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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.697 OF 2011
Cuttack this the 30th day of August, 2013

Sri Jagjit Singh Arya...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? yes
2. Whether it be referred to CAT, PB, New Delhi or not ? yes


(R.C.MISRA)
MEMBER(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.NO.697 OF 2011
Cuttack this the 30th day of August, 2013

CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Jagjit Singh Arya, IDAS
Aged about 54 years
Son of late Dharmapal Arya
Presently working as Additional CFA,
Ordnance Factory
Badmal
Residing at 17-FTH,
Ordnance Factory Estate
Badmal,
Dist-Bolangir

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through

1. The Secretary to Government of India
Ministry of Defence,
Defence Headquarters
New Delhi-110 011
2. The Controller General of Defence Accounts West Block-5, R.K.Puram
New Delhi-110 066
3. The Senior Deputy Controller General of Defence Accounts
Office of the Controller General of Defence Accounts
Ministry of Defence
Government of India
West Block-V
New Delhi-110 066
4. The Deputy Controller General of Defence Accounts (Admn.)
Office of the Controller General of Defence Accounts
West Block-V, R.K.Puram
New Delhi-110 066



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5. The Deputy Financial Advisor,
DAD Co-Ordn., Ministry of Defence(Finance)
New Delhi
6. The Principal Controller of Accounts (Factories)
Ordnance Factory Board
10-A, Saheed Khudiram Bose Road
Kolkata-700 001
7. The Secretary
Union Public Service Commission
Dholpur House
Shahjahan Road
New Delhi-110 069

...Respondents

By the Advocate(s)-Mr.R.C.Behera

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A):

Applicant in this Original Application is a Direct Recruit Officer of the Indian Defence Accounts Service working under the Ministry of Defence, Government of India. He has approached this Tribunal challenging the order of minor penalty imposed upon him as a result of disciplinary proceedings initiated under Rule-16 of CCS(CCA) Rules, 1965.

2. The short facts of the matter are that the applicant was deputed to work under the Indian Metrological Department (in short IMD) and towards the end of his deputation period, the Respondents issued an Office Order dated 27.3.2004 posting him as Joint CFA in the Ordnance Factory, Badmal in the District of Bolangir after his repatriation to his parent Department. The Department to which he was sent on deputation, i.e., IMD had sanctioned him leave upto 15.5.2004 from the date of conclusion of his deputation period, i.e., 16.3.2004. The applicant made further application to the Respondents to continue on leave. The leave was not granted by the concerned authorities in the Department and since the applicant had not



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join his new place of posting, the Respondents served on him a set-up of charges for his unauthorized absence under Rule-16 of CCS(CCA) Rules, 1965 asking him to explain as to why action as deemed fit and proper shall not be taken against him. This memo of charge was dated 11.4.2005 which is Annexure-A/1 of the O.A. The applicant explained the reasons of his continuing on leave in his reply on 3.5.2005 and made a prayer to drop the proceedings. However, the Respondents without causing any further inquiry into the matter, imposed on him minor penalty of reduction of pay by one stage from Rs. 16,700 to Rs.16,300 in the time scale of pay of Rs.14,300-4000-18,300/- for a period of three years without cumulative effect, with a stipulation that the same would not adversely affect his pension. Being aggrieved by this order of minor punishment, the applicant preferred a revision petition dated 8.5.2007 to the Hon'ble Minister of Defence, Government of India New Delhi making a prayer that the matter may be reconsidered and the order of penalty be set aside. This review petition was considered by the President and the order in this regard dated 29.10.2009 passed by the President was communicated to the applicant vide letter dated 12.11.2009 which are placed at Annexure-A/5. In the order of the President, the various issues raised by the applicant were considered in detail and it was concluded that there was no merit in the review petition and it was held that interference with the order dated 15.3.2007 of the Disciplinary Authority was not called for. The review petition dated 8.5.2007 preferred by the applicant was therefore, finally rejected by the President. The applicant has approached this Tribunal by making a prayer that the order of the Disciplinary Authority dated



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15.3.2007 as well as the order dated 29.10.2009 in the Review Petition should be quashed and consequently, the applicant should be granted the resultant service and financial benefits.

