

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4315/2014

**Reserved On:09.03.2018
Pronounced on:12.04.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Shri Jai Karan
S/o Harveer Singh
A-4/7, Lekha Nagar,
Meerut Cantt.,
Uttar Pradesh.

...Applicant

(By Advocate: Shri Harpreet Singh)

Versus

1. Union of India
Through Secretary,
Ministry of Defence,
North Block,
Central Secretariat, New Delhi-110001.

2. The Controller,
CDA (Army), Meerut Cantt.

3. DCDA (AN-1),
CDA (Army), Meerut Cantt.

4. The Controller,
CGDA Office,
Ulan Batar Road,
Palam, Delhi Cantt.-110010.

...Respondents

(By Advocate: Shri Udit Kumar Chaturvedi for Shri Raj Pal
Singh)

ORDER

By Mr. V. Ajay Kumar, Member (J)

The applicant, a Chowkidar in the respondent-
Controller of Defence Accounts (for short CDA), filed the OA

seeking quashing of the impugned Annexure A-1 Speaking Order dated 25.03.2014, whereunder the respondents held that the applicant is deemed to have resigned from Government service in terms of Rule 12(2) of the CCS (Leave) Rules, 1972 with effect from 03.10.2001 and accordingly rejected his request to reinstate him into service.

2. The brief facts, as narrated in the impugned Speaking Order, are that while the applicant was working as Chowkidar under the respondents, Smt. Beena, wife of the applicant lodged an FIR on 03.10.2001 in the Police Station Lal Kurti, Meerut Cantonment stating that the applicant was missing. Applicant's wife in her application dated 05.03.2008 made to the respondents, requested them to pay the dues of her husband on the basis of the final report dated 12.04.2008 of Police Station Lal Kurti, Meerut Cantonment that the whereabouts of applicant could not be ascertained.

3. Applicant had been absenting from his duties with effect from 01.02.2001. The respondents in view of the applicant's long absence and also on the basis of the report of the police, struck off the name of the applicant from the strength of their office with effect from the date of his missing, i.e., 03.10.2001 as per the provisions contained in

Rule 54 sub-rule (12) of CCS (Pension) Rules, 1972. Part-II 00 No.993 dated 07.11.2008 was also published declaring the applicant deemed to have been dead and SOS with effect from 03.10.2001. Accordingly, the case was forwarded to the office of the PCDA (P), Allahabad, for sanction of family pension, but the same was received back with certain observations.

4. However, the applicant vide his application dated 21.07.2009, requested CDA (Army) to allow him to join duty by stating that he had suffered mental imbalance and due to which he had gone somewhere and on 20.06.2009, his relatives saw him at Saharanpur Railway Station and brought him to his home. He also claimed that he is fit to join duty as on the date of his application. Consequent on appearance of the applicant, Part-II 00 No.993 dated 07.11.2008 declaring him deemed dead was cancelled vide Part-II 00 No.1032 dated 29.10.2009 .

5. Action was initiated to reinstate the applicant in service and police verification report from police authority was called for to ensure that he was not involved in any anti social activities. Medical condition of the applicant was also called for and all medical reports, i.e., CMO, Meerut dated 23.11.2009 and Medical Superintendent, Mental Health Institute and Hospital Agra dated 05.11.2009

opined that no traces of mental disorder were found in applicant and he was mentally fit and fit for duty. The applicant was also informed by the competent authority on 22.03.2010. The applicant was also given another opportunity vide letter dated 26.04.2010 and the applicant answered for the same vide his reply dated 06.05.2010 that he lost his thinking/undertstanding capacity and wandered here and there and was treated by herbs through saints and that he had no medical certificate as he was treated with wild herbs in various ashrams during the missing period. The competent authority having not satisfied with the reasons put forth by the applicant, forwarded his case to the Headquarters to seek clarification whether the individual could be reinstated in duty even after absence of more than 8 years from office or otherwise. After protracted correspondence, the committee constituted for adjudicating the case of the applicant recommended that the case of the applicant may be considered as "deemed resigned" in terms of Rule 12 of the CCS (Leave) Rules, 1972 and the said recommendation was accepted by the competent authority and accordingly, the respondents passed the Annexure A-1 impugned Speaking Order dated 25.03.2014 stating that the applicant deemed to have resigned from Government service with effect from 03.10.2001, i.e., the date of FIR in

terms of Rule 12 (2) of CCS (Leave) Rules, 1972 and rejected his request for reinstatement.

6. Heard Shri Harpreet Singh, learned counsel for the applicant and Shri Udit Kumar Chaturvedi for Shri Rajpal Singh, learned counsel for the respondents and perused the pleading on record.

7. Shri Harpreet Singh, learned counsel for the applicant while reiterating the applicant's submission that he suffered from mental imbalance in the year 2001 and wandered here and there and finally was treated in various ashrams with herbs and on bringing by his relatives and as he became mentally fit and fit for duty, he made the application on 21.07.2009 to allow him to join duty.

8. The learned counsel for the applicant, mainly contend that the impugned Annexure A-1 Speaking Order dated 25.03.2014 under which the applicant was deemed to have resigned from Government service in terms of Rule 12(2) of the CCS (Leave) Rules, 1972 is liable to be quashed with all consequential benefits as the same was passed in clear violation of the said rule itself. The learned counsel further submits that the impugned order has been passed without fulfilling the precondition of giving an opportunity to the applicant and is liable to be quashed.

