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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

O.A. NO. 75 of 1994.
T.A. NO.

DATE OF DECISION 19-7-1995.

Shri S. Ramu

(PETITIONER(S)

A-pplicant appeared in person.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr S. Ali, Sr.C.G.S.C

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

~~XXX XXXXXX~~ C.M.G.C.J. CHAUDHARI, M.G.C.J. (S)

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 Vice-Chairman.

17.8.95

M.G.C.J.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 75 of 1994.

Date of Order : This the 19th Day of July, 1995.

Justice Shri M.G. Chaudhari, Vice-Chairman.

Sri S. Ramu,
P/No. 27, Safaiwalla,
51, Sub-Area,
Narengi Camp, Guwahati.

... Applicant

Applicant appeared in person.

- Versus -

1. Union of India
represented by the Secretary,
Ministry of Defence,
New Delhi.

2. Adm. Commandant,
Station Headquarter,
51, Sub-Area,
Narangi Camp.

3. Commander,
51 Sub Area,
Narangi Camp, Guwahati

... Respondents.

By Advocate Shri S. Ali, Sr.C.G.S.C.

O R D E R

CHAUDHARI J.(V.C)

The applicant appears in person. His Advocate has sought to withdraw his appearance by application dated 7.6.95 on the ground that the applicant has taken away the papers. The applicant was heard twice earlier. But he goes on saying that injustice has been done to him by the respondents and that should be removed. Mr Ali has made his submissions on the earlier occasion. In view of the written statement of the respondents I was inclined

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to make an order on the previous date itself but since the applicant continued in saying things which were not strictly legal and ^{he} would not be amenable to any reasonable solution I had adjourned the matter. Today also the applicant merely indulges in alleging that injustice has been done and should be removed. Hence in the light of the contentions urged in the application and the statements made by the applicant orally as also the submissions of Mr Ali I proceed to pass the judgment. It may be mentioned that I had called for replies to certain queries on 26.4.95 and the reply has been received. This will be taken into consideration.

2. The applicant has been working as a Safaiwala in the office of respondent No.2 i.e. Administrative Commandant Station Headquarters, 51 Sub Area, Narangi Camp, Guwahati under the Ministry of Defence. It is the allegation of the applicant that the respondent No.2 has not been paying his salary since July 1993 and onwards and although he approached the office of the respondent again and again requesting for the payment that was of no use. He filed a representation on 6.1.94 to respondent No.3 requesting him to look into the matter but he had not been informed of any action taken. The applicant therefore served a legal notice dated 22.3.94 on respondent No.2 calling upon him to pay his arrear salary but that was not complied with and he has been constrained to file the instant O.A. The applicant avers that the inaction of the respondents is unjust. He maintains that he has regularly attended the duty till 7.4.94 but that after service of the legal notice the respondents refused to allow him to perform his duty without following the normal rules and contrary to the principles of natural justice.

✓ He further alleged that the respondents have refused to continue him in service since 8.4.94 rendering him unemployed and this is illegal. He states that four minor children and ~~widow~~ ^{and} mother are depend upon him and with loss of source of income the family is suffering a great hardship. He therefore prays that the respondents be directed to pay him the salary for the period since July 1993 onwards including other allowances and that the respondents ~~are~~ be directed to continue him in service alongwith other consequential benefits. The O.A. was filed on 19.4.94.

✓ 3. The respondents contention in the written statement as follows :

They have not in terms denied that the applicant is a regular employee but have stated that he is irregular in his attendance and ^{is a} habitual long absentee. He did not attend his duties for 145 days from 9.1.93 to 31.10.93. They deny the statement of the applicant that he was working during that period. However according to the respondents he was paid for the said period even though he was absent for a long duration due to clerical mistake. They further state that the said payment will be recovered from his future earnings when he rejoins his duties. The respondents deny having received any representation dated 6.1.94 by the Headquarter from the applicant. It is however further pointed out that during the period of his absence the applicant had drawn his salary from the Headquarter from the month of June, July and October, 1993 and he has been regularly collecting salary from the Headquarter every month. The respondents state that the allegation of the applicant that he had submitted GPF loan application (Temporary Advance)

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is false. According to the respondents after receipt of the legal notice there was a long discussion and it was decided to pay the salary for the period from 1.2.1994, to 12.2.1994 as the applicant was physically present on duty. However he refused to accept the same. He and his wife repeatedly visited the SSO and Administrative Commandant. Since he refused to accept the salary for the aforesaid period it has been deposited in S.B.I., New Guwahati. The break up given is that Rs.430/- for the month of December, 1993 and Rs.200/- for the month of January, 1994. The respondents state that the applicant remained absent from duty without application and prior sanction of his superiors once again from 13th February, 1994 for about 40 days. On 24.3.94 he produced a Medical Certificate but that certificate was not covering the complete period of absence i.e. from 13.2.94 to 24.3.94. The leave sanctioning authority did not accept the certificate as it was not in accordance with the prescribed rules. The applicant therefore was asked to produce a fitness certificate from Chief Medical Officer, Panbazar, Guwahati as second medical opinion as per the medical rules. However, the applicant disobeyed those orders and refused to take the Re-medical direction letter from the office. Since he did not produce the Medical Certificate as required he could not be taken on duty. The respondents denied that the applicant had continued to work upto 7.4.1994 as alleged. The attendance Register ^{has} ~~denies~~ falsifies that claim.

