

**Central Administrative Tribunal
Principal Bench**

OA No. 3276/2011

Order reserved on: 26.05.2016

Order pronounced on: 15.07.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)

Hon'ble Mr. V. N. Gaur, Member (A)

Mahesh Chandra Lal
Aged about 59 years
S/o Sh. Parshot Lal,
R/o C-8/183 A, Keshav Puram,
Delhi-110035.

- Applicant

(By Advocate: Sh. Ashwin Vaish with Sh. Vinod Pandey)

Versus

1. Union of India
Through its Director (Administration),
Office of the Director General of Audit,
Central Expenditure, AGCR Building,
IP Estate,
New Delhi-110002.
2. The Comptroller and Auditor General of India,
Pocket-9, Deen Dayal Upadhyay Marg,
New Delhi-110124.
3. The Director General of Audit,
Central Expenditure, AGCR Building,
IP Estate,
New Delhi-110002 and others.
4. Sr. Audit Officer (Shri Dinesh Kumar Sharma)
Through The Director General of Audit,
Central Expenditure,
New Delhi-110002.

- Respondents

(By Advocate: Ms. Ishita Baruah for Sh. Gaurnag Kanth)

ORDER**Hon'ble Mr. V.N.Gaur, Member (A)**

The applicant is a Senior Auditor working in the office of Director General of Audit, Central Expenditure (respondent no.1). He was deputed to Itanagar, Arunachal Pradesh to conduct Performance Audit on Non-Lapsable Central Pool of Resources (NLCPR) under supervision of Dinesh Kumar Sharma, Senior Audit Officer (SAO) (Head of the Audit team No.b) and S.S.Biju, Assistant Audit Officer (AAO). The audit was to start from 23.06.2008 and after six weeks the audit team was to be called back by respondent no.1 for one week for midterm briefing on the Performance Audit. The applicant reported to SAO Dinesh Kumar Sharma on 25.06.2008. He along with other team members visited Delhi for mid-term briefing as per programme on 04.08.2008 to 08.08.2008 and left for Itanagar on 10.08.2008 for completing the remaining part of the audit. Thereafter to attend to some routine personal work at home at New Delhi, he left Itanagar again on 26.08.2008 for 10 days after giving leave application to his immediate superior S.S.Biju, AAO, as claimed by the applicant, and resumed duty on 08.09.2008. According to the applicant he again applied for casual and restricted holidays with permission to leave station for going to New Delhi to his SAO on 13.10.2008. He applied for five days Casual Leave for 22.10.2008, 23.10.2008, 24.10.2008, 27.10.2008 and 31.10.2008 and

Restricted Holiday for two days on 29.10.2008 and 30.10.2008 including Saturdays 25.10.2008 and 01.11.2008 and Sundays 26.10.2008 and 02.11.2008 and Deepawali on 28.10.2008. He had applied for leave on the ground that his old aged father required consultation at AIIMS for which he got appointment with a Specialist on 23.10.2008 and 24.10.2008. He also had to make arrangement for medicines with a special permission from Additional Director, Medical Store Depot. The applicant left for New Delhi on 21.10.2008 (night). In the meantime on 24.10.2008 the Accountant General (AG), Arunachal Pradesh informed the respondent no.1 that the applicant after leaving behind a leave application had left the station to attend Goverdhan Puja and Bhaidooj festivals without meeting him or getting SAO's prior permission. The audit team had completed its work and was relieved from Itanagar on 24.10.2008. A memorandum dated 12.11.2008 was served on the applicant directing him to furnish the reason for leaving the duty station and proceeding on leave on two occasions w.e.f. 26.08.2008 to 31.08.2008 and 21.10.2008 to 31.10.2008 without permission of the competent authority and why disciplinary action should not be taken against him. The applicant submitted his reply on 17.11.2008. However, the respondents served another memorandum on 15.07.2009 along with a Statement of imputation of misconduct intimating him about the proposed action under Rule 16 of CCS (CCA) Rules,

1965. The applicant again submitted his reply on 06.08.2009. Not agreeing with the submissions of the applicant the disciplinary authority (respondent no.1) passed an order on 29.12.2009 imposing the minor penalty of withholding one increment of pay in the time scale of pay for a period of two years which would not have the effect of postponing future increments of pay. The applicant filed an appeal on 29.12.2009 and the appellate authority after considering that appeal by order dated 02.08.2010 reduced the penalty of withholding of one increment of pay in time scale of pay for a period of one year from the earlier period of two years. The applicant also filed a revision petition which was rejected by the revisionary authority on 11.03.2011. Separately, the respondent no.1 gave a show cause notice to the applicant as to why the period of absence from duty from 22.10.2008 to 31.10.2008 should not be treated as unauthorised entailing loss of pay for the period in question thereby resulting in break in service under FR 17 (I) and FR 17 (A). The applicant submitted his reply on 30.05.2011. However, vide order dated 14.06.2011 the respondent no.1 issued an order to treat the period from 22.10.2008 to 31.10.2008 as dies non without break in service.

