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3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 128/2004

R.A/C.P No.

E.P.A.M.A No. 48/2004

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SECTION OFFICER (Judl.)

ORDER SHEET



Member (A)

Member (A)

Member (A)

Member (A)

22.09.2004 List on 29.09.2004 alongwith
M.P. 48/2004.

R
Vice-Chairman

mb

29.09.2004 The matter be listed alongwith
M.P. 48/2004.

R
Vice-Chairman

mb

6.12.2004
Shillong

Order delivered in open Court,
kept in separate sheets.

The O.A. is dismissed in terms
of the order at admission stage. No
costs.

ICV [Signature]
Member

bb

R
Vice-Chairman

6.10.04
Reminder

15.12.03

Copy of the
indent. has been
sent to the D/Sec.
for receipt. The
line to the applicant
as well as to R.
Chase for its
Receipt.
Hh

A

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 128 of 2004.&
Misc. petition No. 48 of 2004.

Date of Order : This, the 6th Day of December, 2004.
(At Shillong).

THE HON'BLE SHRI JUSTICE R. K. BATTA, VICE CHAIRMAN.

THE HON'BLE SHRI K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Sri Nripendra Nath Singh
S/o Late Ram Kripal Singh
Wireless Operator, I.S.P.W. Station
Shillong, Meghalaya. Applicant.

By Advocate Mr.R.Goswami.

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Department of Home Directorate
of Co-ordination, New Delhi-110003.
2. The Director
Police Telecommunication
Directorate of Co-ordination
(Police Wireless), Block No.9,
C.G.O. Complex, Lodhi Road
New Delhi - 110 003.
3. Extra- Assistant Director (A)
(Administration), Directorate of
Co-ordination (Police Wireless)
Block No.9, C.G.O. Complex
Lodhi Road, New Delhi-110 003.
4. The Joint Director
(Administration), Directorate of
Co-ordination (Police Wireless)
Block No.9, C.G.O. Complex
Lodhi Road, New Delhi - 110 003. Respondents.

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

O R D E R (ORAL)

BATTA, J.(V.C.) :

We have heard Mr. R. Goswami, learned Advocate for the applicant as well as Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents at length.


2. We neither find any reason for condoning the delay nor find any merit whatsoever in the Original Application. The ground on which the condonation is sought is that he was suffering from various physical as well as mental problems


Contd./2

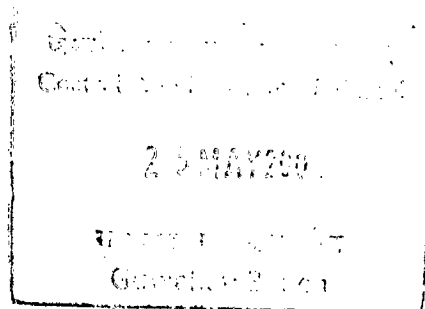
since the date of absence from 1992 and that he was under treatment of various doctors. Some medical certificates have been annexed with the O.A. but a perusal of the said certificates would show none of the said certificates mentioned any illness. It is pertinent to note that the applicant had remained absent from duty from 14.9.1992 to 14.7.1996 and again from 23.7.1996 to 23.3.1998.

3. The respondents in their reply have categorically stated that the applicant did not submit any medical certificate of Govt. hospital regarding his mental disorder. It is further stated that at the time of joining the applicant did not submit any medical certificate or fitness certificate. An enquiry has been conducted against the applicant and notice has been sent in the newspaper and after complying with all principles of natural justice, the period of absence was treated as "DIES NON".

4. On the basis of the materials on record, we do not find neither any justification for condonation of delay nor ~~any~~ any case whatsoever for interference on the merits of the case. The condonation application as also the O.A. is ^{at the admission stage itself} hereby dismissed summarily/with no order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(R.K.BATTA)
VICE CHAIRMAN

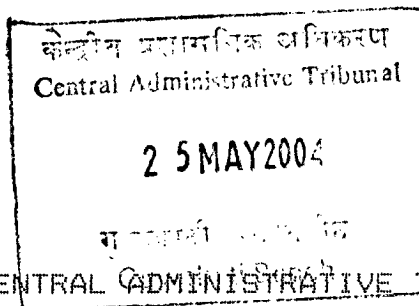


SYNOPSIS & THE LIST OF ENCLOSURES OF THE CASE :-

This application is filed against the Order dated 18-04-2003 by which the appeal of the respondent was found to be rejected by the respondent.

