

**Central Administrative Tribunal
Principal Bench**

OA No.22/2014

New Delhi, this the 17th day of July, 2019

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Mohd. Jamshed, Member (A)**

Anil Yadav, C/o SS Sharma
R/o Ward No.12, Behind Vidyut Karyala
Budhi, Balaghat (M.P.)481001. ...Applicant

(By Advocate: Shri Pukhrambamb Ramesh Kumar)

Vs.

1. Union of India
Through its Secretary
Ministry of Personnel & Public
Grievances & Pensions
North Block, New Delhi-110001.
2. State of Madhya Pradesh
Through its Principal Secretary
Mantralaya, Bhopal, Madhya Pradesh
3. The Secretary, Government of
Madhya Pradesh, General Administration
Department, Vallabh Bhawan
Bhopal(M.P.) 462004. ...Respondents

(By Advocates: Shri R.V. Sinha for Res. No.1 and Shri V.K. Shukla for Res. Nos. 2 & 3)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant is an IAS officer of Madhya Pradesh Cadre, of the year 1999. On his request, he was

granted two years leave, to study MBA in an institution in USA, through order dated 24.07.2007. However, he did not report to duty on expiry of the study leave of two years. The applicant stated that due to his personal and family problems he could not report to duty and made several requests for extension of the leave.

2. The State of Madhya Pradesh, the 2nd respondent issued show cause notice dated 22.07.2011, requiring the applicant to explain as to why he, be not deemed to have resigned from service, as provided for under Rule 7(2) of the All India Service (Leave) Rules, 1955 (hereinafter referred to as Leave Rules). On receipt of the show cause notice, the applicant submitted a detailed reply on 08.10.2011. The second respondent forwarded the entire file together with the reply, received from the applicant, to the cadre controlling authority, the first respondent. The latter issued a notification dated 03.10.2012 stating that the applicant shall be deemed to have resigned from IAS with immediate effect in terms of Rule 7(2) of Leave Rules. This OA is filed challenging the notification dated 03.10.2012.

3. The applicant contends that though he wanted to report for duties on completion of the study leave, he could not do so on account of the problems faced by him in the family. He states that the various letters, said to have been issued by the second respondent, were not received by him. Another plea of the applicant is that the mere issuance of show cause notice does not satisfy the requirement under proviso to Rule 7(2) of Leave Rules, and he ought to have been accorded opportunity of being heard, and a detailed inquiry was required to be conducted.

4. The respondent No.1, on the one hand, and respondent Nos. 2 and 3, on the other, have filed separate counter affidavits. According to them, the applicant did not choose to report to duty on expiry of the study leave. The respondents stated that the efforts made by them to procure the presence of the applicant even did not materialize. It is also stated that the procedure prescribed under Rule 7(2) of Leave Rules was strictly followed and the impugned notification does not suffer from any legal or factual infirmity.

5. We heard Shri Pukhrambam Ramesh Kumar, learned counsel for the applicant, Shri R.V. Sinha, learned counsel for respondent No.1 and Shri V.K. Shukla, learned counsel for respondent Nos. 1 and 2, in detail.

6. The service particulars of the applicant are not in dispute. He is an officer of 1999 batch and was allotted to Madhya Pradesh Cadre. Till he was sanctioned leave for a period of two years on 24.07.2007, there were no remarks as regards his functioning.

7. The applicant wanted to study MBA in an institution in USA. Obviously, feeling that his studies will help them in the administration, the respondents accorded permission and granted leave. If the studies continued beyond two years or the applicant was incapacitated from resuming regular duties, he could have reported to duty and sought fresh leave. Assuming that there was any impediment for him to report to duty immediately after expiry of leave, he could have reported at least, after some time. Nothing of that sort happened. Ever since he left, on being sanctioned leave in July, 2017, he did not turn up at all

till the impugned order was passed. Still curious is the fact that even thereafter, he did not express any inclination to join. Such conduct on the part of a factory worker cannot be condoned. An important Service like the IAS cannot be reduced to such level.

8. In the show cause notice, a detailed account of the absence of the applicant and the steps taken by the respondents was furnished. In his reply the applicant did not even mention that he ever made any effort to join duty. His consistent plea was that, on account of his family problems, he could not report to duty.

9. In case the applicant or any of his family members was suffering from any ailment, there should not be any difficulty at least in reporting for duty. The State would have arranged for treatment of the applicant or his family members. The very fact that he did not report to duty nor did he seek any time for reporting to duty, discloses that he never had any intention to come back at all.

10. Whatever be the reason for the applicant not to report to duty even after expiry of nearly five years,

the consequences provided for under Rule 7(2) cannot be stopped from ensuing. Being a senior IAS Officer in the administration, he was required to be a role model so that a semblance of discipline can be ensured in his own cadre and in other subordinate services. If he remains defiant or indisciplined, it would become difficult for the State to take any steps to bring about discipline.

11. The principal contention urged on behalf of the applicant is that the prescribed procedure under Rule 7(2) was not followed. The provision reads as under:-

"7.2 A member of the Service shall be deemed to have resigned from the service if he-

- (a) Is absent without authorization for a period exceeding one year from the date of expiry of sanctioned leave or permission, or
- (b) Is absent from duty for a continuous period exceeding five years even if the period of unauthorized absence is for less than a year, or
- (c) Continues of foreign service beyond the period approved by the Central Government.

Provided that a reasonable opportunity to explain the reason for such absence or continuation of foreign service shall be given to the member of the Service

before the provisions of this sub-rule are invoked."

12. A perusal of the same discloses that the circumstances indicated in sub clauses (a), (b) and (c) would lead to deemed resignation from service. The only requirement, before the provisions of above sub rule are invoked, is that, an opportunity to explain, must be given to the concerned officer. Such an opportunity was given by issuing show cause notice dated 22.07.2011 and the applicant has also responded to the same on 08.10.2011. Further, in his explanation the applicant did not even mention that he intends to be heard or he wants to offer any further explanation.

13. When the rule does not provide for any personal hearing or inquiry and when the applicant also did not request for any personal hearing, there is no way, the impugned order can be found fault with.

14. Though learned counsel for the applicant sought to invoke Article 311, we are of the view that it is not attracted since it is not a case of punishment. Further, a specific rule framed under Proviso to Article 39 covers the situation and it has been strictly complied with.

15. We have dealt with similar issue in OA No.1479/2016 and took into account, the relevant provision of law and decided case on the subject. The Order of deemed resignation, challenged therein, was upheld. Same situation obtains in the instant case also. The OA is accordingly dismissed.

There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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