

(a)

Central Administrative Tribunal  
Principal Bench

O.A. No.1519/2003

New Delhi this the 6th day of February, 2004

Hon'ble Shri Shanker Raju, Member (J)  
Hon'ble Shri Sarweshwar Jha, Member (A)

Ghanshyam Lal Meena  
Ex-Sr. Peon in  
the Office of Comptroller & Auditor General  
of India, resident of 3/88,  
Andrews Ganj, New Delhi.

-Applicant

(By Advocate: Shri S.K. Sharma and  
Shri K.K. Sharma)

Versus

1. Union of India  
Through  
Comptroller & Auditor General of India  
I.T.O., 10 Bahadurshah Zafar Marg,  
New Delhi-110 002.
2. Sr. Administrative Officer and  
Disciplinary Authority,  
Office of the Comptroller &  
Auditor General of India,  
I.T.O., 10 Bahadurshah Zafar Marg,  
New Delhi-110 002.
3. Director (P) & Appellate Authority  
Office of the Comptroller &  
Auditor General of India,  
I.T.O., 10 Bahadurshah Zafar Marg,  
New Delhi-110 002.
4. Asstt. Director of Estates,  
(Type A (A) Section),  
Directorate of Estates,  
Government of India,  
Nirman Bhawan,  
New Delhi-110 001.

-Respondents

(By Advocate: Shri Madhav Panikar, for 1-3 and  
Shri R.N. Singh, for R-4)

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J)

Applicant impugns removal order dated  
23.10.2002, appellate order confirming up-holding the  
punishment dated 1.1.2003 as well as review order on  
revision petition dated 12.5.2003.

2. Applicant who was appointed as Peon on 28.7.1989 has been proceeded for a major penalty under Rule-14 of the CCS (CCA) Rules for remaining absent for a period of 146 days without sanction of leave.

3. On completion of enquiry, applicant was held guilty of the charge. In response to the report, the disciplinary authority imposed upon a punishment of removal and also treated the absence period from 7.9.2001 to 16.1.2002 as dies non.

4. Appeal and revision preferred against the punishment were rejected, giving rise to the present OA.

5. Learned counsel for applicant contends that the absence of the applicant was on account of mitigating circumstances due to self-illness and illness of his wife. He stated that applicant has produced the medical record, medical prescription and also cash memo for medicines during the enquiry. According to him, while he produced J.P. Meena, Caretaker in his defence, he back tracked and through STD applicant had informed the department, punishment imposed without consideration of medical record of which genuinity has never been disputed by the respondents. The punishment is disproportionate and excessive. He relies upon the decision of the Apex Court in **Om Kumar and Others Vs. Union of India** (2001) 2 SCC 386 to substantiate his plea.



6. On the other hand, learned counsel for respondents Shri Madhav Panikar vehemently opposed the contentions and stated that the absence was wilful without seeking prior permission and during the period of absence despite enquiry the applicant had not responded to and has also failed to submit application for leave as well as medical record which, on joining, had been produced are afterthought.

7. Reflecting the past record where applicant had remained absent from 5.6.96 to 12.7.96 and was awarded a minor penalty on habitual absentism, has been referred to.

8. We have carefully considered the rival contentions and perused the material on record.


9. Leave cannot be claimed as a matter of right and it is at discretion of concerned authority. However, if one produces medical record to justify the period of absence under Rule-19 of the CCS (Leave) Rules, 1972 and if one is not subjected to second medical examination, the medical record cannot be disputed. However, unless leave is granted, one cannot be said to be on regular leave.


10. However, we find that the factum of submission of medical record by the applicant has been acknowledged by the enquiry officer but the same has not been taken into consideration. Neither the disciplinary authority nor the appellate authority have taken into consideration the grounds of absence

of the applicant which consisted of his self-illness and illness of his wife duly covered by the medical certificates.

11. The revisional authority while up-holding the punishment has also taken into consideration an extraneous matter, i.e., past record of the applicant. This has not been put to him. Moreover, the medical records have not been considered, mere late submission of medical record would not make it forged one unless its genuinity is in question. In our considered view, the revisional authority should have considered the medical record issued by the medical authority specified under Rule-19 of the CCA (Leave) Rules ibid.

12. Having regard to the aforesaid, OA stands disposed of by setting aside the order passed by the revisional authority. We remand the case back to the revisional authority to consider the medical record of the applicant and having regard to the absence and the number of years rendered by the applicant may also go into proportionality of punishment and pass an order within three months from the date of receipt of a copy of this order. No costs.

  
(Sarweshwar Jha)  
Member (A)

  
(Shanker Raju)  
Member (J)

cc.