The applicant was absent from his duty in two spells from 14-09-1992 to 14-07-1996 and again from 23-07-1996 to 23-03-2003 and accordingly an inquiry was conducted against the petitioner Sri N.N. Singh, Wireless Operator vide Directorate's Order No.A-13011 / 1 (N-B3) / 92-Admn. dated 21-05-1997, it was held vide order dated 27-07-1998 that the said period have to be treated as " DIES NON ". Whereas on physical and mental ground the period of absence cannot be treated as " DIES NON " as prescribed under the provisions of C.C.S. (Leave), (Pension) and other relevant rules as well as the decision of the Hon'ble Supreme Court. Therefore, this application is made bonafide and for treating the said period of absence as Extra-Ordinary Leave and to quash the order dated 27-07-1998, 15-02-1999 & 18-04-2003.

- | | | |
|----|---------------------|---|
| 1. | Annexure-A | Order dated 18-04-2003 |
| 2. | Annexure-B | " " 15-02-1999 |
| 3. | Annexure-C | " " 27-07-1998 |
| 4. | Annexure-D | Appeal dtd. 04.10.1999 ? <i>Revised</i> |
| 5. | Annexure-E | Petition dtd. 31-03-2002 <i>2003</i> |
| 6. | Annexure-F (Series) | Medical Certificates. (Not there) |



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BRANCH,
GUWAHATI.

(An application under Section 19 of the Administrative
Tribunal Act' 1985)

Original Application No. 128 of 2004.

SRI NRIPENDRA NATH SINGH

Son of Late Ram Kripal Singh,

Wireless Operator, I.S.P.W. Station.

Shillong, Meghalaya.

..... Applicant.

- Versus -

1. Union of India .

Represented by the Secretary, to
the Government of India,
Department of Home Directorate of
Co-ordination, New Delhi-110003.

2. The Director

Police Telecommunication,
Directorate of Co-ordination
(Police Wireless), Block No.9,
C.G.O. Complex, Lodhi Road,
New Delhi-110003.

3. Extra - Assistant Director (A)

(Administration), Directorate of

Contd...p/-

Nripendra Nath Singh

Noted in file
File No. 128
Ramesh Chandra
Advocate.

Co-ordination (Police Wireless),
Block No.9, C.G.O. Complex,
Lodhi Road, New Delhi-110003.

4. The Joint Director

(Administration), Directorate of
Co-ordination (Police Wireless),
Block No.9, C.G.O. Complex,
Lodhi Road, New Delhi-110003.

..... Respondents.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE
APPLICATION IS MADE :-

i) This application is made for consideration of the period of absence of the petitioner from "DIES NON" to extra-ordinary leaves. The Order dated 18-04-2003 passed by the Respondent No.3, the order dated 27-07-1998 passed by the Respondent No.4 and also the Order of Memorandum dated 15-02-1999 of the Respondent No.1 which has made the period of absence during 14-07-1992 to 14-07-1996 and from 23-07-1996 to 23-03-1998 treated as " DIES NON ".

Copies of the Order dated 18-04-2003, 15-02-1999 (including the Inquiry Report), 27-07-1998 are annexed herewith and marked as Annexures-A, B & C respectively.

Contd...p/-

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2. JURISDICTION :-

That the applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :-

That the applicant declares that the cause of action arose on 18-04-2003 and this application is made along with a condonation petition, within the period of limitation as has been prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :-

i) That the applicant is originally from Champna Village of Bairia, Post Office - Bairia in the district of Ballia, Uttar Pradesh. He joined as Wireless Operator under the Directorate of Co-ordination Police Wireless and posted at Aizawl in 1985. He was transferred to I.S.P.W., Shillong in 1987 and again transferred to D.C.P.W. in Delhi in the year 1990. Again, in 1992, he was transferred to I.S.P.W., Lucknow. When he came to Shillong for some domestic offer, he met with an accident and became unbalanced of his mind. Since then he has been undergoing mental treatment. Since the day of his accident in Shillong, he has been taking Medicines as prescribed by the Medical & Health Officer, Shillong and also using Tribal Medicines as prescribed by a Khasi Doctor namely, Mrs. G.D. Passah, Khasi Dawai Kynbat, Shillong and now he got improved by continuous use that medicine.

