

O.A.No.....181..... of 1998

DATE OF DECISION..10.1.2001....

Shri Kamal Roy

PETITIONER(S)

Mr. M. Chanda & Mrs. N.D. Goswami

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors

RESPONDENT(S)

Mr.A. Deb Roy, Sr.G.G.S.G.

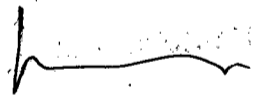
ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR. K. K. SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO.181 OF 1998

Date of decision - January 10, 2001.

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER.

Shri Kamal Roy,
S/O Late Rakhai Chandra Roy,
Village Milan Nagar,
P.O. & Dist Goalpara,
Assam.

- APPLICANT

By Advocates Mr.M. Chanda & Mrs.N.D. Goswami.

- Versus -

1. The Union of India,
through the Secretary to the
Govt of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General of Security,
Office of the Director, SSB(GS),
East Block-V, R.K. Puram,
New Delhi.
3. The Deputy Inspector General,
SSB Training Centre, Haflong,
Dist N.C. Hills, Assam.

- RESPONDENTS

By Advocate Mr.A. Deb Roy, Sr.G.G.S.C.

JUDGMENT AND ORDER

(ORAL)

CHOWDHURY, J. (V.G.) -

The legality and validity of the departmental proceeding initiated against the applicant communicated

vide ...

vide order dated 17.8.1995 and the consequential order of imposition of penalty of compulsory retirement from service issued under order dated 18.6.1996 and the subsequent order dated 10.11.1997 and 7.11.1997 are assailed in this proceeding.

2. The applicant was initially appointed as a Lower Division Clerk-cum-Typist on 10.10.1965. He was promoted to the post of Upper Division Clerk in the year 1971. In the year 1974, the applicant joined in the Village Volunteers Force at Imphal. The applicant was placed under suspension in the year 1979. The applicant assailed those proceedings before the High Court in Civil Rule No. 600/81 which was subsequently transferred to the Tribunal in G.C. No. 322/86. The Tribunal by its order dated 7.10.1986 disposed of G.C. No. 322/86 with certain observations. It was stated that after disposal of the matter by the Tribunal, he was posted in the office of the Deputy Inspector General, SSB, Training Centre, Haflong and started discharging his duties accordingly. A departmental proceeding was initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The statement of articles of charge along with the statement of imputation of misconduct or misbehaviour in support of the articles of charge was furnished to him. The statement of articles of charge as referred to by the applicant is reproduced below :-

*Article-I

That the said Shri Kamal Roy, while functioning as Assistant in the office of the DIG, TC, Haflong w.e.f. 12.12.1986, left the office

in the ...

in the afternoon of 9.9.1988 after submitting his leave application but without handing over proper charge of his office seat including restricted documents and Steel Almirah with keys, held by him under his charge. Thereby, the said Shri Kamal Roy, has committed an act most unbecoming of a Government servant and thus, violated the provisions of Sub-Rule-1(iii) of Rule 2 of the CCS (Conduct) Rules, 1964.

Article-II

That the said Shri Kamal Roy, during the aforesaid period and while functioning in the aforesaid office, is absenting himself unauthorisedly from official duties w.e.f. 27.9.88 till date. Thereby, the said Shri Kamal Roy, has committed an act most unbecoming of a Government servant and thus, has violated the provisions of Sub-Rule-1 (iii) of Rule 3 of CCS (Conduct) Rules, 1964.*

3. The applicant submitted his written statement against the articles of charge. It appears that the applicant did not appear before the enquiry proceedings and the respondent authority made an ex parte enquiry and the inquiry officer submitted his report holding the applicant guilty of the charge. The competent authority in due course accepted the enquiry report and awarded the penalty of compulsory retirement from service to the applicant with immediate effect and ordered that the period of unauthorised absence from 27.9.1988 would be treated as dies non. The applicant thereafter preferred an appeal and according to the applicant, the said appeal is yet to be disposed of. Hence, this application challenging the legality and validity of the proceeding.

4. Heard Mr. M. Chanda, learned counsel for the applicant as well as Mr. A. Deb Roy, learned Senior Central Government Standing Counsel for the respondents.

