

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA No. 731/89 : Date of order 7.7.94

Laxmi Narain Gupta : Applicant

V/s

Union of India & Others : Respondents

Mr. Virendra Lodha : Counsel for the applicant

Mr. U.D. Sharma : Counsel for the respondents

CORAM

Hon'ble Mr. Justice D.L. Mehta, (Vice-Chairman)

Hon'ble Mr. O.P. Sharma, Member (Administrative)

PER HON'BLE MR. JUSTICE D.L. MEHTA, (VICE-CHAIRMAN)

Heard the learned counsel for the parties. We have perused the order (Annexure A-1) dated 24.7.89 passed by the Reviewing Authority. In this order, it has been mentioned that the petitioner has argued that he had submitted an application for leave for the period from 13.8.87 to 19.9.87 well in advance to the SPOs who approved the substitute who worked as EDERM vice him and there was no tradition of issuing sanction of leave to the EDPs in Bharatpur Division. This argument confirms that the leave for the period 13.8.87 to 14.9.87 was availed by the petitioner though he did not receive any sanction for it. On this point there is no denial by the Department in the order. Mr. Sharma is not in a position to answer (i) whether the application well in advance was submitted and if submitted then on what date, (ii) whether the application has been made for the period from 13.8.87 to 19.9.87 (iii) if application has been made, how it can be considered as a case of deemed absence of the applicant. In the order, the disciplinary authority has also held that the applicant remained on sanctioned leave from 13.9.86 to 12.8.87 for 184 days and on this ground they have passed the order that he has remained on leave for 184 days on sanctioned leave but he has exceeded the maximum leave available. If

...2/-

12

he was away from <sup>duty</sup> ~~in~~ view of the duly sanctioned leave, how could the absence be termed a misconduct? Once the leave has been sanctioned then it cannot be a case of unauthorised absence.

2. Under Rule 5(b), it has been specifically mentioned that an employee who is granted leave for a period less than the maximum period admissible to him under the rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such absence shall render him liable to action under the rules. The question now is about the interpretation of the word absent. The word as used in Rule 5 means wilful absence or unauthorised absence. Once leave has been sanctioned, he cannot be considered as absent within the purview of Rule 5(b). For this purpose, we are of the view that the charge no. 1, where the leave has already been sanctioned ~~leave~~ though it exceeded 180 days cannot be considered as <sup>proved</sup> ~~being absent from~~ ~~duty~~ but it is a case in which the party has remained on leave, may be for a period exceeding 180 days.

3. As far the second part of the charge is concerned, we direct the respondents to re-examine the matter in the light of the position whether leave was sanctioned to the applicant from 13.8.87 to 14.9.87, and whether the substitute had been paid allowance for the period during which he had worked on this second charge. The order of Reviewing Authority, Appellate Authority and Disciplinary Authority are hereby set aside. Fresh order on the second charge including the decision whether any penalty is called for if this charges proved, and if so which penalty, should be passed within a period of three months from the date of this order.

(O.P. SHARMA)  
MEMBER (A)

(D.L. MEHTA)  
VICE-CHAIRMAN