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M. P. Chatterjee

ii) That in 1996, the applicant was charge - sheeted and the formal Departmental Enquiry was held against the petitioner under the Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 the charges were as follows :-

(1) He remained absent from 14-09-1992 to 14-07-1996 on the ground that he met with an accident and could not inform Head Quarters or Station Superintendent, I.S.P.W. Station, Lucknow because of his unbalanced mind he had after accident.

(2) He joined back on 15-07-1996 but again went on 2 days C/L w.e.f. 18-07-1997 to collect Tribal Medicine from Shillong and not reported duty as on 12-01-1998 i.e., upto the date of inquiry. Subsequently he forwarded medical certificate in original (which is placed at Flag B). The Doctor has certified for the period 14-09-1992 to 14-07-1996 and also from 18-07-1996 to the date of certificate i.e., 06-02-1998.

The applicant was imposed punishments vide order dated 27-07-1998 as under -

(1) Reduction to three stages in the time scale of pay for three years and he will earn

Contd...p/-

Nepal Math

increments of pay during the period of such reduction. On expiry of such period, the reduction will not have the effect of postponing the future increments of his pay.

(2) The period of unauthorised absence of the said Shri N.N. Singh, Wireless Operator, with effect from 14-09-1992 to 14-07-1996 and from 23-07-1996 to 23-03-1998 will be treated as " DIES NON " under Govt. of India decision I below Rule 25 of C.C.S. (Revised) Leave Rules, 1972.

iii) That the applicant preferred an appeal before the appropriate authority on 04-10-1999 for the retrospective commutation of the said absence without leave into Extra - Ordinary Leave. The applicant again submitted another reminder application dated October, 2001 for consideration of his the appeal he has already submitted but due to non-consideration of the said appeal in time the applicant submitted an application dated 31-03-2003 with a prayer for permission to approach higher authority / Court since the applicant received no reply against his appeal.

A copy of the appeal dated 04-10-1999 and another petition dated 31-03-2003 are annexed herewith and marked as Annexures-D & E respectively.

Contd...p/-

Mubshir Math

iv) That the applicant begs to state that the applicant has been transferred to Kohima from his present post at Shillong by the Respondent No.3 vide Office Order Part-II (No.35/2004) dated 27-02-2004. The applicant is thereby directed to be relieved latest by 01-05-2004 the said transfer order is under challenge by filing O.A. No.101/2004 which is now pending in the Central Administrative Tribunal at Guwahati.

v) That the applicant has been suffering from mental disorder since the day of his accident as stated earlier. He is still undergoing treatment under Dr. J.S. Rana (M.B.B.S., M.D.) for his Exogenous Dysploric Disorder with Sometization Terecipitated as well as he has been regularly taking Tribal Medicines as prescribed by Mrs. G.D. Passah, Khassi Dawai Kynbat, Shillong. He is still taking regularly Tribal Medicines as prescribed by the said Doctor and has to report for regular check-up in every two weeks. Earlier he was treated by Dr. T.K. Roy, M.B.B.S. for quite long time.

Copies of Medical Certificates issued by the doctors are enclosed herewith and marked as Annexure-F series.

vi) That the applicant begs to state that non - consideration of his prayer as has been made through various representations to the respondents has not only

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Mupden mth

increase his mental pressure but also it has violated the law of natural justice.

5. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS :-

- I. For that, the action of the Respondent Authority in passing the impugned Order dated 18-04-2003, 15-02-1999 and 27-07-1998 and non - consideration of the prayer for retrospective commutation absence from 14-09-1992 to 14-07-1996 and from 23-07-1996 to 23-03-1998 to Extra-Ordinary Leave on medical certificate under Rule 32 (6) of the Central Civil Service (Leave Rules), 1972, has made him bound to file this application to get justice.
- II. For that, the inquiry officer in his Inquiry Report came to the "conclusion" that while it was a fact that he was absent from duty " for a long time ", it was also a fact that he was " Physically and mentally unfit " to attend duty. Thus no willfulness in his absence from duty was established in the departmental inquiry the report whereof was accepted by the Disciplinary Authority (in short D.A.).
- III. For that, the applicant begs to state that the fact that he remained absent from duty due to the accident, he met with and " could