3. The Respondents have filed their counter affidavit resisting the claim of the applicant. They have submitted that on completion of his tenure of deputation to the Indian Metrological Department, i.e., IMD, the applicant was reverted to this Department with effect from 15.3.2004. At the time of his reversion, the borrowing Department sanctioned him Earned Leave for two months, i.e., from 16.3.2004 to 15.5.2004 with permission to visit USA. Meanwhile, the applicant was posted as Joint Controller of Finance and Accounts (Factories), Ordnance Factory, Bolangir(Badmal) vide office letter dated 27.3.2004. Instead of joining the new office on expiry of his leave, the applicant applied for EL from 15.5.2004 to 2.7.2004 vide his application dated 15.5.2004. The competent authority refused the request for leave and the applicant was suitably informed of this vide letter dated 7.6.2004. However, the applicant continued to remain absent and therefore, the Principal Controller of Accounts(Factories) Kolkata, repeatedly wrote to him to join his new assignment. In the letter dated 26.7.2004, a warning was issued that if the applicant did not report for duty immediately, disciplinary proceedings shall be initiated against him. The counter affidavit further mentions that the Principal Controller of Accounts (Factories), Kolkata sent letters dated 7.6.2004 and 26.7.2004 to the applicant in the address indicated by him in the application for leave dated 15.5.2004 that his leave has been refused and he should join his duties immediately. However, those letters were received back "undelivered" with the remarks



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"addressee is not available despite repeated visit and information left at the address" of the postal authorities. The applicant did not intimate any change in his address. The Respondents came to the conclusion that the applicant was deliberately avoiding receipt of these communications. This occasioned initiation of the formal disciplinary action against the applicant on account of his unauthorized absence with effect from 15.5.2004. Being aggrieved by the order of minor penalty, the applicant submitted a representation dated 8.5.2007 to the Hon'ble Defence Minister, Government of India, praying that the penalty order dated 15.3.2007 be set aside. This representation was rejected by the Presidential order of the date 29.10.2009, which was communicated to the applicant vide letter dated 12.11.2009. The aforesaid order was received by the applicant on 25.11.2009. According to Respondents, although the applicant should have approached the Tribunal within one year from the date of final order as per the provision of Section -21 of the A.T.Act, 1985, but he ~~has~~ has filed the present Original Application after expiry of almost two years of the order on the review petition. On this ground, the Respondents have submitted in the counter that the O.A. filed by the applicant is barred by limitation.

4. The thrust of the counter affidavit is that the applicant was sanctioned leave by the borrowing department from 16.3.2004 to 15.5.2004. Thereafter, he applied for further leave to the Respondents and this leave application was not sanctioned by the competent authority due to the exigency of work. The Principal Controller of Accounts sent a number of letters to the applicant in the given address communicating that the leave applied for has been refused and he should report for duty at



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the new place of posting. But the applicant deliberately refused to accept these letters which were sent to the known address of the applicant and ~~thus~~ returned by the postal authorities as undelivered. Therefore, due to the unauthorized absence of the applicant as well as the refusal to receive the letters issued by the Respondents rightly a charge sheet dated 11.4.2005 was issued by the Respondents. It is further argued that officers who are already on leave and desirous of obtaining an extension must submit their applications sufficiently in advance to be considered and result communicated before the expiry of the original leave. According to Respondents, leave is not a matter of right and the applicant cannot take it for granted that the leave as applied for must be sanctioned by the authorities. On the other hand, the authorities because of exigency of work can always refuse leave to the applicant and ask him to join the duties. They have further submitted that this being a case of imposition of minor penalty no formal inquiry was required for the purpose. However, the applicant had filed a review petition and while disposing of the said review petition by the Presidential order dated 29.10.2010, all the points raised therein by the applicant have been dealt. Therefore, the intervention by this Tribunal is uncalled for particularly when a minor penalty has been imposed in a situation where the applicant has not acted as per the instructions and refused to join his duties ever after his leave was refused which was communicated to him too.

