

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH AT
HYDERABAD.

O.A.No.403/1989.

Date of Disposal: 17.10.1990.

M.A. Haleem.

.. Applicant.

And

Deputy Secretary to Govt. of
India, Ministry of Water Re-
sources, New Delhi. and another Respondent.

APPEARANCE:

For Applicant: Shri Bashiruddin Ahmed, Advocate.
For Respondent: Shri G. Parameswara Rao, Advocate
for Mr. P. Ramakrishna Raju, Sr. GGSC.

CORAM:

Hon'ble Shri B.N. Jayasimha, Vice-Chairman.

Hon'ble Sri J. Narasimha Murty, Member(J)

Judgment of the Bench delivered by
Hon'ble Sri J. Narasimha Murty,
Member (Judicial).

--:-

This is an application filed by the Applicant for relief to quash the impugned order F.No.6(1)84 Vig., dated 2--2--1989 as it ~~ix~~ tantamounts to termination of services and carries a stigma too, therefore attracts Article 311(2) of the Constitution of India, compulsory retirement when it is not in public interest and is liable to be set aside.

The facts of the case in brief are as follows:

1. The applicant is M.Sc. Geology and M.Sc. Tech. in Hydraulurgy. He was recruited through Union Public Service Commission in 1974 for Group-A service and was appointed as Junior Hydrologist with effect from 1-9-1975. After six months of his posting at Sinaman Project at

P1 28
22/10/90

h

Sholapur, he was transferred to Central Ground Water Board, Southern Region, Hyderabad. In May 1976 on his request to stay with his family and aged parents, he was assigned work at Sathupally, Khammam District. He was then transferred to Central Ground Water Board, Central Region, Nagpur. His request for retention in Southern Region was not considered and he was relieved there from on the very day of his father's demise. He worked in Nagpur from 1978 to 1980 duly attending to the work assigned to him near Bhopal and Jabalpur in Madhya Pradesh. On his request, he was posted again to Southern Region, Hyderabad, and was assigned there reappraisal of ground water in East Godavari District near Amalapuram and Peddapuram where he fell sick and proceeded on leave on medical grounds. During the convalescence period he was transferred to Trivandrum, where he did not join and his leave was sanctioned after getting a second Medical Opinion of the Medical Board. He was retained for some time in the Hyderabad Office to carry out the work at Raiyampet in Cuddapah District and he completed the work on 16th June 1984. On the same day orders were served retransferring him to the Central Region, Nagpur, giving him two months time to complete and finalise the work done.

2. While he was retained at Hyderabad, he applied to the Ministry of Water Resources, Government of India, to register his name vide letter No.MAJ/JHJ/CGBW/Research.I, dt.21-10-1983 to prosecute his studies in Ph.D. of Osmania University, and permission was accorded in letter No.35-184/78.GW.Govt.of India, dated 7-12-1985. The fact of admission to the applicant to prosecute his studies for Ph.D. course was brought

contd..p.3/-

81
10/10/80

to the notice of the Technical Secretary and the Director, Central Ground Water, Southern Region, personally and requested to report the fact to the Chief Hydrologist, Central Ground Water Board and to retain him at Hyderabad till he completes his Ph.D. But his request was not considered and he was relieved on 16-6-1984 to join at Nagpur. He joined at Nagpur on 27th August, 1984.

3. The applicant applied for casual leave for Id-uz-Zuha on 7-9-1984 and availment of two days on 8th and 9th which were Saturday and Sunday. On reaching Hyderabad he found his mother's health in a precarious condition. His mother wished to see the marriage of her last son to be performed before she breathed her last. He applied for earned leave from 7-9-1984 to 9-10-1984. He received his salary for the period ending October 1984, which would not have been paid had the leave not been sanctioned.

4. The applicant made enquiries at Hyderabad about admission to Ph.D. course and applied for admission. It was informed that attendance was compulsory as is evident from the admission letter No. Ph.D/Ad/1984-Session-D2/270, dated 21st July 1984. Pursuant to it he applied for study leave w.e.f. 8-10-1984, which was admissible under rule 50(1) of CCS Leave rules of 1972. In his application he explained the circumstances in which the leave applied for was justified. Correspondence ensued in the matter and it remained unabated till charge of unauthorised absence was framed against him and he requested for enquiry which was conducted.

