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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 85 OF 1999
Cuttack this the 23rd day of May, 2000

Sk.Asaf Ali

...

Applicant(s)

-VERSUS-

Union of India & Ors.

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?

Yes

2. Whether it be circulated to all the Benches of
the Central Administrative Tribunal or not ?

NO

(SOMNATH SOM)
VICE-CHAIRMAN

23.5.2000

(J.S.DHALIWAL)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.85 OF 1999
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI J.S.DHALIWAL (MEMBER (JUDICIAL))

...

Sk.Asaf Ali, aged about 48 years
S/o. Late Sk. Sher Ali, at present
working as Accountant, Doordarshan
Maintainence Centre, Prasar Bharti
At: Khallo Street, Aurobindha Nagar
P.S: Jeypore, Dist: Koraput-764001

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By the Advocates

Applicant

M/s. Jyoti Patnaik
Abani Das
S.K. Parida

-VERSUS-

1. Union of India represented through
the Secretary, Ministry of Information
& Broadcasting, New Delhi-110001
2. Chief Executive, Prasar Bharti Broadcasting
Corporation of India, New Delhi-110001
3. Director General, Doordarshan
Mandi House, Copernicus Marg
New Delhi - 110001
4. Station Engineer, Doordarshan Maintanence
Centre, At/Post: Keonjhar, Dist:Keonjhar-758001
5. Asst.Station Engineer, Doordarshan Maintanence
Centre, At/PO/Dist: Keonjhar

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By the Advocates


Respondents

Mr.S.B.Jena
Addl.Standing Counsel
(Central)

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ORDER

MR. J. S. DWALI WAL MEMBER (JUDICIAL): Applicant Sk. Asif Ali has come to the Tribunal pleading that after joining as Clerk Gr. IT in All India Radio Cuttack he was given posting at Keonjhar as a Storekeeper of the 16 years of service in the year 1990. He was given the duties as assigned to Storekeeper which were later on circulated through Annexure-1 including preparation of proforma accounts establishment periodical returns O.T. claims medical reimbursement claims etc. It was mentioned in Annexure-1 that the duties given therein are not exhaustive and he can be reassigned other official work from time to time. Due to some urgent domestic work at Rourkela he applied for one day's C.L. for 11.8.1997 through application submitted to Assistant Station Engineer (Res. 5) on 8.8.1997 under whom he was working. Later on he also submitted an E.L. application from 11.8.1997 to 20.8.1997 dated 8.8.1997. His application for C.L. was refused on the date of submission due to some urgent official work and communicated to the applicant (Annexure-2). He pleads that he suddenly fell ill due to viral fever from 11.8.1997 and his Medical Attendant Dr. H. C. Sahoo M.D. (Medicines) of District Headquarters Hospital Keonjhar advised him complete rest and on 30.8.1997 had certified him fit to resume normal duties (Annexure-3). The applicant submitted his joining report on 1.9.1997 along with representation for grant of E.L. for 11.8.1997 prefixing 9.8.1997 and 10.8.1997 being Gazetted Holidays and for commuted leave for 18 days from 12.8.1997 to 20.8.1997 suffixing 30th and 31st August 1997 being Saturday and Sunday (Annexure-4). The applicant



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was not allowed to join and perform his duties and was given the letter dated 3.9.1997 treating the period from 11.8.1997 to 31.8.1997 as unauthorised absence by Res.5 (Annexure-5). He submitted a representation (Annexure-6) with a request to sanction leave and for acceptance of his joining report to Res.3 who allowed ~~to~~ the applicant to resume his normal duties w.e.f. 1.9.1997 through Annexure-7. Applicant received letter from Station Engineer dated 6.11.1997 indicating that the period of absence has been viewed seriously entailing loss of pay for the said period (Annexure-8). He preferred an appeal on 17.11.1997 followed by other reminders (Annexures-10 and 11). Respondent No.4 intimated the applicant that his representation and reminders have been duly forwarded to Res.3 and in the meanwhile he had been promoted to the post of Accountant and relieved on 19.12.1997 to join at Doordarshan Maintenance Centre, Jeypore (Orissa) and since then he has been working at the new place of posting. He sent further reminders (Annexures-13 and 14) in June and January 1998 for sanction of leave but no decision has been taken. Even that order of not sanctioning leave to him is arbitrary and treating the same as unauthorised absence entailing loss of pay for the above period is illegal and improper. He pleads that such action/order is violative of principles of natural justice. He has sufficient leave at his credit and under the rules Government servants are granted leave liberally and that he has been denied this in a wrong manner. He had also submitted Medical Certificate issued by the recognised Doctor who had treated him during the aforementioned period. He pleads

