

ITEM NO.104

COURT NO.11

SECTION XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 280 OF 2003

S.C.SAXENA

Appellant (s)

VERSUS

UNION OF INDIA & ORS

Respondent(s)

(With office report)

Date: 21/02/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Ms. S. Janani,Adv.

Mr. Deepak Goel, Adv.

For Respondent(s) Ms. Binu Tamta, Adv.

Ms. Sushma Suri,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

(Rajesh Dham)

(Radha R. Bhatia

Court Master

Court Mast

(signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 280 OF 2003

S.C.SAXENA

Appellant

VERSUS

UNION OF INDIA & ORS
Respondents

O R D E R

This is a case of a recalcitrant Government servant who thinks that leave ought to be granted to him as of right, because the Government, in its magnanimity, has permitted Government servants to accumulate unduly large amount of leave under the Rules.

The appellant was employed as an Upper Division Clerk in the Intelligence Bureau. Between 14th February 1989 to 16th February 1989, he remained absent and claimed that he had telephonically conveyed information to the Section Officer about his inability to attend work on account of illness. By a Memorandum dated 16th/17th February, 1989 the appellant was considered as being unauthorisedly absent from duty and extended

the courtesy of the said Memorandum served by home delivery. As a consequence, the

appellant was issued a warning on 2nd March, 1989 warning him to abstain from taking

leaves frequently and advising him that he should get over the habit of taking leaves

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frequently in future because of which office work suffered. He was also warned that

otherwise disciplinary action would be taken. As expected, the appellant made a

representation against the said warning but his representation came to be ignored.

On 6th July, 1989 the appellant was transferred by an order from the

Headquarters at New Delhi to Subsidiary Intelligence Bureau, Tezpur. A relieving order

was passed on the same day. According to the respondents, the appellant was relieved on

the said day. According to the appellant, however, the relieving order was served on him on

28th July, 1989. Although, the relieving order was treated as being retrospectively effective

from July 6, 1989, nothing really turns on this. The appellant attended work on 7th July,

1989 and 8th and 9th July, 1989 were Saturday and Sunday. He applied for earned leave for

10th and 11th July, 1989. It is the case of the appellant that he fell ill on 11th July, 1989 as a

result of which he could not join the office to which he was transferred at Tezpur. He went

on submitting leave applications supported by medical certificates from Doctors who were

not authorised under the applicable disciplinary Rules. For the entire period from 11th July,

1989 to 20th November, 1990, the appellant remained absent and his only reply was that he

was sick. On 23rd November, 1990, the appellant was served with a charge-sheet alleging

unauthorised absence from duty against him for the entire period. He replied to the said charge-sheet and his only defence was that he was sick and, therefore, he could not report for duty either at Tezpur or at Amritsar where he had been subsequently transferred.

An enquiry was held and by a report dated 25.5.1991, the Enquiry Officer found that "the charge against the appellant that he has been unauthorisedly absenting himself from duty since 07.07.1989 could not be fully substantiated." In coming to this conclusion, the Enquiry Officer also noticed that the appellant had been sanctioned earned leave for

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10th and 11th July, 1989 and he did not agree with the appellant's arguments that he was so serious that he could not even go to Dr. Ram Manohar Lohia Hospital, New Delhi for

medical examination as directed by the competent authority. The Enquiry Officer

specifically noticed that the appellant was fit enough to go to his own Doctors and produced certificates, but was unwilling to produce a certificate from Dr. Ram Manohar Lohia

Hospital about his having been ill and having become fit enough to resume duty. The

medical certificate issued by Dr. Ram Manohar Lohia Hospital stated that the appellant

had "Minimal Osteoarthritic Knee Joint with Inguinal Hernia", but that he was fit enough

to join duty anywhere in India. The disciplinary authority was of the view that the long

absence of the appellant was without excuse and clearly a misconduct under the

disciplinary Rules. In the circumstances, the disciplinary authority, by an order dated 27th

April, 1992, directed that the appellant be visited with the major punishment of compulsory

retirement for the misconduct of unauthorised absence with effect from 07.07.1989 and that

the period of his absence shall be treated as dies non.

The appellant moved the Central Administrative Tribunal (for short 'the Tribunal') by an application impugning the order passed by the disciplinary authority against him. His Original Application No. 2881/1997 was dismissed by the Tribunal by

holding that there was no good reason for interfering with the view taken by the Enquiry

Officer and the order made by the disciplinary authority. The Tribunal noticed that,

despite the tall claim of the appellant that he was sick during the entire period, the Doctors at Dr. Ram Manohar Lohia Hospital had specifically certified that he was fit for duty

anywhere in India. In this view of the matter, the Tribunal dismissed the Original

Application of the appellant. Being aggrieved thereby, the appellant moved the High Court by his Writ Petition and the High Court was pleased to give short shrift to his Writ Petition

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and summarily dismissed it. The appellant is before us hoping for better luck.

We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had

some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty.

The learned counsel for the appellant urged that the appellant had reported for duty on 7th July, 1989 and that he had applied for leave for 10th and 11th July, 1989 and therefore, the Enquiry Officer could not hold him guilty of the misconduct of continuously remaining absent unauthorisedly. It has also been attempted to impress upon us that the Enquiry Officer found the appellant only partly guilty and that, if the disciplinary authority wanted to differ therefrom, he should have followed the Rules, issued notice in this connection and given cogent reasons for his difference of opinion with the Enquiry Officer. We are not impressed by this argument. The Enquiry Officer rightly said that the charge could not be fully established because the evidence showed that between 7th to 11th July, 1989 the appellant could not be said to have remained absent unauthorisedly. Of

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course, there is no doubt that the appellant was absent unauthorisedly for the rest of the period. The Enquiry Officer also took cognizance of this fact and the disciplinary authority noticed it. This is not a situation where the disciplinary authority was disagreeing with the findings of the Enquiry Officer, which would have required following of some procedure prescribed under the Rules. On the contrary, barring five days between 7th to 11th July,

1989, during the rest of the period the appellant was absent unauthorisedly, and the

Enquiry Officer and the disciplinary authority were in agreement thereupon.

A final, if we may say so, desperate, argument was made that the appellant had sufficient leave to his credit and, therefore, the respondents should have taken a liberal

view in the matter and permitted him to resume duty when he attempted to resume in the

year 1992 by sanctioning the leave that was available to his credit. In our view, the

argument cannot be countenanced. Acceding to such an argument by courts, particularly

this Court, has led to and will continue to lead to gross indiscipline in public service. We

are unable to accept such an argument.

We find no reason to interfere with the order made by the Tribunal and the High Court. The appeal is dismissed accordingly without costs, but we make it clear that the

appellant cannot be held guilty of unauthorised absence from 7th to 11th July, 1989.

.....J.

(B.N. SRIKRISHNA)

.....J.

(LOKESHWAR SINGH PANTA)

NEW DELHI;