5. Before expiry of his leave applied for, he requested for posting as Junior Hydrogeologist in Central Ground

h/ contd..p.4/-

Water Board on 31-12-1986 and subsequent telegrams. As no reply was received, he was compelled to report as Junior Hydrogeologist on 8-2-1987 at Fareedabad. On receipt of posting orders at Central Region, Nagpur at Fareedabad, he joined the department on 17-3-1987. He was admitted to duty and was assigned work of office routine in the nearabouts of Ahmednagar for draught relief measures in Maharashtra. The study leave was not sanctioned. On the other hand an enquiry was launched against him vide letter Confidential No.6(1)/84, dt.1st January 1986. Shri N.C.Bhatnagar, Dist.Central General Water Board, North Western Region, Chandigarh, in the office of the Director, Central Ground Water Board, Nagpur, conducted the enquiry into the following charges levelled against him:

" He absented himself from duty w.e.f. 10.9.1984 to today i.e. 23rd July 1986 unauthorisedly without approval or sanction of the competent authority by his aforesaid act, Shri M.A.Haleem has shown lack of devotion to duty and has behaved in the manner unbecoming of a Government Servant and violated the principle of Rule 3(1), (II) & (III) of the Central Civil Service Conduct Rules, 1965."

6. Even though the enquiry was conducted by the Enquiry Officer on 23rd July 1986, report of the Enquiry Officer was not provided to the accused officer Shri M.A.Haleem as required under rule nor any show cause notice was given to him. The enquiry was completed by the Enquiry Officer and there was no inkling given to the applicant of any penalty proposed against which he could make any representation which in common parlance is known as the second stage of enquiry at which any charged officer has to represent, since the second show cause notice is not available under the amended law. He was attending to the

official work at Pune Camp, where he received the message to close the camp and return. On 1st February 1989 he returned to Nagpur and was served with order F.No.6(1)84 Vig., dated 2-2-1984 and 2-2-1989 containing the order of his compulsory retirement as punishment. He handed over charge on the afternoon of 2-2-1989. The said order is misconceived, bad in law, mala fide, arbitrary and issued against Article 14, 16, 21 and 311(2) of the Constitution of India. Hence he has filed this application.

7. The respondent filed the counter on the following contentions:-

7. The various contentions raised in the application are not correct and therefore not accepted.

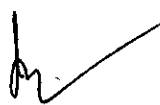
8. While posted at Hyderabad vide his letter dated 21st October 1983, the applicant had sought permission for registering his name as an external candidate in the Osmania University, Hyderabad, for the award of Ph.D. Degree in the subject of Hydrology. While seeking permission, he had assured in that letter that he shall be utilising his free time for study, this would neither affect the departmental work nor interfere with discharging his duties. Since he had sought permission to register himself as an external candidate and had given the above assurance, the permission was granted to the applicant vide letter dated 7-12-1983 for registering himself as an external candidate subject to the condition that his doing Ph.D. will not interfere with his official work in any way and also that grant of leave for fulfilling any residential requirements for

contd..pg6/-



completion of the course will be subject to the exigencies of Government work. Thus the permission was only conditional. i. The applicant secured admission in Ph.D. course in Osmania University, Hyderabad, as a regular student and completed the course without proper sanction of leave, thereby remaining on unauthorised absence from duty. The University rules clearly provide that the course would be pursued only as a regular student and that any officer joining the course as a regular student would have to produce a certificate of his being on leave. The applicant concealed the material fact of his not having been granted leave for pursuing studies from university authorities. As regards his transfer to Nagpur, it was purely on administrative grounds and in view of shortage of Junior Hydrogeologists at Nagpur and had nothing to do with the permission granted to him for pursuing the Ph.D. course. The applicant was informed vide telegram dated 15.10.1984 that his request for study leave not recommended and to report for duty at once as work was affecting.

9. The applicant was transferred from Southern Region, Hyderabad, to Central Region, Nagpur, vide order dated 16-6-1984 in public interest. The applicant was relieved from Southern Region, ~~Hyderabad~~, on ~~16-8-1984~~ and he joined duty in the Central Region, Nagpur, on 27-8-1984. Immediately after joining his duties at Nagpur, the applicant proceeded on two days casual leave for 10th and 11th September 1984 on account of the festival Idd-u-zuha with permission to leave the headquarters. After the expiry of the two days casual leave, instead of joining his duties, the applicant sought further extension of leave first upto 30-9-1984 and thereafter



