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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 754 of 1998

Jabalpur, this the 6th day of January, 2003

Hon'ble Mr. Justice N.N. Singh - Vice Chairman
Hon'ble Mr. R.K. Upadhyaya - Member (Administrative)

Dularelal S/o late Shri Umrao, age 55 years,
Occupation:- Service as District Opium Officer,
First Division, Mandsaur, Resident of Gr. No.
A/1-Type-2, Mandsaur (MP)

- APPLICANT

(By Advocate Shri S. Saran)

VERSUS

1. Union of India, through the Secretary to Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, New Delhi.
 2. Narcotics Commissioner of India, Office of Narcotics Commissioner of India, 19, The Mal, Morar Gwalior, Distt. Gwalior (MP).
 3. Deputy Narcotics Commissioner, Neemuch (MP) - RESPONDENTS
- (By Advocate - Shri P.N. Kelkar)

ORDER

By R.K. Upadhyaya, Member (Adminv.) -

In this application, the applicant has challenged the order dated 16.11.1994 (Annexure-A-12) passed by the Deputy Narcotics Commissioner, Neemuch by which he has been communicated that the period from 9.10.1993 to 15.10.1993 is treated as unauthorised absence and ordered as break in service under FR 17-A. He has also challenged the orders dated 12.7.1996 (Annexure-A-14) and 2.6.1998 (Annexure-A-16) by which his appeal and revision against the aforesaid order were rejected.

2. The applicant while working as Sub-Inspector in the Office of the Narcotics Commissioner, Gwalior submitted a tour programme for the period 5.10.1993 to 8.10.1993 to attend the Court of Judicial Magistrate-II, Budaun. For this purpose, he was supposed to leave Gwalior on 5.10.1993 and reach Bareilly and after the study of the case file at

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Bareilly, he was to attend the Court proceedings at Budaun and return to Gwalior from Budaun on 8.10.1993. The claim of the applicant is that this tour programme was duly approved by the competent authority on 4.10.1993. However, he over-stayed at Bareilly beyond 8.10.1993 under instructions of the authorities and kept them informed of the progress of the work regarding trap on the information of the informer. He further claims that in fact his tour programme was also approved for the aforesaid purpose to continue after 8.10.1993. The learned counsel of the applicant states that on receipt of the information from the Headquarters to report for duty, the applicant immediately rushed from Bareilly to Gwalior on 15.10.1993. It is claimed that the applicant could have come earlier had he been informed so. While away on tour, the applicant was transferred to Neemuch and was treated relieved in the afternoon of 13.10.1993. On arrival at Gwalior after the tour of Bareilly and Budaun, the applicant was served a memorandum dated 15.10.1993 (Annexure-A-10) issued by the Assistant Narcotics Commissioner (Hqrs.), Gwalior to the following effect:-

"Whereas Shri Dularelal, Sub-Inspector, Office of the Narcotics Commissioner of India proceeded on tour to U.P. Unit for a period of 4 days from 5.10.93 to 8.10.93. On returning from tour Shri Dularelal was required to join his duty but till 10.10.93 he did not join his duty. Shri Dularelal did not send any leave application or any intimation about absenting himself.

Whereas Shri Dularelal had been absenting himself unauthorisedly after 8.10.93, therefore under the provisions of F.R.17-A the entire period of absence from duty by Shri Dularelal is liable to be treated as unauthorised entailing loss of pay for the period in question, thereby resulting 'in break in service'.

Now, therefore, Shri Dularelal, Sub-Inspector is called upon to show-cause as to why the action proposed above should not be taken against him. Any representation which he may wish to make against the proposed action should be made in writing to the undersigned not later than 15 days from the date of receipt of this Memorandum. If no representation is received within the specified period, it will be presumed that Shri Dularelal has no submission to make and the case will be decided on merits."

Chhannu

2.1 The applicant sent a reply on 18.10.1993 (Annexure-A-11) to the aforesaid memorandum dated 15.10.1993. In the said reply the applicant has stated as follows:-

".....Before going to Budaun I had submitted a note to the A.N.C.(E), Gwalior (Annexure-1) wherein I had informed that there is an information about a seizure and if perused it can give result. The A.N.C.(E) Gwalior has ordered as under:-

'His tour programme is approved as per note of S.(E). He may record the information and pass it on to D.O.O. Bareilly to workout'.

In pursuance of above orders I met D.O.O. Bareilly and requested vide his letter Dt. 6.10.93 directed me to meet Inspector Budaun for help. Thereafter I met the Inspector and also contacted the informer who advised me to wait for 4/5 days so that he could collect the exact information. I immediately contacted the HQRS on phone on 14.10.93 and 15.10.93 to inform the development of case. However the S.I. on duty has informed that I have been transferred to Neemuch and that I should return to HQRS immediately. Accordingly I returned to HQRS. It will thus be seen that the undersigned was on tour. As such, period....8.10.93 to 13.10.93 can not be treated as unauthorised period".