5. Learned counsel for the applicant has filed written note of submission in which he has mentioned that the applicant has never availed of leave during the previous six years of his service and refusal of his leave

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application by the Respondents was not at all justified. At the time of reversion from the borrowing Department, i.e., IMD, leave was sanctioned in his favour from 15.3.2004 to 15.5.2004. The applicant was posted to Ordnance Factory, Badmal in the District of Bolangir by an office order dated 27.3.2004. The applicant made a request to respondents to post him somewhere near Delhi, but this request was turned down. However the assurance was given to the applicant when he met the Secretary, Defence *Finance* in the Ministry of Defence that the leave as required by him would be sanctioned in his favour. In spite of this assurance not a single day leave was sanctioned in his favour after the leave sanctioned by the borrowing Department was over on 15.5.2004. The learned counsel for the applicant has further submitted that the letter in which refusal of leave was communicated was not delivered to him in his leave address. Those letters on the other hand were sent to the address in which the applicant was not staying. The applicant had therefore no opportunity of coming to know that his leave had been refused. The letters were sent to the addresses at Nibedita Kunj and also Basant Kunj, New Delhi whereas the applicant was not staying in any of these places. Since the letters have not been duly served on him, the departmental authorities committed an error by starting a minor penalty proceedings against the applicant. The further contention of the learned counsel for the applicant is that the Respondents took a wrong plea that because of exigency of work the leave had to be refused since there was no such urgent work pending which would have prompted *pted* *R* the Respondents to take such a decision. Further, when the advice of the UPSC was obtained the correct facts were not presented with the UPSC as

argued by the learned counsel for the applicant. The advice given by the UPSC to the Respondents has not also been supplied to the applicant for preparing his defence. Further, it is argued that in the final orders passed in the review petition, the various issues raised in the revision application were not addressed by the concerned authorities. The learned counsel has also mentioned about various personal and family difficulties of the applicant which compelled him to apply for leave and it was his submission that the Respondents cannot take an arbitrary decision of not granting him leave when the applicant was continuing on leave facing personal difficulties and could not immediately report to the new place of posting at Badmal in the District of Bolangir.

6. One important issue raised by the learned counsel for the applicant is that although the proceedings were initiated under Rule-16 for imposition of minor penalty, there were no formal inquiries conducted by the Respondents and the order of punishment was imposed after the applicant submitted his explanation to the authorities. According to learned counsel for the applicant, in a case of minor penalty proceedings under Rule-16 of CCS(CCA) Rules, 1965, the authorities have the powers to decide whether to go for a regular inquiry or not, and if they find that regular inquiry is not required, they are duty bound to record the reasons as to why the regular inquiry is not required. Therefore, the learned counsel for the applicant has argued that the process of imposition of minor penalty has also been vitiated on this score.

7. On the other hand, the learned Addl.Central Government Standing Counsel for the Respondents has first of all raised the point of limitation

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mentioning that Hon'ble Supreme Court in the case of D.C.Negi vs. Union of India & Ors. decided on 7.3.2011 has laid down that the Tribunal has to first consider the issue of limitation. Further the Hon'ble Supreme Court has also stipulated that the Tribunal cannot abdicate its duty in accordance with the statute under which it is established even if the fact that objection on limitation was not raised by the Respondents. Therefore, according to learned Addl.Central Govt. Standing Counsel, the instant O.A. being barred by limitation should not be considered by the Tribunal.