contd..p.7/-

R.33

upto 7-10-1984 on the ground of illness of his mother. The extension of leave was not allowed to him and he was asked to join duty immediately as field work was affected vide telegram dated 9-10-1984. The applicant did not join his duties at Nagpur but subsequently sent two applications both dated 10-10-1984. In these applications, the applicant requested for grant of (i) earned leave for 28 days from 10-9-1984 to 7-10-1984 on the grounds of his mother's illness and brother's marriage and in continuation thereafter (ii) study leave from 8-10-1984 to 7-10-1985 under the Central Civil Services (Leave) Rules, 1972 for his Ph.D. course at Osmania University. The applicant was, however, again informed immediately vide Director, Central Ground Water Board, letter dated 15-10-1984 that his request for study leave was not recommended and therefore he should report for duty at once as work was suffering. The applicant did not comply with the instructions of the Government of India and continued to remain on unauthorised absence disregarding and disobeying the repeated advice of the Director, Central Region, Nagpur, for which a Memorandum dated 30-11-1984 was issued to him informing him that the study leave applied for could not be allowed in view of the exigency of work and he was directed to report for duty by 15-12-1984 failing which action as deemed fit will be taken against him. He was also directed to explain as to why disciplinary action should not be taken for his unauthorised absence from duty. The applicant vide his letter dated 12-12-1984, expressed his inability to join duty stating that he was pursuing his study in Ph.D. course in mutual interest and benefit to the Govt. Thereafter memos were issued to him on 26-2-1985, 15-4-1985,

h contd..p.8/-

27-5-1985 and 8-8-1985 making it clear that his explanation was not found satisfactory; permission for study leave was not granted; absence was unauthorised, etc.. and was directed again and again to join duty immediately, failing which he will be liable to disciplinary action. In the memorandum dated 8-8-1985 he was also informed that about his transfer, he could represent his case after joining duty at Nagpur office. The applicant, however, ignored all the instructions/advice and continued to remain absent and pursued his Ph.D. course. Thereafter, with the approval of the Competent Disciplinary Authority, major penalty proceedings under rule 14 of the Central Civil Services (CCA) Rules, 1965 were initiated against the applicant vide Memo dated 1-1-1986 for absenting himself from duty with effect from 10-9-1984 unauthorisedly without proper approval or sanction of the competent authority thereby showing lack of devotion to duty and behaving in a manner unbecoming of a Govt. servant in contravention of the Central Civil Services (Conduct) Rules, 1964. On receipt of the applicant's defence statement, wherein he denied the charges, an Inquiring Authority was appointed to inquire into the charges and the applicant afforded the necessary opportunity to defend his case. The Inquiring Officer submitted his report on 28-8-1986 stating that the charge levelled against the applicant was fully proved. The advice of the Union Public Service Commission was also obtained. Thereafter, the disciplinary authority, after going through all the facts relating to the case including the report of the Inquiring Officer and the Union Public Service Commission's advice, observed that while applying for permission for registration in the Ph.D. course,

h3 contd..p.9/-

the applicant had clearly stated that he would utilise his free time in the study of Ph.D. and that it would not affect the departmental work nor it would interfere with discharging his duties. Since he had asked for permission to register himself as an external candidate and had given the above assurances, permission was granted to him in December, 1983 subject to the condition that his pursuit of studies for Ph.D. would not interfere with his official work in any way and that the grant of leave for fulfilling the residential requirements would be subject to exigencies of Government work. Thereafter, he was transferred from Hyderabad to Nagpur, where he joined on 27-8-1984. Despite the fact that permission allowed to him was subject to aforesaid conditions, the applicant secured admission for Ph.D. course in Osmania University, Hyderabad, as a regular student. For the admission, the University authorities had also stipulated a condition that all the non-teaching candidates, who are otherwise employees, should take leave under the rules, or otherwise their admission would be cancelled. The study leave asked for by the applicant subsequently for this purpose, was not granted by the competent authority and he was asked to report for duty. The applicant did not reveal the correct position that the Government had not sanctioned him leave for the course, and remained absent from duty unauthorisedly. The Disciplinary Authority further observed that even if the applicant had not been transferred from Hyderabad, he could not have performed his official duties as well as undergone the Ph.D. course, since the University Rules require that a Ph.D. scholar has to be a regular student and has to produce a certificate that he is on leave from the Department. The applicant had been given important work at Nagpur with