5. The respondents submitted its written statement denying the allegation of the applicant. On the other hand, Mr. Chanda, learned counsel appearing for the applicant referring to the order dated 19.3.1991 submitted that the leave of the applicant was duly sanctioned by the competent authority. It was not justified on the part of the respondents to hold the applicant guilty of unauthorised absence from duty as mentioned in articles of charge. Mr. Chanda further submitted that the respondent-authority found the applicant guilty of the charge in Article-I without applying its mind. Mr. Chanda referring to the written statement submitted that he has totally denied the charge in Article-I and stated in written statement that the key of the Steel Almirah was duly handed over to one Shri Lal Mohan Dey, Upper Division Clerk and that the restricted documents, maps, cash books etc. were in the custody of the head of office, Senior Instructor Training. That aspect of the matter which was submitted by the applicant was never considered by the respondents which caused denial of justice. Mr. Chanda further draws our attention to the order dated 10.11.1997 by which the period of unauthorised absence from 27.9.1988 was treated as dies non and also other order dated 7.11.1997 by which the period of suspension was not taken into account to reckon the qualifying service for granting of pension without

giving ...

giving him due opportunity. Mr. Chanda submitted that the action of the respondents is unjust, unfair as well as violative of F.R. 54.

6. Mr. A. Deb Roy, learned Sr.C.G.S.C. on behalf of the respondents submitted that the applicant is a person who remained all along absent from duty and in the circumstances, penalty of compulsory retirement from service was duly awarded to the applicant after giving him due opportunity. We have given our anxious consideration on the matter. We, however, find it difficult to uphold the order of punishment. Firstly, we find that the respondent-authority did not take into consideration the written statement presented by the applicant. The applicant submitted his show cause by way of written statement which ought to have been considered by the respondents under the law. The applicant in his written statement clearly intimated that he had duly handed over keys to the person mentioned in the written statement, Shri Lal Mohan Dey and the restricted documents were already in the custody of the Head of Office, Senior Instructor Training and that it was not with the applicant. From the materials on record also, we do not find that there is any evidence to the extent indicated. As regards the other charge namely, unauthorised absence from duty with effect from 27.9.1988. It appears that the period of half pay leave upto 60 days with effect from 27.9.1988 to 25.11.1998 and thereafter half pay leave with effect from 26.11.1998 to 23.2.19 for 90 days were granted on medical ground by the

communication ...

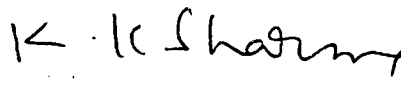
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communication dated 19.3.1991. The applicant was also directed to submit proper medical certificate for the period from 4.2.1989 to 10.3.1989 at the earliest to regularise the above period. In the circumstances, it cannot be said that the applicant was in unauthorised leave for the aforementioned period. Mr. Deb Roy, however, submitted that the aforementioned order dated 19.3.1991 was consequently cancelled by order dated 10.11.1997. Mr. Chanda submitted that, that was done only after awarding of punishment by the impugned order. From the aforementioned case, it appears that the respondent-authority allowed to authorise the leave of the applicant by the impugned order dated 19.3.1991. Therefore, on the fact situation, the aforementioned order of compulsory retirement cannot be sustained referring to a judgment in Shri Satpal v. Delhi Administration & Ors, reported in 1999 (3) ATJ 573 rendered by the Central Administrative Tribunal, Principal Bench (O.A. No.1912/93 decided on 14.7.1999).

7. Similarly, the finding of the disciplinary authority holding the applicant guilty of the charge in Article-I also cannot be sustained as lawful on the ground of non-consideration of the written statement of the applicant. The aforesaid conclusion arrived at by the respondents, therefore, cannot be sustained. The order dated 10.11.1997 also suffers from vice in violation of natural justice and the subsequent order dated 7.11.1997 is also passed in violation of F.R. 54.

8. In the circumstances, the impugned order of compulsory retirement is set aside and the applicant is entitled to be reinstated in service forthwith. The respondents are ordered accordingly. The applicant shall be entitled to have all admissible service benefits including seniority except back wages.

9. With the above direction, the application stands disposed of. No order as to costs.


(K.K. SHARMA)
MEMBER (ADMN.)


(D.N. CHONDHURY)
VICE-CHAIRMAN