, Rajkot.

Respondents.

Advocate Shri Akil Kureshi

ORAL JUDGEMENT

In

O.A. 43 of 1990

Date : 2-12-1992.

Per Hon'ble Shri R.C. Bhatt Member (J)

This application under section 19 of the  
Administrative Tribunals Act, 1985 has been filed by the  
applicant seeking the relief that the order dated  
12th, August 1988, produced at Annexure A-6 of the A/cs Officer

treating the period of 22 days, from 15th June 1988 to 6th July 1988, as unauthorised absence without pay and allowance, not counting for pension and increment of the applicant, be quashed and set aside and the period be treated as on duty in all respects.

2. The applicant had applied for commuted leave from 13th April 1988 to 14th June 1988. The respondents, vide letter dated 6th June 1988 (Annex.A-1), directed the applicant to get himself examined by the Medical Board. The applicant wrote a letter dated 14th June 1988 (Annex. A-3), to the respondents to intimate him, whether he should resume duty after he received the Medical Board Report or he should join the duty without report as the authorised medical attendant has declared him fit for duty with effect from 15th June 1988. The document at Annexure A-5 dated 29-6-1988 shows that the Medical Board intimated to the Deputy Accountant General that, as the period of commuted leave of the applicant is less than 90 days, the Medical Board has no jurisdiction to examine him, as suggested. The applicant has, therefore, submitted before us that there was no fault of his in not resuming the duty from 15th June 1988, because he was under the impression that until Medical Board examined him, he could not resume the duty, apart from the fact that he had already written letter dated 14th June 1988 (Annex.A-3) to the respondents. The applicant submits that no opportunity was given to him for hearing before the order (Annex.A-6) was passed by the Accounts Officer and he also submits that the said order is not a speaking order. The applicant on 10th October 1988 made application

to the Comptroller & Auditor General of India, New Delhi, against the order of Accountant General Rajkot, dated 12-8-1988. The reply was given to him on 4th July 1989, vide Annexure A-8, that his request made in the representation dated 10th October 1988, to grant him special casual leave for 20 days is not covered by the rules.

3. The respondents have contended in their reply that the applicant did not report for duty on the expiry of the period of his commuted leave, on 15th June 1988 and he did not apply for extension. The main contention of the respondents is that the applicant should have reported on 15th June 1988 after the expiry of his medical leave on 14th June 1988, if he was ~~far~~ fit for duty.

4. We have heard the applicant in person in detail and the learned Advocate for the respondents also. Reading the order of the Accounts Officer (Annex.A-6), it appears to us that it is a penal order in nature inasmuch as not only that the period from 15th June 1988 to 6th July 1988 was treated as unauthorised absence without pay and allowance, but the said period was directed not to be counted for pension and increment. This penal order should not have been passed by the authority concerned without giving opportunity to the applicant to explain the same. It is ~~difficult~~ different to treat the period of absence as unauthorised absence and it is totally different not to count it also for pension and increment. The stigma would attach when the ~~the~~ unauthorised period of absence is not <sup>to</sup> be counted for pension and increment. Moreover, thereby the employee would lose not only the pay and allowances but also the pension for that period. The appeal of the applicant was also dismissed but the said

order would also very well suffer from the same vice and therefore, it was penal order. Not giving the opportunity to the applicant of being heard on the point of this penal part of the order has violated the principles of natural justice and therefore, that part of the order which is penal in nature shall have to be quashed and set aside.

5. So far as the rest of the order treating the period from 15th June 1988 to 6th July 1988 as unauthorised absence without pay and allowance is concerned which would mean no pay for no work done during that period, and hence the same is not penal and we do not see any fault in treating it as unauthorised absence without pay and allowance and we would not interfere with that part of the order of the respondents.

6. The applicant submitted that as no reasons were recorded by the Accounts Officer in his order Annex.A-6 for treating the period as unauthorised absence, the same should also be quashed and set aside. We are not aware of the rule which requires the authority concerned to pass the speaking order in such a case and in our opinion, therefore, the submission of the applicant that the same being without any reasons should be quashed and set aside cannot be accepted.

7. Hence we pass the following order:

O R D E R

The application is partly allowed. The order passed by the Accounts Officer, Admin. to the extent that the period from 15th June 1988 to 6th July 1988, is treated as unauthorised absence without any pay and allowance requires no interference at our hand but rest of the portion of the order "not counting for pension and increment" is quashed and set aside and the appellate order to that extent is also quashed and set aside.

8. The application is dismissed accordingly. No order as to costs.



( R.C.Bhatt )  
Member (J)

  
✓ 2/2/92

( N.V.Krishnan )  
Vice Chairman