9. Rule 12 (2) of the CCS (Leave) Rules, 1972, reads as under:-

“12(2) Unless the President, in view of the exceptional circumstances of the case, otherwise determines, a Government servant who remains absent from duty for a continuous period exceeding 5 years other than on foreign service, with or without leave, shall be deemed to have resigned from the Government service:

Provided that a reasonable opportunity to explain the reasons for such absence shall be given to that Government servant before provisions of sub-rule (2) are invoked”.

10. The learned counsel for the applicant while drawing our attention to the Rule 12(2) of CCS (Leave) Rules, 1972, submits that an order under said rule can be passed after a reasonable opportunity to explain the reasons for such absence shall be given to the Government servant before sub-rule (2) is invoked and no opportunity was given to the applicant and hence the impugned Speaking Order is liable to be quashed.

11. On the other hand, Shri Udit Kumar Chaturvedi for Shri Rajpal Singh, learned counsel for the respondents while denying the fact that a prior opportunity to explain the reasons for absence was not given to the concerned employee before passing the order under Rule 12 of CCS (Leave) Rules, 1972, submits that the respondents have given an opportunity to the applicant to explain the reasons. Though the respondents vide Part-II 00 No.993 dated 07.11.2008 basing on the application dated 05.01.2008 of the applicant's wife and the final police

report dated 05.04.2008 declared the applicant deemed dead with effect from 03.10.2001 but on the appearance of the applicant and in view of his application dated 21.07.2009, cancelled the said order dated 07.11.2008 vide order dated 29.10.2009. Thereafter, the respondents called for fresh police verification report and medical condition of the applicant was assessed by obtaining medical reports from CMO, Meerut dated 23.11.2009 and Medical Superintendent, Mental Health Institute and Hospital, Agra dated 05.11.2009. Further, the applicant was given an oral opportunity to represent his case and he was interviewed on 22.03.2010. Again, another opportunity to submit his explanation vide letter dated 26.04.2010 was given to the applicant by requesting him to give answers to the specific questions as regards his absence from duty and after considering the reply of the applicant dated 06.05.2010 and also after obtaining clarification from the Headquarters and again considering the representation of the applicant dated 01.12.2010 and having not satisfied with the reasons given by the applicant, passed the impugned order. Accordingly, the learned counsel submits that admittedly, the applicant was continuously absent with effect from 01.01.2001 till 21.07.2009 and that the medical reports categorically opined that there were no traces of mental disorder are

found and he was mentally fit and fit for his duty all through and after considering the recommendation of the committee specifically constituted for the purpose, passed the final order. In view of the clear cut opportunity by way of obtaining medical reports, police report, consideration of the clarification from the Headquarters and recommendation of the committee constituted for the specific purpose of considering the claim of the applicant, and the reply of the applicant, it cannot be said that no opportunity was given, as required under the proviso to Rule 12(2) and hence prays for dismissal of the OA.

12. A bare perusal of the Rule 12(2) of the CCS (Leave) Rules, 1972 clearly indicates that before passing an order under the said Rule, a reasonable opportunity to explain the reasons for the absence shall be given to the Government servant. It is true that the respondents in their letter dated 16.03.2010 under which they gave an opportunity to the applicant to appear before them to explain the reasons for his absence or in the letter dated 26.04.2010 under which they gave another opportunity to the applicant to clarify the specific questions raised by them with regard to his absence from duty, there was no reference of any sort about Rule 12 or the intention of the respondents or to declare applicant deemed to have resigned. But it was an

admitted fact that the respondents before passing the impugned order have given full and fair opportunity to the applicant and after considering the material, such as, medical reports from two different hospitals and of the police report and of the view of the committee, and the reply and representation of the applicant passed the impugned Speaking Order. It is the settled principle of law that once the power is available, non-mentioning or wrong mentioning of the provision of law or rule does not vitiate the action of the authorities.

13. In the present case, the absence of the applicant from duty with effect from 01.02.2001 to 21.07.2009 was an admitted fact and that he failed to satisfactorily explain the same, even after opportunity was provided to him. On the other hand, the medical reports from two distinct hospitals clearly indicate that applicant was in no way suffering from any mental disorder and he was fit for duty all through even during the period prior to his reappearance before the respondents. Hence, we do not find any illegality in declaring that the applicant is deemed to have resigned from service.

14. Now we advert to the next contention of learned counsel for the applicant, that keeping in view the illness of the applicant, the department should have treated him

being on leave of the kind due instead of dismissing him from service. In this regard, it may be added here that, assuming for the sake of argument, if applicant was sick, even then he has to inform the department and he ought to have got his leave sanctioned from the competent authority. He cannot claim leave, as a matter of right as envisaged under SO 111 and Rule 7 of the Central Civil Services (Leave) Rules, 1972. Rule 19 (1)(ii) posits that, in respect of a non-Gazetted Government servant, an application for leave on medical grounds shall be accompanied by a medical certificate in Form 4 given by a CGHS doctor. According to Rule 25(2) of Leave Rules, the wilful absence from duty after the expiry of leave renders a Government servant liable for disciplinary action. Admittedly, the applicant at no point of time applied for any leave. Hence, the contention of the applicant is unsustainable.

15. In the light of the aforesaid reasons, we do not find any merit in the OA and the same is dismissed accordingly. The parties are left to bear their own costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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