2.2 The Deputy Narcotics Commissioner, Neemuch, after taking into account the facts of the case has passed the following order on 16.11.1994 (Annexure-A-12):-

"Shri Dularelal, while posted as Sub-Inspector in the office of the Narcotics Commissioner, Gwalior proceeded on tour for a period of 4 days w.e.f. 5.10.93 to 8.10.93. On returning from tour Shri Dularelal was required to join the duty but till 13.10.93, he did not join the duty and also failed to submit any leave application/intimation about his absence from duty. A memorandum was issued by the Asstt. Narcotics Commissioner (H) Gwalior vide F.No. 34/10/Confl/93-1546, dated 15.10.93 asking him as to why action under the provision of F.R. 17-A for 'Break in Service' should not be taken. The explanation submitted by Shri Dularelal, Sub-Inspector vide his letter dated 18.10.93 was not found satisfactory by the Narcotics Commissioner of India and the Narcotics Commissioner of India has ordered that the period from 9.10.93 to 15.10.93 may be treated as unauthorised absence and has ordered 'Break in Service' under F.R. 17-A as communicated by the Deputy Narcotics Commissioner (Enrt.) Gwalior vide letter F.No. 34/10/Confl/93-1473, dated 1.8.1994".

Aggrieved by the order of the Deputy Narcotics Commissioner, Neemuch, the applicant filed an appeal dated 28.12.1994 to the Narcotics Commissioner, who has dismissed the appeal as per impugned order dated 12.7.1996 (Annexure-A-14). While

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rejecting the appeal, the Narcotics Commissioner has further stated that the applicant had also committed several misconducts in the past. Such misconducts included taking of house building loan but not submitted completion report even after 15 years; making false complaints against departmental officers; and submitting false report and explanation with ulterior motives in respect of certain enquires relating to opium.

2.3 Aggrieved by the order of the Narcotics Commissioner, the applicant submitted a revision-petition under Rule 29(iv) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 on 10.12.1996 (Annexure-A-15), which has been rejected by the Central Board of Excise and Customs, New Delhi vide order dated 2.6.1998 (Annexure-A-16).

2.4 It is claimed by the learned counsel of the applicant that the applicant has been made subject matter of harassment because of filing certain Court cases for claiming his rightful claims. In this connection, reference has been made to T.A.1872 of 1987 which was decided in August, 1992 (Annexure-A-1). This application was filed by the applicant while he was posted in Bareilly in 1985 for claiming seniority. Subsequently he filed O.A.55/1995 which was decided on 2.7.1996 (Annexure-A-3) and the applicant was promoted as Inspector with effect from 16.2.1985 as per order dated 5.12.1996 and subsequently promoted as Superintendent with effect from 1.12.1994 by an order dated 12.9.1997. On account of these Court cases, the applicant "incurred ill-will of the authorities and remained always apprehensive of some uncalled for situations". The learned counsel stated that even though the applicant over-stayed at Bareilly for departmental work as directed by his superiors, but in any case, this over-stay did not call for such a severe action as break in service.

Chandra

At the most, the applicant could have been granted leave for the period when he was absent. He, therefore, urged that all orders, pursuant to issue of show cause notice dated 15.10.1993, passed by the Deputy Commissioner, Narcotics Commissioner and the Central Board of Excise and Customs deserve to be quashed.

3. The respondents in their reply have stated that the applicant was sanctioned tour programme for the period 5.10.1993 to 8.10.1993 only. There is nothing on record to support his claim that he was asked to over-stay beyond 8.10.1993. He also did not apply leave for this period. In the circumstances, the action taken by the departmental authorities is in line with the rules on the subject. It is stated in the reply that the applicant after expiry of his tour programme on 8.10.1993 did not contact the headquarters office and only on 14.10.1993 at 7.30 a.m. he informed the Gwalior Control Room over telephone that he would take 2-3 days more to collect intelligence. When his intention was intimated to the Assistant Narcotics Commissioner, he did not approve his leave beyond 9.10.1993 and asked the incharge Control Room to communicate the same to the applicant. Accordingly, the incharge Control Room intimated the same to the applicant on 15.10.1993. The respondents have stated that the order of break in service has been issued by the "Disciplinary Authority i.e. Dy. Narcotics Commissioner, Neemuch" vide his order dated 16.11.1994 based on records. According to the reply of the respondents, the Narcotics Commissioner and the Central Board of Excise & Customs have properly decided the matter and no interference is called for by this Tribunal.