8. Coming to the merits of the case the learned Addl.Central Govt. Standing counsel submitted that as per Para 251 of the Office Manual, Pt.1 of the Department, it is the responsibility of every member of the establishment who applies for leave to ascertain before absenting himself that the leave has been sanctioned and on no account should proceed on leave in anticipation of sanction. Members already on leave and desirous of obtaining an extension must submit their applications in sufficient time for them to be considered and the result communicated before the expiry of the original leave so as to permit their joining by the due date if the application is refused. Failure to comply with these instructions will render an employee liable to be treated as absent without leave. In the present case, the applicant did not bother to find out after sending his leave application dated 15.5.2004 whether the leave applied for has been sanctioned in his favour by the competent authority or not. Further, leave should not ordinarily be denied during the last 10 years of service. The applicant in the year 2004 had a balance service of 13 years and therefore, the aforesaid rule is not applicable in his case. All the letters were sent to

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the applicant in his own address and they were received back undelivered.

Therefore, there was no need to adopt any other course of alternative mode of service as stated by the applicant. Regarding the exigency of work on the basis of which leave was refused, the learned Addl. Central Govt. Standing Counsel has submitted that this is the discretion of the leave sanctioning authorities and in the interest of work they can always refuse leave to an officer. Replying to the point that urged by the applicant that a copy of the UPSC advice was not supplied to him before passing the final order, learned Addl. Central Govt. Standing Counsel mentioned that the Disciplinary Authorities are not bound to serve copy of the advice tendered by the UPSC on the delinquent before passing any final order.

The basic thrust of the *a* argument of the learned ACGSC is that the applicant should not have taken it for granted that leave should be granted in his favour as no such right enjoyed by the applicant. According to him, the applicant has deliberately avoided receipt of the letters and also joining new place of posting as per the posting order issued on 27.3.2004.

On the above mentioned grounds, the learned Addl. Central Govt. Standing Counsel has urged that there being no merit, the O.A. is liable to be dismissed.

9. I have heard the learned counsel for both the sides and perused the documentary evidence placed on record. I have also given my anxious thoughts to the arguments advanced by the learned counsel for both the sides.

10. The prime point to be considered in this case is whether the applicant, as per the claim *laid* by him, has a right to be granted leave.

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Admittedly, the applicant was working on deputation with the IMD and before his repatriation to the parent Department, he had been sanctioned leave by the borrowing Department from 16.3.2004 to 15.5.2004. In the meantime, by the order dated 27.3.2004, he was posted at the Ordnance Factory, Badmal in the District of Bolangir. The applicant was reluctant to join at Ordnance Factory, Badmal and apparently met the Secretary, ^{Finance &} Defence, in the Ministry of Defence, who had assured him that he would be granted minimum leave as per his requirement. Thereafter, the leave was refused and communications were sent to him intimating the same. Even if the Secretary, ^{Finance &} Defence had assured him that minimum leave would be granted, but that ~~by~~ ipso facto does not confer upon the applicant any right that application for leave should be granted by the authorities unhesitatingly and for all times to come. It is a matter of record that the applicant had been already granted two months' leave by the borrowing Organization at the time of his repatriation to the parent Department. Even if he required further leave on personal grounds and submitted an application for the same, he should have waited to find out the decision of the authorities on his leave application. As a disciplined Government servant, particularly belonging to a very senior service like Indian Defence Accounts Service, the applicant had an obligation, before remaining on leave, to find out whether the leave applied for by him was sanctioned or not. However, he should not have proceeded on an assumption that the leave as applied for by him shall be granted only on the basis of some oral assurance given by the higher authorities in the Department. This attitude



and approach is not expected of the applicant being a senior officer of the IDAS.

11. The second issue for resolution is whether the letters of refusal of leave not being received by him or the letters being communicated to some addresses where the applicant was not staying would warrant interference by this Tribunal. It appears that the authorities had sent the letters to the known addresses as available with them of the applicant. If the applicant had a different address he had an obligation to communicate the same to the Respondents. But this is not a material point since it was incumbent on the part of the applicant before remaining on leave to find out whether the leave was actually sanctioned in his varour or not. In the circumstances, he should have been available at his headquarters with a view to verifying regarding the sanction or otherwise of the leave before going elsewhere on the presumption that leave must have been sanctioned. Therefore, It is not required to pronounce any verdict whether the applicant has deliberately avoided receipt of the letters as the circumstances underlying are self-evident. This point itself is also redundant in view of the fact that being an officer of a senior service onus was on the applicant ^{to} to find out the status of his leave application and to join his new place of posting in the event his leave application was refused.