contd..p.10/-

P92

certain target dates. The applicant should have looked into the interests of the Government rather than remaining away from Nagpur on some grounds or the other. He completed the Ph.D. course inspite of clear University Rules, that the official seeking admission for that should be on approved leave, clearly established that he was guilty of suppressing the information from the Osmania University that he was not on study leave, which reflects on his integrity. The Disciplinary Authority was thus fully convinced that the applicant wilfully ignored and disobeyed Government's orders and that the charges of absenting from duty unauthorisedly without proper approval or sanction from competent authority thereby showing lack of devotion to duty and behaving in a manner unbecoming of a Government servant, was fully proved against the applicant, and came to the conclusion that the applicant was not a fit person to be retained in Government service and ordered imposition of major penalty of Compulsory Retirement on the applicant.

10. The contention of the applicant that a copy of the Inquiring Authority's report was not given to him immediately after the completion of inquiry ~~xxxxxxxxxxxxxxxx~~ ~~Rxxxx~~ is not correct. The applicant was given all opportunities to defend his case. The penalty order is legal and fully in accordance with Law and there are no grounds for the applicant. The application is liable to be dismissed.

// Heard Sri Bashiruddin Ahmed, learned counsel for the Applicant and Sri G. Panameswara Rao for Sri P. Ramakrishna Raju, Senior Standing counsel for Central Government.

12. In this case the applicant sought permission for registering his name to prosecute his studies in Ph.D., of Osmania University in Hydrology. The applicant was working as a Hydrologist in the Respondents' Department.

Page 3

While seeking permission, he gave an undertaking that he would utilise his free time for this study without detrimental to the Departmental work and his normal duties. He obtained the permission of the respondents to register his name as an External Candidate for prosecuting his studies in Ph.D. of Osmania University in the field of Hydrology. In the permission letter, it was stated that the permission granted is subject to the condition that his doing Ph.D. will not interfere with his official work in any way. The grant of leave for fulfilling any residential requirement for completion of the course will be subject to the exigencies of Government work.

13. The applicant secured admission in Ph.D. Course in Osmania University, Hyderabad as a regular student. While he was at Hyderabad, ~~xxxx~~ he was attending to his studies in the leisure hours. While so, he was transferred to Nagpur on administrative grounds in view of the shortage of Junior Hydrologists at Nagpur on 16-6-1984. He was relieved from the Southern Region, Hyderabad on 16-8-1984 and he joined duty in the Central Region, Nagpur on 27-8-1984. After he joined at Nagpur, he immediately applied for leave for ^{7th} ~~10th~~ ~~xxx~~ ~~xxxx~~ September, 1984 on account of the Eid-Us-Zuha and permission to avail two days on 8th and 9th which were Saturday and Sunday. After reaching Hyderabad, he found his mother's health in a precarious condition. His mother expressed her last desire to see the marriage of her last son to be performed before she breathed her last. Therefore, he applied for earned leave from 7th September to 9th October, 1984. The extension of leave was not allowed to him and he was asked to join duty immediately as the field work was being affected by a telegram dated 9-10-1984. But he did not join duty and he also made an application for grant

of study leave from 8--10--1984 to 7--10--1985 which is admissible under Rule 50(1) of C.C.S. Leave Rules of 1972. His request for study leave was rejected and he was asked to join duty immediately. He remained without joining duty. For the period of absence, his explanation was called for and inquiry was conducted and he was made to retire compulsorily from service.

14. According to the applicant, the Enquiry Report was not furnished to him and he also contended that the punishment of compulsory retirement amounts to removal from service. He states that he had put in 13 years and 4 months service. He has got more service and that the punishment imposed is too severe. He did not carry the matter in appeal contending that the Enquiry Report was not furnished to him.

15. The applicant applied for permission to register his name for Ph.D. Course of Osmania University in the field of Hydrology and the permission was granted without detrimental to his normal duties and departmental work. He was also allowed to prosecute his studies in the Ph.D. While so, he was transferred to Nagpur because of exigencies of services. So long as he was continued in Hyderabad, there was no trouble either to the applicant or to the Department. Because of the transfer to Nagpur, it seems the trouble arose. It is evident that because of the transfer he could not prosecute his studies in the field of Hydrology for Ph.D. Course.

16. The applicant never expected that he would be transferred to Nagpur. In the first instance he applied for casual leave and went to Hyderabad for Eid-Us-Zuha festival and thereafter on the ground of his mother's

P12
3

illness he applied for leave and thereafter he applied for study leave as he was transferred to Nagpur. But the respondents have not granted him the leave.