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that Res.4 has acted in a vindictive manner so as to penalise/^{him} even though he is having very good service record. He has prayed for quashing the orders at Annexures-5 and 8 and to issue direction to Res.4 to reconsider the sanction of leave admissible to him for the said period and regularise the same. He has prayed for further direction to Res.3 to dispose of the appeal/representation pending with him since 17.11.1997(Annexure-11).

2. Respondents contest the case through a detailed reply pleading that in addition to the duties allotted to him it is mentioned under Annexure-1 that he was allotted duties through communication dated 3.2.1996(Annexure-R/1) regarding certain areas under the Office of Res.4 which included calculation of arrears pay and preparation of bills, calculation of income tax of each incumbent yearwise considering pay O.T.A. etc. On 8.8.1997 the applicant informed the respondent that the work assigned to him was not over through note under Annexure-R/2. They allege that the applicant did not try to complete the work despite one and half years time was over. They have denied the assertion of the applicant ^{that} he had not taken leave during his service tenure and have mentioned that he had availed of leave many a times. He even though in his application at Annexure-4 intimated that he was suffering from fever from 12.8.1997 to 31.8.1997, did not intimate regarding his absence in this office and they take a plea that it was strange that period of illness coincided with the period of leave applied for by him earlier. They claim that the applicant has misled the administration regarding his absence and

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that the action taken against him is as per rules and on the facts mentioned above. During the period of action there were three heads of office and thus it would indicate that there was no personal bias against the applicant. His earlier application for C.L. and E.L. due to exigency of work and similarly his application with medical certificate were also rejected.

Applicant has filed a rejoinder reiterating his pleas in the Original Application along with certain additional documents.

4. We have heard learned counsel for the parties and have examined the materials *on the file.*

We need not give all the averments, allegations and counter allegations in detail. The fact remains that the applicant had applied for commuted leave with the Medical Certificate (Annexure-3) along with E.L. for one day. Respondents plead that medical certificate does not indicate that he was ill. We find this plea is not correct. Annexure-3 is reproduced below :

" Certified that Sk.Asif Ali S/o. Late Sk.Sher Ali At:Doordarsan Keonjhar was suffering from viral fever and was under my treatment from 12.8.97 to 30.8.97. During above period he was advised to take rest. He is fit to resume his duties from 31.8.97".

This certificate has been issued by the Doctor who was M.D.(Medicines) and was working in the Government Hospital. Respondents were free to make an inquiry to find out as to whether the applicant was ill or as to whether the medical certificate has been wrongly given by competent Doctor. It is not uncommon that in real life things may sometimes happen, like applicant falling ill during the period for which he had earlier applied for leave. *May A* strong suspicion in the

mind of Respondents 4 or 5 could not be made a basis for ignoring the certificate at Annexure-3 without doing anything further to find out the truth. We are not saying that had the respondents made some efforts to find out, they could have come to the conclusion they are now expressing in written reply but equally strong are the chances that the applicant is telling the truth. In the absence of any fact finding enquiry conducted by the respondents to find out the truth or the falsehood if any, the action of the respondents impugned in this case cannot be sustained under the law. As a controlling officer he is free to arrive at certain administrative decisions but when tested at the altar of Court of Law, the same has to be shown to be based on reasonableness and without there being any arbitrariness. In our opinion the action of respondents in treating the period between 11.8.1997 upto the period when he was allowed to resume his duties as unauthorised absence without seriously considering his application for commuted leave and E.L. is arbitrary and not based on sound reasons. We therefore quash the orders at Annexures-5 and 8 and direct the respondents to reconsider his application for sanction of ^{commuted leave and} E.L. for one day by prefixing the Gazetted Holidays as mentioned in his application if the same is admissible to the applicant. They shall also take a decision for treating the aforementioned period under the rules as may be decided by the competent authority. Respondents are directed to comply with these directions within a period of two months from the date of receipt of copies of this order. No order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

B.K. SAHOO

(J.S. DHALIWAL)
MEMBER (JUDICIAL)