Contd...p/-

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not inform " the Head Quarter or the Station Superintendent, I.S.P.W. Station, Lucknow due to mental imbalance. It has been clearly mentioned in Charge No.1 itself. That the applicant submitted medical certificates, in original, to the authority as has been mentioned in Charge No.2. Thus his absence from duty and failure to inform the authorities about his accident due to mental imbalance caused by the intensity of shock suffered from accident, were both compulsive and were wholly beyond his control at that time. The inquiry report has established these facts.

IV>

For that, neither in the two charges as mentioned in the I.O.'s report nor in the D.A.'s order dated the 27th July, 1998 mentioned has been made of any willfulness of his absence. It is respectfully pointed out that the absence, from duty was compulsive and beyond his control and accordingly called for no punishment.

V.

For that, under Rule 24 (3)(a) of the C.C.S. (Leave) Rules, 1972, a Government Servant who has taken leave on medical certificate of illness cannot return to duty until declare fit on medical certificate of fitness. In

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Mupchamath g

that case, the leave sanctioning authority is left with no option but to grant the leave as due and admissible, to the Government Servant. Since the medical certificates furnished by the applicant regarding his physical and mental unfitness were accepted it could not, in rule and law, be held that his absence from duty was either unauthorised or willful. Since also no " second medical opinion " on the medical certificates furnished by him, was obtained. Facts certified in the medical certificates, stood absolute and ipso facto strike down the punishments ordered by the D.A. in his order dated the 27th July, 1998, as the punishment would appear to be untenable being contrary to facts as medically certified by registered physicians.

VI. For that as mentioned in paragraph 5 of the D.A.'s order dated the 27th July, 1998, his absence from duty was in two spells intervened by a brief period of duty, as shown below :-

- i) From 14-09-1992 to 14-07-1996 (3 years 10 months)
- ii) From 23-07-1996 to 23-03-1998 (1 year 8 months).

Contd...p/-

Harendra Math

VII. For that thus his absence from duty which was a medically certified illness, was not continuously for 5 years (casual leave is not treated as leave but is deemed as duty). in view this, treatment of his absence for the two separate periods of 14-09-1992 to 14-07-1996 and from 23-07-1996 to 23-03-1998 which are individually less than continuous 5 years, as " DIES NON " was irregular being violative of Rule 24 (3)(a) of the C.C.S. (Leave) Rules, 1972 and ought, therefore, be set right by grant of Extra-Ordinary Leave on medical certificates, on the ground, among others, that no willfulness in his absence from duty has been proved in the inquiry conducted against him.

VIII. For that, the term " DIES NON " connotes break in service but in this particular case, the Hon'ble Supreme Court in a plethora of decisions has held that absence from duty on the ground of physical and mental cannot be treated as " DIES NON ".

IX. For that, the impugned Transfer Order dated 27-07-1998, 15-02-1999 & 10-04-2003 have been passed most mechanically on the basis of irrelevant and extraneous consideration. There has been total non application of mind to the relevant factors and therefore, total

Contd...p/-

Hopend Math

non application of the said action of the authority is disproportionate, excessive and arbitrary and hence liable to be set aside and quashed.

X. For that, the impugned Order dated 27-07-1998 15-02-1999 and 18-04-2003 clearly reflects non application of mind and therefore it warrants the tribunals interference.

XI. For that, in any view of the matter the impugned Order dated 27-07-1998, 15-02-1999 and 18-04-2003 are not sustainable in law and as such the same is liable to be set aside and quashed.

6. DETAILS OF REMEDY EXHAUSTED :-

There is no other remedy except filing this application before this Hon'ble Tribunal.

7. MATTER NOT PENDING IN ANY OTHER COURT/TRIBUNAL :-

That the applicant declare that he has not that he has not filed any other application before any Court/Tribunal.