2. The applicant has filed the present OA with the following prayer:

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the respondents initiating the disciplinary proceedings against the

applicant as illegal, arbitrary against the rules and against the law of the land and consequently pass an order of quashing the impugned orders dated 29.12.2009, dated 26.05.2010, dated 02.08.2010 and dated 11.03.2011 and consequently the applicant is entitled to all consequential benefits i.e. pay and allowances of the period from 22.10.2008 to 31.10.2008, annual increments w.e.f. 01.07.2010, benefits of MACPS w.e.f. 01.09.2008 as per rules with arrears thereof along with interest @ 18% per annum.

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

3. Learned counsel for the applicant submitted that the respondents have acted in an arbitrary and illegal manner in penalising the applicant without holding a departmental enquiry. The applicant had availed 10 days Earned Leave from 27.08.2008 to 05.09.2008 which was duly sanctioned and entered in the service book. Therefore, the respondents cannot treat that leave as unauthorised. The Controlling Officer of the applicant was SAO who headed the audit team and according to DGACR office order dated 19.05.2004 he can sanction leave upto 30 days in the case of the applicant. Casual Leave and Restricted Holidays are not recognised form of leave, and therefore, it is obvious that a SAO, who can sanction Earned Leave, can also sanction Casual Leave/Restricted Holiday. Further, according to para 6.8 of Manual of Administration and office procedure of DGACR, the only requirement for availing leave is that every member of the office has to submit a report to his AAO stating the date and hour on which he has to leave his duties and his address while on leave in

addition to list of papers etc. made over by him. No formal permission to leave Headquarter is necessary. The applicant had applied for leave from 22.10.2008 to 31.10.2008 nine days in advance. He had submitted the application to the SAO as the AAO was not available. The SAO had marked that application to AAO after sanctioning the leave and nowhere was it mentioned that the applicant was not permitted either to avail leave or to leave station. He had thus availed leave with prior intimation and with the approval of the competent authority, and therefore, his absence cannot be considered as unauthorised. Learned counsel also referred to the case of Dinesh Kumar Sharma, SAO, who was also awarded a penalty of withholding one increment for a period of 3 years and treating the period of unauthorised absence from 18.08.2008 to 05.09.2008 as dies non in a somewhat similar situation. However, in his case the respondent no.3 in compliance of the direction of respondent no.2 declared the penalty order on Dinesh Kumar Sharma as null and void and absence period was treated as duty for all purposes. On the other hand, the revision petition of the applicant was treated differently and rejected.

4. Learned counsel for the respondents submitted that this was a case of disciplinary action taken against an errant employee in accordance with the disciplinary rules, and therefore, the scope for intervention of this Tribunal was very limited. The applicant was given full opportunity to defend himself and the principle of

natural justice was followed at every step by the respondents. The minor penalty imposed by the disciplinary authority was further reduced by the appellate authority after considering the representation of the applicant. Referring to the contentions raised by the applicant, learned counsel submitted that the applicant along with other team members were deputed for conducting audit on NLCPR at Itanagar for a limited period. He had visited Delhi after completing six weeks of audit for a briefing session at the Headquarters. However, within a few days of that visit the applicant came back to Delhi without taking prior approval of the competent authority. The applicant has not revealed the complete truth with regard to his leave from 27.08.2008 to 05.09.2008 as on that occasion also he had left station unauthorisedly on 26.08.2008. The competent authority taking lenient view had given ex post facto sanction and granted leave for the aforesaid duration. Despite that the applicant repeated the same misconduct by leaving station on 21.10.2009 without obtaining the permission of the competent authority. There was a meeting taken by AG on 20.10.2008 with the audit party of DGACR. In that meeting the AG had made it clear that the audit party will be relieved on 26.10.2008 only if the items of work discussed in the meeting were done to his satisfaction failing which they have to work for some more time. It was also clarified that if some team members had some emergency and needed to

visit Delhi they could do so with AG's prior permission. The applicant was present in that meeting. Even then he left station on 21.10.2008 without taking permission of the AG. He left his application with SAO, who had not approved the leave but simply marked it to the AAO. Learned counsel also pointed out that the rules quoted by the applicant about the competence of SAO to sanction leave upto one month would not be applicable in a situation where an Auditor is deputed for a limited period to conduct the audit at the designated place.

5. Regarding parity with the case of Dinesh Kumar Sharma, learned counsel for the respondents stated that Sharma's case cannot be compared as the facts of the two cases were quite different and the competent authority had taken decisions on the basis of the facts and circumstances obtaining in each case. With regard to the contention of the applicant that he has been inflicted with two penalties, the learned counsel submitted that the minor penalty imposed for the misconduct of unauthorised absence has nothing to do with the decision of the competent authority as to how to treat the period of such absence. The period of unauthorised absence as *dies non* is not an outcome of the charges against the applicant and that cannot be categorised as double jeopardy.