12. Coming to the procedure laid down in Rule-16 of CCS(CCA) Rules, 1965, it is provided therein that no order imposing on a Government servant any of the penalties specified in Clause-(i) to (iv) ~~of~~ of Rule-11 shall be made except after informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct

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or misbehavior on which it is proposed to be taken, and giving him a reasonable opportunity of making such a representation as he may wish to make against the proposal. It is further provided in the said Rule that the disciplinary authority may hold an inquiry in any manner as laid down in sub-rules (3) to (23) of Rule-14 in every case in which the disciplinary authority is of the opinion that such an inquiry is necessary. In the present case it is an admitted position that no formal inquiry has been held and the minor penalty was imposed after considering the representation of the applicant and after obtaining advice of the UPSC. From this, it is clear that the Disciplinary Authority was of the opinion that in the existing case holding of an inquiry was not required. Having gone through the explanation submitted by the applicant on 3.5.2005 to the Disciplinary Authority, I do not find any demand raised by the applicant that there should be a formal inquiry into the matter. However, I find that the Government of India have decided after the suggestion made by the staff side of the Committee by the National Committee set up to consider revision of CCS(CCA) Rules, 1965, that if the record indicates notwithstanding the points urged by the Government servant, the Disciplinary Authority could after due consideration come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons instead of rejecting the request for holding inquiry summarily,

Without any communication that it has applied its mind to the request as such an action could be construed as denial of natural justice. Although the learned counsel for the applicant has mentioned that there is no such order in this case to the effect that inquiry was not considered necessary, this

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argument does not hold water in a situation where the applicant has not made out a case for causing an inquiry. Therefore, on this point, it cannot be held that the procedure followed under Rule-16 of CCS(CCA) Rules, 1965, for imposition of minor penalty has been vitiated in any manner.

13. The next point to be considered is whether by the non-supply of a copy of advice tendered by the UPSC the proceedings under Rule 16 of CCS(CCA) Rules, 1965 has been vitiated. In this connection, it is to be noted that the advice tendered by the UPSC is advisory in nature. It is also not the case of the applicant that the punishment imposed is one of those which does not fall within the categories of minor penalties. Therefore, the emphasis laid by the applicant that by the non-supply of advice tendered by UPSC, he has been prejudiced is out of place.

14. As regards the plea of the applicant that all the points raised by him in the review petition were not considered by the competent authorities is nothing but a bland assertion in view of the fact that the applicant has not made a definite and distinct statement as to which of the points raised in the review petition was left out of consideration.

15. Now, coming to the point of limitation, it is pertinent to quote hereunder Section-21 of A.T.Act, 1985, which is germane to the issue.

21- Limitation(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in Clause(a) of sub-section(2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.

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16. In the present case, the Disciplinary Authority imposed the minor penalty on the applicant vide order dated 15.3.2007. On 8.5.2007, the applicant preferred a revision petition addressed to the Hon'ble Minister of Defence, Government of India. The Revision petition has been disposed of by a Presidential order dated 29.10.2009, which however, has been communicated to the applicant on 12.11.2009. Challenging that order the applicant has approached this Tribunal by filing the present O.A. on 17.10.2011. Viewed from this angle, in adherence of Section-21(1)(a) as quoted above, the applicant should have approached this Tribunal within one year of the order dated 12.11.2009, i.e., by 11.11.2010, whereas he has filed this OA on 17.10.2011. This apart, applicant has not filed any petition seeking condonation of delay in filing the present O.A. In the circumstances, it cannot be held that the O.A. in its present form is within the period of limitation as prescribed under Section 21(1)(a) of the AT Act, 1985.

17. For the discussions held above, both on the grounds of limitation as well as on merits the O.A. is dismissed. Parties to bear their respective costs.



(R.C.MISRA)
MEMBER(A)

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