8. RELIEF PRAYED FOR :-

It is, therefore, prayed that Your Lordships would be pleased to admit this application, issue a notice upon the respondents to show cause as to why the impugned Order dated 27-07-1998,

Contd...p/-

Mupadun Math

15-02-1999 & 18-04-2003 issued under the signature of the respondent authority, Department of Co-ordination (Police Wireless) (Annexures-A, B & C), passed by the Ministry of Home Affairs, Government of India should not be set aside and upon cause / causes being shown and after hearing the parties be pleased to set aside and quashed the impugned Order dated 27-07-1998, 15-02-1999 and 18-04-2003 (Annexures-A, B & C) and also to treat the said period of absence as Extra-Ordinary Leave and to quash the order passed by the authority treating the said period as "DIES NON" and / or pass such further or other order/orders as Your Lordships may deem fit and proper.

And for this act of kindness, the applicant as in duty bound shall ever pray.

9. INTERIM ORDER, IF ANY PRAYED FOR :-

Pending disposal of the Original Application, Your Lordships may be further pleased to stay the impugned Order dated 27-07-1998, 15-02-1999 and 18-04-2003 passed by the respondent authority.

Contd...p/-

Harprender Math

10. PARTICULARS OF THE POSTAL ORDER :-

Postal Order NO. :- JS6389508
Date of issue :- 20.5.04
Issued from :- G.P.O. Guwahati
Payable at Guwahati. - 100 -

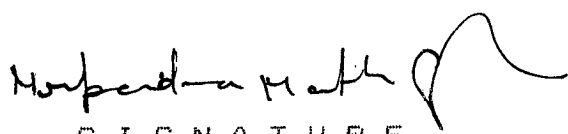
11. DETAILS OF INDEX :-

An index showing the particulars of the documents is enclosed.

V E R I F I C A T I O N

I, Sri Nripendra Nath Singh, son of Late Ram Kripal Singh, aged about 54 years, Wireless Operator, I.S.P.W. Station, Shillong, Meghalaya, do hereby verify and declare that the statements made in this foregoing paragraphs are true to my knowledge and belief.

And I sign this verification on this the 25th day of May, 2004 at Guwahati.


S I G N A T U R E .

Affidavit....

Contd...p/-

A F F I D A V I T

I, Sri Nripendra Nath Singh, son of Late Ram Kripal Singh, aged about 54 years, Wireless Operator, I.S.P.W. Station, Shillong, Meghalay, do hereby solemnly affirm and state as follows :-

1. That I am the petitioner in this case and I am acquainted with the facts and circumstances of the case and I am competent to swear this affidavit.

2. That the statements made in this affidavit and in the paragraphs 1 - 11 (Part) to are true to my knowledge and those made in the paragraphs 1 to 5 being matter of records are true to my information derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 25th day of May, 2004 at Guwahati.

Identified by -

Advocate's ~~Signature~~

(ADIC AHMED)

DEPONENT.

Solemnly affirmed by the Deponent
before me Who is identified by ADIC AHMED

ADVOCATE

Ranil Goswami.

No. A 13019/1(N-88)/92-Admn.I
Government of India
Ministry of Home Affairs
Directorate of Coordination
(Police Wireless)

(15)

Block No., 9, CGO Complex,
Lodhi Road, New Delhi-110003
Dated 10th April, 2003

MEMORANDUM

Subject:- Appeal against the penalty order in respect of Shri N.N. Singh, Wireless Operator.

With reference to his application dated 31/3/2003 on the above mentioned subject and to informed Shri N.N. Singh, Wireless Operator of this Directorate that his appeal has already been rejected by the appellate authority vide Dte's memo of even number dated 15/2/1999. However, a photo copy of the same enclosed herewith.

Encl:- As above



(ASAD ZIA)
EXTRA ASSISTANT DIRECTOR (A)

To

✓ Shri N.N. Singh, Wireless Operator,
ISPW Station,
Shillong.

m

ANNEXURE - B = 16 2

DCPW

0856137

No. A 13019/1(N-831/92 -Admn.1
Government of India
Ministry of Home Affairs
Directorate of Coordination
(Police Wireless)

Block No.9 CGO Complex
New Delhi-3
Dated 15 the Feb., 99

MEMORANDUM

Subject:- Grant of leave in lieu of Dies-Non in respect of Shri
N.N. Singh, Wireless Operator.

