

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2215 /2003

New Delhi this the 30th day of November, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Malhotra, Member (A)

K.B. Kohli
123, Shankar Garden,
2nd Floor, Vikaspuri
New Delhi - 18.

.....Applicant

(By Advocate: Shri DAVESH SINGH)

Versus

1. The Chief Secretary
Government of N.C.T. of Delhi.
Delhi Sachivalaya, I.P. Estate,
New Delhi - 110002.
2. The Director of Education.
Govt. of NCT of Delhi.
Old Secretariat,
Delhi - 54.
3. The Deputy Director of Education
Department of Education (South Distt.)
Govt. of N.C.T. of Delhi,
Defence Colony,
New Delhi - 110024.

Respondents.

(By Advocate Shri George Paracken)

ORDER

Hon'ble Shri S.K. Malhotra, Member(A)

The present OA has been filed by the applicant with the prayer that the impugned order dated 8.5.2003 rejecting the appeal filed by him against termination of service may be quashed and set aside and he may be reinstated in service with all consequential benefits.

2. The facts of the case, in brief, are that the applicant joined as Assistant Teacher in the year 1964 and was promoted as TGT in the year 1978. Due to certain domestic problems, he applied for 89 Extra Ordinary Leave(EOL) from 6.12.83 to 3.3.84 which was granted to him. He thereafter requested for extension of the leave upto 5.12.86 which was also sanctioned by the competent authority vide order dated 6.2.85 (Annexure-A-4). As his domestic problems were still persisting, he requested for further extension of leave from 6.12.86 to 5.12.88 but this request was not acceded to and vide order dated 18.2.1987 (Annexure R-2), he was asked to report for duty in the School. According to the applicant, he went to join duty but he was not allowed to join duty by the Principal on the ground that he was not the leave granting authority. On 17.6.1987 (Annexure A-5) he was issued a charge sheet for holding an enquiry against him under Rule 14 CCS(CCA) Rules,1965 for his alleged unauthorized absence from duty from 6.12.86. Based on the enquiry held, penalty of removal from service has been imposed on him vide order dated 22.8.1991 (Annexure R-1). The applicant has contended that in terms of the provisions contained in Rule 17 of CCS(CCA) Rules,1965, the order issued by the Disciplinary Authority was required to be communicated to him along with the copy of enquiry report which was not supplied to him. The applicant claims that he had made a request vide letter dated 9.9.91 (Annexure A-10) to provide him

a copy of the enquiry report but despite two reminders dated 7.11.91 and 18.12.91, the copy of the enquiry report was not made available to him. Subsequently, he filed an appeal but no action was taken by the respondents. The applicant filed an OA No.394/1993 which was disposed of vide order dated 10.5.1999 by the Tribunal with the direction to the respondents to dispose of his appeal dated 10.2.92 stated to have been filed by the applicant (Annexure A-14). The respondents, however, vide order dated 3.5.2002(Annexure-A1) informed the applicant that no appeal had been received in the Office of Chief Secretary. The fresh appeal filed by the applicant on 19.6.2002 was, however, considered by the competent authority but the same was rejected, being time barred vide letter dated 8.5.2003(Annexure-1).

3. The respondents have filed a counter reply in which they have stated that although the applicant was granted EOL w.e.f. 4.3.84 to 5.12.86, he applied for further extension of EOL for another two years w.e.f. 6.12.86. His request for extension of leave was not accepted vide order dated 18.2.87 (Annexure R-2). He was informed that he should report for duty within ten days, failing which disciplinary action will be taken against him under the rules. Since he did not join duty he was issued another Memo dated 10.4.87 (Annexure R-3). The applicant ignored both these orders. He was ultimately issued a charge sheet on 17.7.87(Annexure-A5) for his unauthorized absence and a department enquiry was initiated. The Enquiry officer in his inquiry report dated 17.6.91 found^{that} the charge levelled against the applicant for remaining unauthorisedly absent w.e.f. 6.12.86 to 5.12.86 was established. Consequently, the Disciplinary Authority vide order dated

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22.8.91 imposed the penalty of removal from service. The respondents have stated that the applicant had not made any representation stated to have been made on 9.9.91 or sent any reminders on 1.11.91 and 18.12.91 as claimed by him. No appeal dated 10.2.92 was ever received by them as stated in the Tribunal's order dated 10.5.99. It has been pointed out that after making a request for providing him a copy of enquiry report on 9.9.91, he kept quiet for over ten years and made the appeal only on 19.6.2002 which was rejected under Rule 25 of CCS(CCA) Rules, 1965 being time barred vide order dated 3.5.2003 (Annexure A-1). The applicant is, therefore, not entitled to any relief asked for by him in the OA..

4. We have heard Shri R.K. Gauba, learned counsel for the applicant and Shri George Parackan, learned counsel for the respondents and have also gone through the pleadings and other materials on record.

