

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.612/2003

Friday, this the 29th October 2004

C O R A M:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

K.K.Venu, unskilled Labourer
Naval Ship Repair Yard, Kochi.

Applicant

By Advocate Mr.R.Krishna Raj

Vs

1. Union of India represented by Secretary
Ministry of Defence, New Delhi.
2. Flag Officer, Headquarters,
Southern Naval Command, Kochi.
3. Chief Staff Officer (P&A) Headquarters
Southern Naval Command, Kochi.

Respondents


By Advocate Mr.C.Rajendran, SCGSC

The application having been heard on 24.9.2004 and this
Tribunal on 29.10.2004 ordered the following:

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER.

The applicant an unskilled labourer posted at Naval Ship
Yard, Kochi, was fell ill due to mental depression on 16.12.97
and was in his house at Kozhikode. He was taken to
Dr.S.Santhakumar, Psychiatrist of Medical College Hospital,
Kozhikode and was under his treatment which was intimated to the
department through telephone and later submitted a leave
application alongwith Medical Certificate. He under went
treatment upto 7.7.2001. The last leave application submitted
by him is reported to be missing from office therefore he
submitted another application with medical certificate. The




absence period was treated as unauthorised absent and a show cause letter was issued to explain his absence and directing him to report back to duty. He was not aware of any registered letter stated to have been sent to him which was returned unclaimed. A charge sheet was issued on 8.9.98. The applicant submitted his defence statement on 23.9.98 denying the charges. Subsequently the respondents have cancelled the Memorandum issuing the charges on the ground of certain infirmities in the memorandum. Thereafter another memorandum of charges was issued and enquiry conducted. Vide order dated 13.1.2000 the authority replaced the presenting officer and the applicant participated in the enquiry. The enquiry authority came to the conclusion that the applicant is guilty of both the charges framed against him. The disciplinary authority imposed a penalty of withholding of next two increments when it falls due for two years without cumulative effect and that the absence of the applicant was treated as unauthorised absence resulting loss of pay and allowances for the period (Annx.A1 & Annx.A2). The appellate authority rejected the appeal filed by the applicant and confirmed the penalty order (Annx.A3). Aggrieved by the said impugned orders, the applicant has filed this O.A seeking the following main relief:

- (a) to quash Annx.A1&A3 and set aside the punishment of withholding of two increments for 2 years without cumulative effect with a further direction to treat the period of absence from 17.12.97 to 31.1.99 as unauthorised absence resulting in loss of pay and allowance for the period imposed on the applicant.
- (b) direct the respondents to treat the period of absence from 17.12.97 to 31.1.99 as medical leave and grant the applicant all benefits.



- (c) direct the respondent to grant the applicant the increments from proper days.
- (d) direct the respondents to disburse the applicant's arrears of salary as per the 1996 pay revision.

2. The respondents have filed a detailed reply statement contending that the applicant was charge sheeted on various misconducts such as unauthorised absence and refusal to accept the official communication. On having proved the charges in the enquiry, the disciplinary authority imposed a minor penalty of withholding of two increments for two years treating the absence for the period 17.12.97 to 31.1.99 as unauthorised absence resulting in loss of pay and allowances for the said period. The appellate authority considered the appeal and rejected. It is further contended that as per Annx.R1, leave cannot be claimed as a matter of right but a privilege and should only be availed after the same is duly approved by the leave sanctioning authority. The applicant remained absent from duty w.e.f. 17.12.97 and submitted the leave application along with medical certificate only on 23.9.98, after a long period of nine months instead the same should have been sent immediately on his falling ill. The applicant failed to prove that he has sent the intimation through telephone to T.D.Joseph which was discredited in the deposition of the said witness. The leave application and medical certificate stated to have been misplaced was issued on 16.6.99 for the treatment 31.12.98 to 19.6.99 and was not the first leave application. This medical certificate was not acceptable. A letter written to the applicant was unclaimed. Not claiming an official letter is to be treated as refusal to accept the same therefore the applicant was issued with a memorandum of charges to which he submitted his defence



statement. The applicant was provided with full and fair opportunity to defend his case in pursuance of the principles of natural justice and the Inquiry Officer found that the applicant is guilty of the charges. The appeal was also rejected after careful examination.

3. We have heard Mr.R.Krishna Raj counsel for the applicant and Mr.C.Rajendran, SCGSC, the counsel for the respondents. We have given due consideration to the materials, evidences and pleadings on record.

4. The learned counsel for the applicant argued that the leave application sent by the applicant was neither accepted nor rejected, in such circumstances, the applicant cannot be treated as unauthorised absence from the date of leave application. The respondents has not treated the period of absence from 1.2.99 to 6.7.2001 as unauthorised absence. The Inquiry Officer has not gone into the prejudice shown by the Section Clerk T.D.Joseph, witness No.2 who was inimical to the applicant. When all other subsequent communications were received by the applicant, it is not known how a letter sent by the enquiry authority has not reached to the applicant at Kozhikode, therefore, the enquiry is not in compliance with the natural justice. For that reason the appellate authority has also not considered these points. The learned counsel for the respondents on the other hand precisely argued that as per the rules, it is the duty of the absenting employee to inform the respondents about his absence at the earliest opportunity. The change of Presenting Officer has not



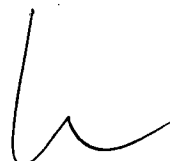
caused any prejudice to the applicant. Mr.T.D.Joseph, being the Assistant deals with the attendance of the applicant is a material witness in this case.