6. We have heard the learned counsels and perused the record. The applicant was initially asked to explain his absence from station without permission on two occasions i.e., from 26.08.2008 to 31.08.2008 and 21.10.2008 to 31.10.2008, while on audit duty at Itanagar. However, after receiving the explanation, apparently the charge of unauthorised absence for the period from 26.08.2008 to 31.08.2008 was dropped and the period was regularised by granting leave post facto. Only the absence from the station during the period from 21.10.2008 to 31.10.2008 has been treated as unauthorised.

7. The contention of the applicant is that he had applied for leave about nine days before the date of departure to the authority competent to sanction leave, i.e., SAO who had initialled his application and marked to AAO. He presumed it to be the approval of the competent authority. With regard to the specific instruction given by AG in the meeting held on 20.10.2008 that his prior approval would be required before leaving station, the applicant submitted that the minutes of the meeting were not available when he left station on 21.10.2008. He has also mentioned that he had taken oral approval of AG in the meeting held on 20.10.2008. He has also alleged discrimination on the part of respondents in treating his case compared with a similar incident of unauthorised absence of Dinesh Kumar Sharma, SAO. We have considered these

contentions but we do not find any merit in the arguments put forward by the applicant.

8. It is undisputed that the applicant as a member of the Audit Team-B had gone to conduct a Performance Audit on NLCPR at Itanagar starting from 23.06.2008. It was obvious that such audit would be for a limited period and the team had to complete the task in a time bound manner. The applicant had visited Delhi from 01.08.2008 to 09.08.2008 after six weeks of audit for a briefing at the Headquarter/AGCR from 04.08.2008 to 08.08.2008. He left Delhi on 10.08.2008. Within a few days of returning to station, he availed leave from 26.08.2008 to 31.08.2008 which as it turns out, was without obtaining prior permission. The competent authority after considering his representation took a lenient view and sanctioned leave post facto. This fact mentioned in the counter filed by the respondents has not been contradicted by the applicant in his rejoinder. The respondents have ultimately penalised the applicant for his unauthorised absence in the month of October from 22.10.2008 to 31.10.2008.

9. The explanation given by the applicant that he had left station after the approval of the competent authority is not convincing at all. Within a short span from the date of reporting at Itanagar i.e. 25.06.2008, the applicant had visited Delhi twice, once on official duty and on the second occasion by availing leave

without prior permission. In the meeting on 20.10.2008 the AG, Itanagar had given explicit direction that any person requiring to leave for Delhi in emergency should take his prior approval. It is an admitted fact that the applicant and the SAO were both present in that meeting. It is not the contention of the applicant that he was not aware of the instruction of the AG; his plea is that the minutes of the meeting were not issued before he left the station, which cannot be countenanced as a reason for not complying with the instruction. An oral instruction in such meetings has to be followed with as much rigour as an instruction which is reduced to writing in the form of minutes. The averment of the applicant that he had orally informed the AG that he intended to visit Delhi has been denied by the AG in his response. The applicant had submitted his application 9 days in advance but it was endorsed by SAO to AAO only on 21.08.2008 without any remark like 'sanctioned' or 'approved'. He had simply initialled and marked it to the AAO. In official parlance, such treatment of the application cannot be construed to be an 'approval', more so, when both the SAO and the applicant were aware of the direction given by the AG on the previous day.

10. Regarding parity with Dinesh Kumar Sharma it is noted that he was charge-sheeted in a different case and concerned authorities would have decided the matter on the basis of the facts and circumstances of that case. The applicant cannot claim parity

with a different disciplinary proceeding. From the averments made by the applicant as well as the respondents, it is observed that the procedure prescribed for the imposition of minor penalty had been scrupulously followed and no denial of natural justice has been established. In such a situation, we do not find any ground for intervention by the Tribunal.

11. In **B.C.Chaturvedi vs. Union of India and others**, (1995) 6 SCC 749 Hon'ble Supreme Court has held as under:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

11. In **Ram Chander and ors. Vs. Union of India and ors.**, WP

(C) no.6632/2011 the Hon'ble High Court has held as under:

“18. It is trite that the scope of judicial review in disciplinary proceedings is extremely limited. The court is permitted to examine the record of the disciplinary proceedings from the perspective only in regard to examine as to whether there was any violations of statutory provisions or rules and regulations. This court would also be permitted to examine as to whether any principles of natural justice would have been violated. In a case where an objection is raised that the findings of the disciplinary authority as well as the appellate or revisional authority are based on no evidence, the court would examine the evidence which was led by the parties before the disciplinary authority. However, the scope of this examination by the court is narrow inasmuch as the burden of proof which the authorities have to discharge is limited to establishing preponderance of probabilities and is not required to discharge the burden of proving the allegations beyond reasonable doubt as in a criminal trial. Therefore, the burden which the prosecution had to discharge in the aforementioned disciplinary proceedings against the petitioners was only to establish the possibility that the incident as complained could have occurred and the court would test grievances of the petitioners on the bench mark of the probability as to whether it could have occurred as stated or not.”

12. In the light of the foregoing discussion and the reasons stated above, we do not find any merit in the OA and the same is dismissed.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

‘sd’