17. The petitioner has put up nearly 13 years of service in the Department. He is entitled to get the study leave. Moreover, he got the earned leave and other leaves to his credit. The Department will lose nothing if they grant any of the above said leaves to continue his studies but contrary to the principles of natural justice, the Department did not grant him the leave. In the same subject he is dealing in the Department, he joined to do Ph.D., in the same subject with the permission of the authorities. If he completes his course and return to the Department, he would be an asset to the Department and also to the Public. The Department can extract better work. He might have paid fees to the college and joined the college with the permission of the Department. Having parted with the money, the petitioner requested the respondents to grant him the study leave. The respondents ought to have sympathised with the position but they vindictively refused to grant him leave. His transfer from Hyderabad to Nagpur is also not made with a good intention, knowing fully well that he joined the Ph.D in Hyderabad with the permission of the Department, he was transferred to Nagpur. After he was transferred to Nagpur, his struggle started. The charges were framed against him and the respondents conducted inquiry and found him guilty of the charges. The disciplinary authority awarded punishment of compulsory retirement to the petitioner. It amounts to removal from service almost. He got 10 years more service. At this stage he was asked to retire compulsorily. The penalty imposed on the petitioner is disproportionate to the charge. ^{Inq. report - LSN} ~~The documents were~~ not given to him to carry the matter in appeal. Though requested, he was not given a

personal hearing. In this case, the petitioner cited a decision reported in AIR 1964 SC 1585 in which their lordships observed as follows:-

"It is hardly necessary to emphasise that for the efficient administration of the State, it is absolutely essential that permanent public servants should enjoy a sense of security of tenure. The safeguard which Article 311(2) affords to permanent public servants is no more than this that in case it is intended to dismiss, remove or reduce them in rank, a reasonable opportunity should be given to them of showing cause against the action proposed to be taken in regard to them."

In the present case, the documents are not served on the petitioner to carry the matter in appeal and he was not given a personal hearing also to explain his case. In this case, ^{he contended that} he did not commit any offence. He requested the respondents to grant him study leave or any leave ^{on} to his credit. By over-staying the leave, such a harsh punishment is unwarranted. In this connection, the learned counsel for the petitioner cited a decision reported in AIR 1966 SC 492, wherein their lordships stated as follows:-

"The removal of a Government servant from service for overstaying his leave is illegal even though it is provided by the service Regulation that any individual who absents himself without permission after the end of his leave would be considered to have sacrificed his appointment and may be reinstated only with the sanction of the competent authority."

A discharge from service of an incumbent by way of punishment amounts to removal from service, and the constitutional protection of Art. 311 cannot be taken away from him by contending that under the Service Regulations the incumbent himself gives up the employment and all that the Government does is not to allow the person to be reinstated. It is true that there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal and one circumstance deserving removal may be overstaying one's leave. But a person is entitled to continue in service if he wants until his service is terminated in accordance with law. It is true that the Regulation speaks of reinstatement but what it really amounts to is that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden thrown on the incumbent to secure reinstatement by showing cause. No doubt the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but it cannot order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is ~~agreed~~ done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as

✓

seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Art.311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it."

18. In this case, the petitioner applied for his leave to go to Hyderabad to see his ailing mother. When he reached Hyderabad, his ailing mother expressed her last desire to see her last son's marriage before she breathed her last. Therefore, he applied for earned leave from 7.9.1984 to 9.10.1984. He further extended the leave for studies from 8.10.1984 to 7.10.1985 which was not granted and the petitioner was asked to join duty immediately, but he did not join duty. So, they called for explanation, ~~and~~ an inquiry was conducted and he was compulsorily retired from service. The petitioner, for a legitimate purpose, asked to extend his earned leave and the respondents refused the same. He asked to grant study leave which he is entitled to get. This was also rejected. For a bonafide purpose, the petitioner asked for extension of leave and also study leave. He is entitled for the leave as per the rules. Contrary to the rules, an inquiry was conducted and he was compulsorily retired from service. So, this compulsory retirement was not made in public interest. If he prosecuted studies and get his Ph.D., ~~and~~ he ^{would} ~~will~~ be more useful not only to the concerned institution but also to the society at large. He has not asked for a leave either for illegal or immoral purposes. He asked for a legitimate purpose. Instead of

granting the leave, the Department vindictively retired him compulsorily from service. He worked for 13 years under the respondents and he will get another 10 years service. Though he is legally entitled to get the study leave, the respondents have not granted the study leave but compulsorily retired him from service. It shows that compulsorily retiring him from service is not in public interest, which is vindictive act of the respondents contrary to the rules and contrary to the principles of natural justice.

