

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO. 89/97 in OA.NO.408/93

5th this the ~~wed~~ day of November 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

Shrikrishna Damodar Shete ... Applicant
V/S.

Union of India & Ors. ... Respondents

Tribunal's Order By Circulation

The applicant has filed a Review Petition against the decision of the Tribunal dated 22.8.1997 seeking review of the order of the Tribunal. In the review petition, the applicant admits that he remained absent without leave being sanctioned by the competent authority. He has given explanation that due to sudden death of his daughter and wife he was granted leave for 197 days from 16.12.1970 to 30.6.1971. Therefore, he submits that the said statement is not correct and requires review. Respondents in their communication dated 26.7.1988 have reiterated that after verification of service book, it revealed that the official was on Extra Ordinary Leave for 197 days without medical certificate from 16.12.1970 to 30.6.1971. He admits that he has not participated in the departmental enquiry and ex-parte inquiry held. He contends that it was obligatory on the Presenting Officer and Inquiry Officer to verify the charge. He contends that due to mental disturbances, he could not appear in the departmental enquiry. His contention is

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that he was in fact on sanctioned leave but this fact was over looked by the competent authority as well as by the Tribunal. Therefore, instead of dismissing him from service, he should have been asked to retire compulsorily so that he would have received the fruits of his ^{21 years of} service by way of pension.


2. However, on perusal of the judgement we find that there was inordinate delay in passing the appellate order. The counsel for the respondents submitted that the case of the applicant has been considered compassionately by the competent authority on the basis of the representation made by the applicant in 1987 after a lapse of nearly 15 years. The delay is not on account of the department, on the other hand, the department if there is any substance in applicant's contention wanted to help him if permissible and they produced the relevant service record of the applicant for our perusal. He did not join duty despite notice, show cause notice and reminders etc. According to the applicant, he was not given any satisfactory reply ~~for~~ his absence except stating that he was mentally ^{sick} ~~weak~~. Therefore, he could not produce any medical certificate etc.


3. The question for consideration is whether it is open to the Tribunal to reapp^{rise} the decision taken by the competent authority in their wisdom. In this connection we have quoted two judgements. As regards penalty to be imposed, the Tribunal has no power to direct the respondents to reconsider the matter if there has been one enquiry

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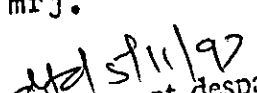
consistent with the rules and in accordance with the principles of natural justice. What punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion or that of the authority.


4. In the light of the above, we do not find any error apparent on the face of record or any new points are brought to our notice for reconsidering the judgement rendered earlier. Therefore, we are of the view that the Review Petition is devoid of merit and the same is dismissed.


(P.P. SRIVASTAVA)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J)

mrj.


Order/Judgement despatched
to Applicant/Respondent (s)
on 13/11/92


20/11/92