4. The respondents categorically state that applicant's services have never been discontinued though he remained absent for 240 days during 1993, on humanitarian ground and he was given several warnings to improve his attitude towards his duty. But he never showed any improvement ⁱⁿ to his casual

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attitude towards his service. He remained absent from his duty and work place although his services were essentially required by the employer. On several occasions he used to run away from his detailed work place without the knowledge of his Mate which was time and again verbally conveyed by the Administrative Commandant. The respondents also disputed the statement of the applicant that he has four minor children as stated by him. They point out that he has only two minor sons as per the service book details and has a wife and dependent mother. His statement is an exaggeration of family details and meant to take the sympathy and that is not a fact. Thus according to the respondents there are no grounds which are tenable and the application is therefore liable to be dismissed.

5. The respondents rely upon Chapter III of sub-rule 2(b) of Rule 18 and sub-rule 3 of Rule 19 of Appendix to CPR0 27/75, Central Civil Services (Leave) Rules, 1972 in support of their contention.

6. The particulars supplied in answer to the queries made by me show the days of absence monthwise from July 1993 upto 31.10.93 and from February 1994 to 14.5.1994. They have also given details of payment with effect from July 1993 to April 1994. The statement shows that the net amount of salary payable for August 1993 is Rs.1905/- has been deposited as MRO Dep on 11.12.93. Likewise an amount of Rs.519/- for the month of September 1993 has been deposited as MRO on 11.12.93, and amount of Rs.430/- for the month of December 1993 has been deposited in the Treasury on 28.2.94, an amount of Rs.200/- has been deposited in the Treasury on 8.2.94, It also shows that the applicant refused to accept an amount of Rs.2065/- for the month of March 1994. Likewise

he refused to accept an amount of Rs.879/- for the month of April 1994. This statement gives the net amount payable after deduction of salary for the period of absence. It is clear that the salary has been deducted for unauthorised absence of the applicant for a long period corresponding to that period. Secondly it is clear that the Medical Certificate submitted by him was not found satisfactory and he is refused to get ^{himself} examined again so as to complete formalities and allow him to rejoin duties. The attitude of the applicant is difficult to be understood. He refused to comply with the procedural formalities and what he wants is that notwithstanding his conduct and his unauthorised absence and failure to submit the fitness certificate on a fresh medical examination he should be given the benefit of continuance of service together with payment of full salary for the period when he was absent and other benefits.

7. It is not possible to ignore that the respondents had acted in accordance with the rules and it appears that because of the quarrelsome attitude of the applicant they had on humanitarian ground given him some benefits. Although later on they discovered that in the process there has been over payment which they intend to recover. It is clear that the respondents have not terminated the service of the applicant and they are willing to allow him to join service as soon as he obtains the Medical Certificate. The requirements of the rules cannot be bypassed merely because the applicant says that he has no source of income left; for that misfortune he has to thank himself. His adamant attitude cannot be helpful in getting the salary and other benefits. Taking into account the overall circumstances following order is passed

(i) On applicant approaching the concerned authorities any time within a period of eight weeks from today the respondents shall issue to him re-medical direction for obtaining fitness certificate from Chief Medical Officer, Panbazar, Guwahati.

(ii) On the Medical Certificate as aforesaid being produced the respondents to allow the applicant to perform his duties.

(iii) The respondents are directed in the special circumstances of the case that they will not recover any excess amount as may have been paid to the applicant due to mistake.

(iv) The respondents are directed to secure the payment or as may be necessary to assist the applicant in realising the amount of MRO Dep dated 11.12.93 of Rs.1905/-, the MRO deposit made on 11.12.93 for an amount of Rs.519/-, an amount of Rs.430/- deposited in the Treasury on 28.2.94 and an amount of Rs.200/- deposited on 8.2.94 in the Treasury.

(v) The respondents are directed to pay to the applicant the amount of Rs.2065/- towards the salary of March 1994 and the amount of Rs.879/- for salary for the month of April 1994 (totally Rs.2944/-).

(vi) The amount of Rs.2944.00 may be paid as early as possible.

(vii) Other payments be secured expeditiously.

(viii) In the event of default on the part of the applicant to produce the Medical Fitness Certificate the respondents will be at liberty to take such further steps in accordance with the rules as they may be advised except recovery of excess amount already paid.

The application is disposed of in terms of the aforesaid order. There will be no order as to costs.

A copy of this order be supplied to the applicant in due course.

M.G.CHAUDHARI
(M.G.CHAUDHARI)
VICE-CHAIRMAN