With reference to his appeal dated 17.08.1998 on the
above mentioned subject, the undersigned being the appellate
authority informs Shri N.N. Singh, Wireless Operator of this
Directorate that his request has been carefully scrutinised, but
I do not find any reason to the prayer of Shri N.N. Singh,
Wireless Operator being acceded to. Accordingly the appeal of
the said official has been rejected.

(KAMALESH DEKA)
DIRECTOR POLICE TELECOMMUNICATIONS
& APPELLATE AUTHORITY

To.

Shri N.N. Singh, Wireless Operator,
ISPU Station,
Shillong.

16.2.99
11/11/99

ANNEXURE (B)

3(17)

Report on the enquiry conducted against Shri N.N. Singh. W/Opr. vide Directorate's order No. A-13011/1(N-83)/92-Admn. dated 21.3.1997.

The date of enquiry was fixed on 12.1.98 at Hqrs. Shri N.N. Singh, W/Opr. appeared in person on that day at 1500 hrs. as scheduled while Shri S.K. Malhotra, Asstt. Director as presenting officer was also present.

On being asked for his prolonged absence from duty Shri N.N. Singh has given his statement which is recorded and placed in original at (Flag 'A').

In fact there are two charges against him.

No.1 :- He remained absent from 14.9.92 to 14.7.96 on the ground that he met with an accident and could not inform Hqrs. or Station Supdt. ISPW Station, Lucknow because of his unbalance mind he had after the accident.

No.2 :- He joined back on 15.7.96 but again went on 2 days C/L w.e.f. 18.7.96 to collect tribal medicines from Shillong and not reported duty as on 12.1.98 i.e. upto the date of enquiry.

Subsequently he forwarded medical certificate in original which is placed at (Flag 'B'). The Doctor has certified for the period 14.9.92 to 14.7.96 and also from 18.7.96 to the date of certificate i.e. 06.2.1998.

Subsequently a TP message was received from Shri N.N. Singh W/Opr. (Placed at 'C'). Where he states that he had joined duty at ISPW Station Lucknow from the P/N of 23.3.98. This has been confirmed from EAD, Lucknow on Hot line.

Conclusion:- The charges that Shri N.N. Singh remained absent from duty unauthorisedly for a long time has been agreed by him with the excuse that he was physically and mentally unfit.

631...PS/ED (ADMN)
Dated 1/4/98

Adv (P) [Signature] Kls 14.9.8 [Signature] [Signature] [Signature] 21/3/98

M

ANX(C)

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455
3-8-92
24

No. A-13015/1 (M-23)/92-Admn. I
Government of India
Ministry of Home Affairs
Directorate of Co-ordination
(Police Wireless)

Block No. 9, CBO Complex,
Lodhi Road, New Delhi-11,
Dated the 27/11/July, 1990.

ORDER

Shri N.M. Singh, Wireless Operator, of this Directorate was posted at ISPW Station, Lucknow is informed that he absented himself from duty on 14.09.92 to 14.07.96, and 23.07.96 to 23.08.92 without prior permission/sanction of leave which is a serious lapse on his part. The matter has been viewed seriously and it has been decided that his entire period of unauthorized absence above mentioned be treated as "DIES NON" under Govt. of India, decision I below Rule 25 (2) of CCS (Revised Leave) Rules, 1972 for wilful and unauthorized absent from duty.

"Wilful absence from duty, even though not covered by grant of leave, does not entail loss of Lieut. The period of absence not covered by grant of leave, shall have to be treated as "DIES NON" for all purpose, viz increment, leave and pension. This may however, not be constituted as "Break of service"

(M S PDFT)
Joint Director

To

Shri N.M. Singh, Wireless Operator,
through Extra Asstt. Director, Lucknow,

Copy to :

1. Accounts Officer, DCPW with the request that any payment on account of Pay and Allowance i.e. availed LTC (if he availed LTC before completion of year) may be recovered accordingly.
2. Extra Asstt. Director, ISPW Station, Lucknow.
3. ACR Dossiers of the individual concerned/personal file/Service Book.
4. Service Book of the official concerned.
5. Hindi Officer, DCPW.
6. Assistant Director (Comm.).