19. The applicant states that he was not served with the copy of the Enquiry Report and other documents. The respondents in their counter states as under:

"At that time, the relevant Rules on the subject did not provide for giving a copy of the Inquiry Officer's report to the delinquent Government servant and taking his submission, if any, into consideration, before issuing the final orders. Copies of the Inquiry Officer's report and Union Public Service Commission's advice, were then required to be supplied along with the final order only which was done."

20. In SHRI PREMNATH K. SHARMA V. UNION OF INDIA AND OTHERS (1988 (6) A.T.C. 904 the New Bombay Bench of the Central Administrative Tribunal held as under:

"Even after the amendment of Article 311(2) by the 42nd Amendment, the Constitution guarantees a reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement, he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is recorded and the

147

charged officer is permitted to cross-examine the witnesses and challenge the documentary evidence during the course of the enquiry. But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charges. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It therefore follows that furnishing a copy of the enquiry report to the charged officer is obligatory."

The respondents themselves have stated in their counter that copies of the Inquiry Officer's report and Union Public Service Commission's advice were supplied along with the final order only. Thus, the applicant was not given a reasonable opportunity and therefore the finding of the Disciplinary ^{authority} is vitiated by denying the enquiry Officer's report to the applicant.

20. As held in ALEXANDER PAL SINGH V. DIVISIONAL OPERATING SUPERINTENDENT AND OTHERS (1987(2)A.T.C.922-S.C.) this is not a case where the applicant has been found guilty of any act involving moral turpitude. The Supreme Court held as under:

"This is not a case where the appellant has been found guilty of any act involving moral turpitude but the appellant has been punished for his negligence amounting to misconduct in not reporting to the Railway Hospital for treatment. While we cannot absolve the appellant for not reporting sick at the Railway Hospital but undergoing treatment of private doctors according

A/18
3

to whose certificate he was suffering from typhoid and hepatitis, we think the ends of justice will be served by imposing a lesser punishment, namely withholding of two increments with cumulative effect for a period of three years and in consequences loss of seniority."

This is not a case where the applicant has been found guilty of any act involving moral turpitude. In this case, there is no dishonesty on the part of the applicant. He has only asked for leave for educational purpose which he is entitled to get as per the rules but the respondents refused the same. They compulsorily retired him from service and the action taken by the respondents is not in public interest as he did not commit any fraud or any illegal act. So compulsory retirement of the applicant is not in accordance with the principles of natural justice.

21. The quantum of Punishment is a very delicate question which requires to be resolved by the competent authority, be it a Judge presiding over a criminal court or a disciplinary authority exercising Disciplinary jurisdiction. The punishment imposed be neither too excessive nor too lenient. It must be proper, adequate; at the same time neither too harsh nor too lenient. It has to be either deterrent or reformative.

22. In JAI SHANKER V. STATE (A.I.R. 1966 S.C.492), it was held as follows:

"The removal of a Government servant from service for overstaying his leave is illegal even though it is provided by the service Regulation that any individual who absents himself without permission after the end of his leave would be considered to have sacrificed his appointment and may be

reinstated only with the sanction of the
Competent Authority.

The Regulation involves a punishment for overstaying one's leave and the burden ~~is~~ is thrown on the incumbent to secure reinstatement by showing cause. No doubt, the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but it cannot order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done, the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Art.311. A removal is removal and it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it."

This is not a case where the applicant has been found guilty of any act involving moral turpitude. The applicant was not supplied with a copy of the Enquiry Report and other documents. The respondents have themselves admitted that it was supplied along with the final order. The quantum of punishment is not commensurate with the gravity~~xxx~~ of the charges levelled against him.



23 In these circumstances, I am of the opinion that the enquiry is vitiated and the quantum of punishment does not commensurate with the gravity of the charges levelled against the applicant and is against the principles of natural justice. The impugned order is, therefore, liable to be quashed. The applicant shall be reinstated to duty with all consequential benefits.

24. In the result the application is allowed.
No costs.



(J. NARASIMHAMURTHY)
Member (Judl.)

Date: 17.10.90