4. We have heard the learned counsel of parties and have perused the material available on record carefully.

U. S. Narayan

5. The applicant was posted as Sub-Inspector in the Office of the Narcotics Commissioner during the period when he proceeded on tour on 5.10.1993. There is no dispute that his absence from 5.10.1993 to 8.10.1993 was on account of official duties. From the reply of the respondents, it appears that the applicant was also required to make certain inquiries as directed by the Assistant Commissioner but as the same was likely to take some time, his stay beyond 9.10.1993 was not approved by the Assistant Commissioner. In our opinion, the defence put forward by the applicant that he was also asked to make certain other enquiries in addition to attend Court cases appears plausible though not independently supported by separate tour programme extending his tour at Bareilly. The learned counsel of the applicant invited attention to a letter of one Jhhunailal of Bhawanipur, Hazrat Ganj stating that the applicant left without waiting for the fructification of the information developed by the informer. This letter being inland letter bears the postal stamp of 20.10.1993. The learned counsel stated that the plea of the applicant for reasons for over-stay cannot be said to be entirely without any basis. However, without going into this aspect of being reasonable cause for absence, there is another aspect which requires to be considered. The order of break-in-service has been passed by the Narcotics Commissioner and conveyed to the Deputy Narcotics Commissioner, Neemuch vide letter dated 1.8.1994 as has been reproduced by the Deputy Narcotics Commissioner, Neemuch. Subsequently, the same Narcotics Commissioner (Shri Kailash Sethi) has also decided appeal against the order of the Deputy Narcotics Commissioner, Neemuch. In our opinion, the entire order of the disciplinary authority viz. Deputy Narcotics Commissioner is vitiated inasmuch as he has not passed any order as the disciplinary authority but has merely reproduced the order of the appellate authority, i.e., the Narcotics Commissioner of India. Such an order in our

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opinion cannot be sustained. In this connection, Government of India's order No.6 reproduced below Rule 12 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (Swamy's compilation - Edition-1999) may be referred to which state that -

"A penalty can be imposed only by the prescribed punishing authority, and an appellate authority or any other authority higher than the appropriate punishing authority cannot exercise any concurrent original disciplinary jurisdiction. In no circumstances should an authority higher than the punishing authority issue any direction in regard to the penalty to be imposed. Neither should a punishing authority obtain the guidance or comment of any superior authority in this respect."

As per the reply of the respondents, it has been stated that the original order has been issued by the disciplinary authority, i.e., the Deputy Narcotics Commissioner as per his order dated 16.11.1994. But this order of 16.11.1994 merely states that the Narcotics Commissioner has ordered that the period from 9.10.1993 to 15.10.1993 may be treated as unauthorised absence etc. It is also seen that against this order of 16.11.1994, the same Narcotics Commissioner Shri Kailash Sethi has also decided the appeal vide his order dated 12.7.1996 (Annexure-A-14). If it is assumed that he had assumed the power of disciplinary authority being a superior authority and had passed the order of break in service as communicated by the Deputy Narcotics Commissioner, Neemuch, he was not entitled to pass another order in appeal as communicated to the applicant as per his order dated 12.7.1996 (Annexure-A-14). Even the order of the revision as communicated by the Central Board of Excise and Customs is merely a reproduction of what the Narcotics Commissioner had stated in his appellate order and gives no reason as to why the same has been sustained.

6. In our opinion, the impugned order dated 16.11.1994 (Annexure-A-12) and the subsequent orders in appeal and revision dated 12.7.1996 (Annexure-A-14) and 2.6.1998 (Annexure-A-16) deserve to be quashed. Accordingly, these

orders are quashed and set aside. The respondents are directed to consider sanction of leave of any kind due to the applicant, for the period of which he has been treated as absent unauthorisedly and break in service under FR 17-A has been communicated, within a period of three months from the date of receipt of a copy of this order.

7. In the result, this application is allowed, however, leaving the parties to bear their own costs.

(Signature)
(R.K.Upadhyaya)
Member (Admnv.)

(Signature)
(N.N.Singh)
Vice Chairman

rkv.

पृष्ठकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अग्रे भिजत :-

- (1) सचिव, उच्च न्यायालय वार उच्च न्यायालय, जबलपुर
- (2) आयोगी श्री/श्रीमती/शु.....के कार्डसल
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के कार्डसल
- (4) बंधुमाला, कोप्रअ, जबलपुर न्यायालय सूचना एवं आवश्यक कार्यवाही हेतु

Swami

Saran Singh

J. N. Singh

(Signature)
उप निदेशक
5/11/03

Issued
2.1.03
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