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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 313 of 1993

Date of Decision: 30.08.1993

Harish Chandra

Applicant(s)

VERSUS

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.


MEMBER (ADMINISTRATIVE)

30 Aug 93

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Respondents

For the applicant

M/s.B.Nayak
Advocate

For the respondents

Mr.Ashok Mishra
Sr.Standing Counsel
(Central)

C O R A M:

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

JUDGMENT

MR.H.RAJENDRA PRASAD, MEMBER (ADMN) In this application, the petitioner

Shri Harish Chandra, Horticultural Asstt.Gr-II, Archaeological Survey of India, Kalachand Temple Garden, Bishnupur, Dist: Bankura, has prayed for the quashing of: a Memo (No.HD.4/HC/PER/92-93-503 dated 7.7.1993) in which the Deputy Superintendent, Horticulturist, Bhubaneswar, had called for certain clarifications in the matter of the petitioner's alleged absence without proper leave; and another Memo (No.HD.4/HC/PER/92-93-594 dated 17.7.1993) calling for further explanations on the same subject. The petitioner has also prayed that a direction be issued to the respondents to pay the arrears of salary from April, 1992, till date with 18 per cent interest thereon.

2. Briefly narrated, the petitioner proceeded on

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medical leave on the strength of a letter written, and purported to have been sent, by him to Respondent No.4, on 25.4.1992, wherein it is stated as under:

" I may kindly be permitted to avail medical leave with the permission to leave headquarters. The unfit and fitness certificates will be submitted at the time of joining and obliged."

Thereafter, the applicant remained absent, and, according to him, he reported for duty on 26.6.1992, after producing a certificate of fitness issued by an Assistant Professor in the V.S. Medical College, Bankura. According to the petitioner, he forwarded the joining report along with the said medical certificates on 26.6.1992, and, thereafter requested the respondent on 4.7.1992 (by a registered letter) to disburse his pay from April to June, 1992. On 7.7.1992, the respondent no.4 issued the impugned first Memorandum (Annexure-A/4) referred to above, to which he replied on 15.7.1992. This was followed by the second impugned memorandum (Annexure-5) from the respondents to which the petitioner sent a reply on 28.7.1992.

3. It is the claim of the petitioner that, after availing of leave on medical certificate from 26.4.1992, he rejoined duty on 26.6.1992, and that he was actually not allowed to resume duty. The respondents, on the other hand, state that the petitioner was absent without any proper leave not merely from 26.4.1992, but had not in fact reported to duty till date, not to mention the additional fact that he was not present on his duty right from 4th April, 1992. They further point out that the medical certificate is not from

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an Authorised Medical Attendant, not in the proper proforma, and issued at a place situated far away from the petitioner's headquarters where he is supposed to have fallen ill. They further point out that his so-called joining report was actually sent by a registered letter which ^{was} booked at Lalbandh Post Office on 4.7.1992, while he claims to have rejoined duty on 26.6.1992 itself. They also allege that the petitioner was actually reported to have been found at his native village upto 1.7.1992. They, therefore, doubt the veracity of the statements made by the petitioner from time to time. They have also produced the attendance register maintained in the office of the Horticultural Assistant, Bankura, for the relevant period, which shows that the petitioner was absent from a period much prior to 25.4.1992, viz., the date on which he maintains that he was on medical leave.

4. Without going into too many unnecessary or ancillary details, it is clear on the face of the evidence produced, as also from the arguments advanced by the learned Standing Counsel that the petitioner was absent from his headquarters without prior and proper intimation or leave of absence, during the months of May and June, 1992. From the entries in attendance register there is reason to believe that the petitioner is accustomed to frequent unauthorised absence verging on habitual malingering. The learned Standing Counsel was emphatic that he is not entitled to any of the reliefs prayed for because the impugned memos are merely

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communications from the petitioner's superior authority calling on his errant subordinate to clarify certain matters. The question of payment of arrear of salary, the Respondents maintain, does not arise in this case, because he has been unauthorisedly absent without proper leave from 26th May, 1992. The petitioner was not able to establish his claims except putting forth inadequate explanations regarding alleged shortage of service postage stamps in the office, etc., which do not materially or substantially help his contentions.

5. Taking a dispassionate view of facts, I do not find it easy or possible to believe the version or evidence of the petitioner. It is clear that he has been extremely remiss and irresponsible in the performance of his duties, and has actually been continuously absent for inordinately long stretches of time, which

6. Under the circumstances, I am constrained to hold that the petitioner has not come with a clean hand and is not entitled to the reliefs claimed.

7. In order, however, to end this state of continuing uncertainty caused to a low-paid employee, as well as to the respondents, I direct that:

- i) the petitioner should produce a certificate of fitness for rejoining his duties from a qualified Medical practitioner, (including the one under whose treatment he claims to have been) the same be accepted by the respondents
- ii) that the same be accepted by the respondent

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for admitting him to duty.

8. These directions are issued with a firm hope that the petitioner shall overcome the weaknesses and negligence that have clearly come to notice, and makes a genuine attempt to improve his dedication to duty so as not to give any further scope for ^{such} complaints in future. This can be regarded as a one-time gesture of extreme leniency and a clear caution that such gestures of leniency may not recur in future. As regards the period of his absence from 26.4.1992 till the date of his readmission to duty, the respondents may take a suitable decision as per rules after granting him an opportunity to make a full factual representation. The petition is thus disposed of. No costs.


MEMBER (ADMINISTRATIVE)

30 AUG 93

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 30.8.1993/ B.K. Sahoo