5. We have given due consideration to the arguments advanced by the learned counsel for the parties. The counsel appearing for the parties had made an endeavour to take our attention to the evidence adduced in the enquiry report. Observing the spirit of the decision of the Hon'ble Apex Court in the case of Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651, the scope of judicial review has been elaborately discussed. It is only the decision making process not the merit of the decision itself is reviewable as the court does not sit as an appellate court while exercising the power of review. Action is vitiated only by arbitrariness, unfairness, illegality, irrationality or unreasonableness, therefore, what the court called upon to evaluate the process and proceedings and find out whether the same has been faulted. Admittedly, the charge against the applicant is:

"(a) Did remain absent from duty unauthorisedly for the period from 17 Dec 97 to 23 Aug 98.

(b) Did fail to comply with the lawful orders of his superior officer."

6. Admittedly the applicant had participated in the enquiry in a full-fledged manner, cross examined the witnesses and has no grievances whatsoever that the proceedings in the enquiry is




faulted. It is also born out from the records that the applicant was absent from 17.12.97 to 31.1.99. The proceedings initiated by the respondents is as per the provisions of major penalty for violation of Rule 14(8), 14(27) and 14(10) of the Central Civil Services (Classification, Control & Appeal) Rules. The respondents has also produced the instructions with regard to availing of leave (R1), para 2 of the said instructions reads as follows:

"2.However, in case where an employee suddenly falls sick and no permission could be obtained, he should immediately intimate the department of his absence enclosing the medical certificate and indicating the period and type of leave required. Those who were absent from duty on account of sickness will only be permitted to sign their attendance/punch cards on production of fitness certificates to Main Office. Where employees are forced to absent from duty without prior permission due to reasons beyond their control such as sickness in the family and other unavoidable circumstances they are to intimate the department of their absence either on telephone or by a letter at the first instance indicating the type of leave required and duration of leave. All cases of absence without prior sanction/intimation beyond 3 days are to be reported to the Main Office by the Shop-in-Charges/departmental officers in writing immediately for further action duly indicating the local address of the employee concerned."

7. The prerequisite for availing leave is to obtain permission prior to that and if not possible in a case of suddenly falling sick the person should intimate the office of his absence alongwith medical certificate. The applicant has informed his absence and treatment after a period of 9 months i.e. 23.9.98 requesting for leave on medical ground. The information alleged to have been given over phone to T.D.Joseph was denied in the examination by the said witness. Therefore,

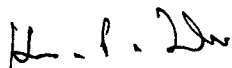


the applicant has not fulfilled the conditions that he should have been complied with in such circumstances. It is also seen that the applicant had forwarded a certificate from Dr.A. Santhakumar, Psychiatrist for the period from 17.12.97 to 31.12.98 (R3) to which the submission of the respondents is that due consideration has been given to the medical certificate, his mental illness and the peculiar circumstances under which the applicant was subjected, while imposing the penalty. They have filed the leave chart (R5) showing the leave granted during the period 17.12.97 to 6.7.2001. From the said chart we find that a part of the period has been treated as unauthorised absence and rest of the period has been treated by granting whatever available leave to the applicant credit and a minor penalty of withholding of two increments for two years was imposed on the applicant. What we could find from the record is that his pay has been cut for a short period of his absence since he has not submitted any medical certificate and rest of the period has been regularised by granting various kinds of leave. Having considered the entire aspect we could not find any infirmity or irregularity in the procedure adopted and we are of the view that our intervention is not required in the impugned orders. Moreover, the learned counsel of the applicant also submitted that the punishment imposed is disproportionate to the gravity of the charges. Our attention is invited to the decision reported in 1998(9) SCC 671 State of Karnataka & Ors. Vs. H.Nagaraj, wherein it is laid down that the Tribunal cannot interfere with the finding of the Enquiry Officer or the competent authority where they are not arbitrary or utterly perverse. The principle of proportionality of the punishment can be invoked by the courts only in the case where the



punishment was totally irrational in the sense that it was in outrageous defiance of logic or moral standards. Considering the entire aspect, we are of the view that the punishment is not disproportionate ~~or~~ nor will affect the judicial conscience.

8. In the conspectus of facts and circumstances, we are of the considered view that the O.A does not merit and therefore the applicant is not entitled for any relief claimed in the O.A and therefore to be dismissed and accordingly we dismiss the O.A. In the circumstances no order as to costs.



(H.P.Das)
Administrative Member

kkj



(K.V.Sachidanandan)
Judicial Member