(M.S. PDFT)
JOINT DIRECTOR

M

The Director of police Telecommunications,
Directorate of coordination (Police Wireless)
Block No.9, C.G.O. complex, Lodhi Road,
New Delhi - 110001

Sub: Appeal for retrospective commutation of the periods of
absence without leave into extraordinary leave under
Rule 32(6) of the central civil services (Leave) Rule
1972 Read with Rule 12 of the said CCS (Leave) Rules 1972

Most Respected Sir,

The case in brief:

01. In 1996, I was charge-sheeted and a formal departmental enquiry under Rule 14 of the central civil services (classification control and Appeal) Rules 1965 was held against me. Shri H. Sutradhar Deputy Director an Inquiry officer, in his inquiry report dated the 24th March, 1998 (copy enclosed - marked Annexure A) mentioned the charges against me, as follows:-

No.1 :- He remained absent from 14.9.92 to 14.7.96 on the ground that he met with an accident and could not inform Hqrw. or Station Superintendent I.S.P.W Station, Lucknow because of his unbalanced mind he had after accident.

No.2 :- He joined back on 15.7.96 but again went on 2 days C/L w.e.f. 18.7.97 to collect tribal medicine from Shillong and not reported duty as on 12.1.98 i.e. up to the date of inquiry. Subsequently he forwarded medical Certificate in original (which is placed at Flag B) The doctor has certified for the period 14.9.92 to 14.7.96 and also from 18.7.96 to the date of certificate i.e. 26.2.1998.

02. The disciplinary authority in his order No.A.13019/1(N-03)/92- adn. I dated the 27th July, 1998 (copy enclosed - marked Annexure B) has however, shown my absence in two spells from 14.09.1992 to 14.07.1996 and again from 23.07.1996 to 23.03.1998 and imposed punishments as under :-

(i) Reduction to three stages in the time scale of pay for three years and he will earn increments of pay during the period of such reduction. On expiry of such period, the reduction will not have the effect of postponing the future increments of his pay.

(ii) The period of unauthorized absence of the said Shri N.N. Singh, Wireless Operator, with effect from 14.09.1992 to 14.07.1996 and from 23.07.1996 to 23.03.1998 will be treated as absence under govt. of India decision I below Rule 25 of CCS (Revised) Leave Rules, 1972.

contd Page 2

Reasons:-

- (a) The inquiry officer (in short IO) in his Inquiry Report (Annexure A) came to the " conclusion " that while it was a fact that I was absent from duty " for a long time ", it was also a fact that I was "Physically and mentally unfit" to attend duty. Thus no wilfulness in my absence from duty was established in the departmental inquiry the report whereof was accepted by the disciplinary authority (in short DA).
- (b) The fact that I remained absent from duty due to the accident I met with and "could not inform " the headquarter or the Station Superintendent, I.S.P.W. Station, Lucknow due to mental imbalance has been clearly mentioned in charge No.1 itself. That I submitted medical certificates, in original, to the authority has been mentioned in charge No.2. Thus my absence from duty and failure to inform the authorities of my accident due to mental imbalance caused by the intensity of shock suffered from accident, were both compulsive and were wholly beyond my control then. The inquiry report has established these facts.
- (c) Neither in the two charges as mentioned in the IO's report (Annexure A) nor in the D.A's order dated the 27th July, 1998 (Annexure B) mentioned has been made of any wilfulness, it is respectfully pointed out. In the absence, therefore of the element of wilfulness, my absence from duty was compulsive and beyond my control and called for no punishment.
- (d) Under Rule 24(3)(a) of the CCS (Leave) Rules 1972, a Government servant who has taken leave on medical certificate of illness cannot return to duty until declare fit on medical certificate of fitness. In that case, the leave sanctioning authority is left with no option but to grant the leave as due and admissible, to the Government servant. Since the medical certificates furnished by me regarding my physical and mental unfitness were accepted it could not, in rule and law, be held that my absence from duty was either unauthorised or wilful. Since also no "second medical opinion" on the medical certificates furnished by me, was obtained, Facts certified in the medical certificates, stood absolute and ipso facto strike down the punishments ordered by the D.A. in his order dated the 27th July, 1998, (Annexure B) as the punishment would appear to be untenable being contrary to facts medically certified.
- (e) As mentioned in para 5 of the D.A's order dated the 27th July, 1998, my absence from duty was in two spells intervened by a brief period of duty, as shown below :-
- (i) From 14.09.1992 to 14.07.1996 (3 Years 10 months)
 - (ii) From 23.07.1996 to 23.03.1998 (1 Year 8 months)

