

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1686/2003

NEW DELHI THIS ^{19th}.....DAY OF JANUARY 2004.

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

T C Kaushik S/o Late Sh. M R Kaushik,
Working as Assistant Central Intelligence Officer,
Grade-I (G) , In the O/o Intelligence Bureau,
Ministry of Home Affairs, posted at SIB Amritsar (Pb)

.....Applicant

(By Shri Yogesh Sharma, Advocate)

VERSUS

1. Union of India through the Secretary,
Ministry of Home Affairs, Govt of India,
North Block, New Delhi
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
35, Sardar Patel Marg, New Delhi
3. The Additional Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs, Govt Of India
19/1-B, Madhya Marg,
Sector 19-B, Chandigarh.

.....Respondents

(By: Shri R N Singh, Advocate)

O_R_D_E_R_(ORAL)

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant was initially appointed as Assistant Central Intelligence Officer -II in the Intelligence Bureau, Ministry of Home Affairs on 17.4.1973. After number of postings he was posed in the office of IB at SIB Amritsar Punjab on 2.4.1996 from New Delhi. He joined his new assignment on 11.4.94 after availing usual joining time and applied



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for six days Casual leave on 12.4.96. He was due to report for duty on 21.4.1996. However, he failed to join duty and was thus considered to be unauthorised absence and was issued Charge Sheet under rule 14 of the CCS(CCA) Rules 1965 vide Memo dated 2.4.97.

2. The Enquiry Officer submitted his report on 23.6.2000 holding that the charges were proved. The disciplinary Authority imposed a penalty of reduction in his pay by two stages for a period of two years with further direction that he will not earn increment of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing future increments of his pay vide order dated 16.5.2001. Applicant made an appeal against the penalty on 25.6.2001. Appellate authority referred the appeal to the UPSC for their advice. The UPSC advised that the appeal is baseless and same is to be rejected. This advice was accepted by the Appellate Authority and the penalty was confirmed by order dated 7.5.2003.

3. The applicant has impugned the orders dated 16.5.2001 of the Disciplinary authority, Appellate Authority dated 7.5.2003, including the report of the Enquiry Officer and Charge Sheet on the ground that these are illegal and arbitrary and against the principle of natural justice.

4. The plea of the applicant is that he was not on unauthorised absence but unable to join because of bad health, which he had developed during many hardship posting. In fact he had to take

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medical leave for 3 months from January to March 1996. After recovery he was posted to Amritsar in April 1996. His son met with a serious road accident shortly after he joined his duty at Amritsar and he had to rush to New Delhi on usual leave from 12.4.96 to 19.4.1996. The condition of his son was serious, which caused a relapse of his old disease of cephalgic seizures for which he had earlier taken treatment in Safdarjang Hospital. He was on medical leave from 20.4.96 to 22.7.1996 for this illness. After recovery he submitted a 3 months medical certificate which was not accepted by JAD Amritsar and he was asked to obtain medical certificate from a Civil Surgeon, as per rules. It is the contention of the applicant that this was not necessary because as per CCS(Leave) rules a certificate from a private/registered medical practitioner is sufficient. However, the authority asked proof of his illness from a Government Doctor. He sent a copy of prescription dated 15.7.1996 issued from Safdarjang Hospital and continued sending medical leave applications along with medical certificates. After nearly one year Disciplinary Proceedings were initiated for unauthorised absence despite the applicant's request for constituting a medical board. His request for conducting the enquiry at New Delhi in view of his mental illness was also turned down..

5. The applicant filed OA No. 2051/98 in the PB, CAT which was dismissed. Against this judgement a Writ Petition was filed with Hon'ble High Court Delhi and the High Court passed the order on 6.5.99

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directing respondents to constitute a medical board for medical examination. Accordingly a medical board was constituted in RML Hospital New Delhi which opined that applicant is a case of somatisation disorder which is a mental illness in which person develops physical symptoms due to mental stress. No other mental or physical ailment found. Needed proper treatment by a psychiatrist.

6. The court had also asked the respondents to provide an escort for attending the enquiry at Amritsar. The applicant attended the enquiries.

7. The contention of the applicant is that there was no unauthorised absence as per Rule 19(2) of CCS (Leave Rules) 1972. The absence was not wilful because the applicant was ill; this is supported by the medical certificates.

8. The applicant relies upon the judgement of the tribunal in the case of A. Prasad Rao Vs. The General Manager, Railway reported in (1994(2) ATJ 434 mere absence from duty though not authorised by grant of leave, cannot be treated as a misconduct so as to attract disciplinary proceedings. In the present case the absence of the applicant cannot be considered as misconduct so as to attract disciplinary proceedings, because he was prevented from joining duty on account of his medical condition.

9. The respondents according to the applicant have erred by not accepting the medical certificates issued by registered medical practitioner

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19(3) of the CCS (Leave) Rules . The respondents have the discretion, to secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon to examine the applicant ,which they failed to do.

10. The respondents should have reconsidered the period of absence after the report of the medical board, and issue a new charge sheet if it was warranted, because the earlier charge sheet was liable to be quashed and held void ab initio. Finally, the applicant has taken the plea that the disciplinary proceedings were void ab initio, because the authority issuing the charge sheet was not competent to do so. It had been issued by the Addl. Director Chandigarh ^{two} ranks below the Director IB, ^{who} is not competent to punish the applicant.