5. The main point raised by the learned counsel for the applicant during the course of arguments was that the applicant was not provided the copy of the enquiry report by the disciplinary authority, which was mandatory under the Rules. Secondly, after his request for further extension of leave beyond 6.12.86 was rejected, he came and reported for duty to the Principal but he was not allowed to join. This fact is proved by the statement made by the Principal before the Enquiry Officer on 16.4.1990, who had stated that the applicant came to join duty long after the expiry of the leave. He was, however, not allowed to join by the Principal as he had no power to let him join duty as he was not the leave sanctioning authority (Annexure AA-I).

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6. As regards the appeal filed by the applicant against the order of removal from services, the learned counsel for the respondents stated that the applicant had not submitted any appeal dated 10.2.92, as claimed by him. He also stated that the applicant had not made any representation dated 9.9.1991 or sent the two reminders, as claimed by him. These papers are not in the records of the respondent Department. The applicant has also not produced any documentary evidence in support of his contention in this regard. He alleged that it appears to be an after thought, at the time of filing the OA. The appeal ultimately filed by him on 19.6.2002 was time barred and the same was rejected under Rule 25 of the CCS (CCA) Rules, 1965.

7. From the facts and circumstances of the case, it appears that the applicant had no intention to continue with his service with the respondent Department. Initially itself, he had applied for extra-ordinary leave (EOL) for 89 days w.e.f. 6.12.1983. Normally, an employee will apply for earned leave etc. to attend to any urgent work and it is only after he has exhausted this earned leave etc. that he would apply for EOL which is without pay. Here in this case, he seems to have already exhausted earned/medical leave etc. and thereafter applied for EOL. Thereafter, he applied for extension of EOL for two years which was also allowed to him. His request for further extension of leave for another two years beyond 5.12.1986 was rejected by the respondents vide order dated 18.2.1987(Annexure R-2). No specific reasons for such a long leave have been indicated, except that he had some domestic problems. The question which arises is whether it is sufficient for a Govt. employee to apply for leave and in the

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absence of any communication from the Department, can he presume that the leave has been sanctioned. The answer is "No". Unless the leave is formally sanctioned, an employee cannot presume that the leave is sanctioned. This is indisputable that the applicant remained unauthorisedly absent for a long time after the expiry of his leave on 5.12.1986. He came to join only after he received the letter dated 18.2.1987 but he was not allowed to join duty by the Principal. It appears that thereafter he did not make any serious efforts to join the duty through the Dy.Director/Director of Education. If he was serious, he could have given his joining report in his office against signatures of the recipient. He did not do so for obvious reasons. Even during the course of arguments, the learned counsel for the applicant did not spell out as to what were the compelling circumstances due to which the applicant had to absent himself from duty for a long period of more than three years. The reason of some domestic problem due to property dispute is very vague and not convincing enough for his long unauthorized absence. The learned counsel for the applicant has also not contested the fact that the applicant remained absent without sanction of leave after 5.12.1986. Such a conduct on the part of the applicant is a grave act of indiscipline and irresponsibility, especially in a teaching institution, which cannot be ignored. He was in fact playing with the career and life of hundreds of students whom he was supposed to teach. In such a situation, the Department had no other option but to initiate disciplinary proceedings against him for unauthorized absence. The applicant had participated in the enquiry proceedings as is evident from Annexure AA-1.

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8. It is a fact that a copy of the enquiry report was not furnished to the applicant, as provided for in the rules. But in our opinion, no prejudice was caused to him by non-supply of the enquiry report. The only charge against him was unauthorized absence which charge has not been denied by him. Even if the enquiry report had been given to him, the result would have been the same. The Hon'ble Supreme Court in the case of **S.K.Singh Vs. Central Bank of India & Ors.** 1996 (6) SCC 415 has held that non-supply of enquiry report is inconsequential if no prejudice is caused. In another case of **Managing Director,**

► **ECIL Vs. B.Karunakar & Ors.** JT 1993(6) SC 1, it has been held that "if after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished." The same principle has been laid down in another judgment in the case of **Krishna Lal Vs. State of J& K**, 1994 (27) ATC 590. The present case is squarely covered by the above judgments.


9. It is a well settled principle of law that Administrative Tribunal, while exercising the power of judicial review in a disciplinary case, has no jurisdiction to go into the truth of the allegation/charge except in case it is based on no evidence or is perverse. The Tribunal has the power only to examine the procedural correctness of the decision making process. The judicial review is not an appeal against a decision taken by the competent authority but is a review of the manner


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in which a decision is made. We do not find any legal infirmity in the conduct of disciplinary proceedings, except that the enquiry report was not supplied to the applicant, which in our opinion has not caused any prejudice to the applicant, as explained above. Merely on this ground, the disciplinary proceedings are not vitiated.

10. The applicant has not been able to produce any documentary evidence that he had in fact filed an appeal on 10.2.92 as claimed by him. He had filed a fresh appeal on 19.6.2002 which was time barred and was rightly rejected by the competent authority, in terms of the relevant rules. The punishment awarded to him is also not considered disproportionate to the gravity of the charges proved against him. Taking an overall view of the facts and circumstances, we do not find it a fit case for any interference in the punishment awarded to the applicant.

11. As a result, the OA turns out to be devoid of any merit and the same is accordingly dismissed, without any order as to costs.


(S.K. Malhotra)
Member (A)


(V.S. Aggarwal)
Chairman

New Delhi

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