Thus my absence from duty which was a medically certified illness, was not continuously for 5 years (casual leave is not treated as leave but is deemed as duty): In view this, treatment of my absence for the two separate periods of 14.09.1992 to 14.07.1996 and from 23.07.1996 to 23.03.1998 which are individually less than

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continuous 5 years, as dies non was irregular being violative of Rule 24(3)(a) of the CCS (Leave) Rules, 1972 and ought, therefore, be set right by grant of Extraordinary leave on medical certificates, on the ground, among others, that no wilfulness in my absence from duty has been proved in the inquiry conducted against me.

Prayer:-

Q4. I beg, therefore, most humbly and respectfully pray that you would be graciously pleased to retrospectively commute the periods of my absence from 14.09.1992 to 14.07.1996 and from 23.07.1996 to 23.03.1998, to extraordinary leave on medical certificate under Rule 32(a) of the CCS (Leave) Rules, 1972 and save me from the loss of my qualifying service for the purposes of pension. In this connection, I beg to add that under the provision of Rule 21 of the CCS (Pension) Rules 1972, Extraordinary Leave granted on medical certificates, counts for qualifying service for pension whereas dies non does not. Hence is my appeal for granting me extraordinary leave. I beg further to add that the inquiry against me has conclusively established, based on accepted medical certificates, that my absence was compulsive and not wilful. Hence the Government of India's decision No. (1) below Rule 25 of the CCS (Leave) Rules 1972 could not have regulated my case.

With the submissions as above I remain Sir, in eager expectation of your favourable order as prayed for by me.

With respectful regards.

Yours faithfully,

4th October, 1999

N. N. Singh

Encl : Annexure A and B

(N N SINGH)
Wireless Operator
I.S.P.W Station
Shillong.

Copy Submitted to the :

(1) The Joint Secretary (Police)
Ministry of Home Affairs
North Block, New-Delhi.

(2) The Director,
Directorate of Coordination
(Police Wireless)
Ministry of Home Affairs
CGO Complex, New Delhi -3

The Director,
Directorate of Coordination
(Police Wireless)
Ministry of Home Affairs
CGO Complex, New -Delhi -3

(Through Proper Channel)

Sub : Prayer for Permission to approach Higher Authority / Court-
since No reply is received till date in the referred subject:-

Ref : My application Dated 4th October 1999 and Remainder Dated
October 2001 regarding Appeal for retrospective commutation
of absence without leave into Extra ordinary Leave :-

Respected Sir,

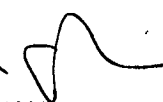
In my application referred above I most humbly and respectfully
pray that you would be graciously pleased to retrospectively commute
the periods of my absence from 14.09.1992 to 14.07.1996 and from
23.07.1996 to 23.03.1998, to extraordinary leave on medical certificate
under Rule 32(6) of the CCS (Leave) Rules 1972 and save me from the
loss of my qualifying service for the purpose of pension. In this
connection, I beg to add that under the provision of Rule 21 of the
CCS (Pension) Rules 1972, Extraordinary Leave granted on medical
certificate, counts for qualifying service for pension whereas
disease does not. Hence is my appeal for grating me extraordinary
leave. I beg further to add that the Inquiry against me has conclusively
established, based on accepted medical certificate, that my absence
was compulsive and not wilful. Hence the Govt of India's decision No.
(1) below Rule 25 of the CCS (Leave) Rules 1972 could not regulated
in my case.

I further request that this act of generosity I will be able to
get minimum pension as I am an old man of 53 years and I joined this
Directorate in 18.10.1985 so I can manage my livelihood awafuily in
my Old age with my wife and Children.

I understood that further NO reply is received to my prayer in
stipulated period will be treated as permission to approach the
higher authorities / court.

Thanking you for anticipation,

Yours faithfully

Nripendra Nath 
(N.N SINGH)

Wireless Operator,
ISFW Station Shillong

Shillong
Dtd 31-3-2003

Encl.... (1) Copy of Application Dated 4-10-99
(2) Copy of Remainder Dated Oct. 2001
(3) Copy of Appendix - A
(4) Copy of Appendix - B