11. The respondents contested in their counter the above pleadings of the applicants with the preliminary objection that Tribunal had no jurisdiction to hear the matter as the applicant had been posted continuously at Amritsar since 1996 and the statutory remedy was available in the Chandigarh Bench of the Tribunal. Further the original charge sheet issued by the disciplinary authority and report of the enquiry officer is by persons stationed at Chandigarh and Amritsar respectively.

12. The applicant in his rejoinder stated that the punishment order as well as appellate order have been passed by the authorities whose offices are

Admit

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situated in New Delhi, therefore the Hon'ble Principal Bench has jurisdiction to decide the present OA.

13. We have considered the rival contention of the parties. We see from the impugned order dated 7.5.2003 that it has been issued from New Delhi as such the Principal Bench would have jurisdiction.

14. The case of the respondents is that there is no record with them to confirm that the applicant got afflicted with Cephalgec Seizure in the year 1992 and remained under the treatment of Safdarjung Hospital New Delhi from January 86 to March 1996. The applicant had only submitted an OPD slip of Safdarjung Hospital in 1996. The respondents agreed that applicant was on medical leave from January 1996 to March 1996. The respondents state that there is nothing on record to indicate that his son met with a road accident and sustained serious injuries on the other hand the applicant applied for six days casual leave, kept a photo copy of this application and then linked the accident of his son and claimed aggravation of his mental condition to cover his absence. This shows his malafide intention to pre-planning the grounds for remaining absent from duty. It is the case of the respondents that the applicant deliberately tried to prolong his absence under the guise of medical problems by ~~not~~ not acting on the directions of the respondent's memo. dated 14.5.96 (Annexure R-1) directing him to send, as per rules, the medical certificate from Medical Civil Surgeon. Only after he was ~~being~~ reminded twice on

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[Signature]

31.5.96 and 3.7.96, ^{letter -7-} ~~which~~ had to be delivered to him through SIB Delhi, the applicant submitted an application on 31.7.96 mentioning that no post of Civil Surgeon exists in Govt. Hospital at Delhi as such ^{he is} ~~he~~ unable to get a certificate from such medical authority. The respondents again directed the applicant vide memorandum dated 36.9.96 (R-5), to submit medical certificate from Civil Surgeon/ Staff Surgeon or any equivalent medical authority of Govt. Hospital failing which the period will be treated as unauthorised absence. In response to this the applicant submitted an old OPD slip No. 1405/92 dated 23.4.92 showing consultations on 27.4.92, 4.5.92, 22.6.96, 24.6.96 and 15.7.96 which did not recommend any rest required for recuperation. His absence was wilful and unauthorised. The failure of the applicant to obtain medical certificates from any senior Doctor like of Head of Department of Neurology of Safdarjung Hospital showed his absence to be wilful and unauthorised. He tried to cover this by sending certificates from the private practitioners.

15. The applicant filed OA No. 2051/98 against the order of the disciplinary authority rejecting his request for change of venue of the enquiry from Amritsar to Delhi. The OA was dismissed by the Tribunal as it was not maintainable under the law. The applicant approached the Delhi High Court against the Tribunal order, however Hon'ble High Court directed him to attend the enquiry proceedings at Amritsar and directed respondents to provide escorts which was done. He ~~was~~ also directed by the Hon'ble High Court to appear before a medical

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Board to ascertain the extent of his illness. This medical board found that the ailment did not warrant such prolonged absence from duty.

16. Finally the respondents point out that the disciplinary authority considered the representations of the applicant and passed final order dated 16.5.2001 clearly indicating that the representation of the applicant has been considered fully and that the contention of the applicant that Additional Director was not competent to issue the charge sheet is incorrect. In fact even the Joint Director Incharge of SIB is competent to issue the Charge Sheet to Group 'B' employee. Further all requirement ~~as~~ as per CCS(CCA) Rules 1965, has been strictly adhered to.

17. We have carefully gone through the pleas of the applicant and averments made by the respondents and also the records/documents placed on record. The applicant had relied upon the judgement of this Tribunal in the case of A. Prasada Rao Vs The General Manager, Railway (supra) that mere absence from duty, though not authorise by grant of leave cannot be treated as misconduct so as to attract the disciplinary proceedings. However, facts of the present case are distinguishable from the aforesaid judgement. In the case of A. Prasada Rao Vs. The General Manager, Railway the fact that the applicant was under treatment for serious illness was not in dispute. The charge was not reporting ~~to~~ ^{at} a Railway Hospital and not following Railway Servant Medical Attendance Rules. In the present case the seriousness

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of the claimed illness of the applicant is itself in dispute. The facts are thus distinguishable and the judgement ~~can't~~ not come to the rescue of the applicant.

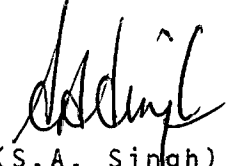
18. Under the directions of the Hon'ble High Court a Medical Board was constituted. The applicant was examined by this board and its findings were as under:


"It has been the opinion of the above medical board that he is a case of Somatisation Disorder. Mr. T C Kaushik has not been found to be having any other mental or physical ailment. During all these years he has never been given treatment for somatisation disorder except Ayurvedic treatment in the recent past (one year), partially effective for this ailment. Somatisation Disorder is a mental illness in which person develops physical symptoms due to mental stress. A person suffering from Somatisation Disorder can continue to attend his duties provided, the disease is properly treated by a psychiatrist.

However, Mr. T C Kaushik's ailment does not warrant such a prolonged absence from duty."

19. It is clear that his prolonged absence was not warranted on medical grounds and he should have thus joined duty at the earliest.

21. In view of the ^{above} we find no merit in the OA and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)


(V S Aggarwal)
Chairman

Patwal/