

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.577/2002 with MA No.774/2002

New Delhi, this 7th day of June, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)
Hon'ble Shri M.P. Singh, Member(A)

Dr. M.S. Prasad
F-156, Ashirwad Apartments
Dilshad Colony, Delhi-110095 .. Applicant

(Shri D.S.Chaudhary with Ms. S.Chaudhary, Advocates)

versus

Union of India, through

1. Secretary
Department of Health
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi
2. Mr. R. Mohan Kumar
Under Secretary (Vigilance Section)
Ministry of Health & Family Welfare
New Delhi .. Respondents

(Shri V.S.R. Krishna, Advocate)

ORDER

Shri M.P. Singh, Member(A)

Heard the learned counsel for the parties on both OA
as well as MA and considered the pleadings on record.

2. Applicant has challenged the order dated 1.10.2001
whereby the period of his unauthorised absence w.e.f.
7.10.92 till he reported back for duty in India has been
directed to be treated as Dies-non.

3. Admitted facts of the case are that the applicant was
issued a charge-sheet dated 1.8.1996 under Rule 14 of
CCS(CCA) Rules, 1965 to the effect that he, while working
in GTB Hospital, Delhi acted in a manner unbecoming of a
Government servant inasmuch as (i) he had been absenting

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himself unauthorisedly from duty since 7.10.92 and that (ii) during the year 1993 he left the country and accepted foreign assignment with Government of Libya without permission and information of the competent authority in contravention of the provisions of Rule 3.1(ii) & (iii) of CCS(Conduct) Rules, 1964. After conducting enquiry, the inquiry officer concluded that charge (i) was partly proved while charge (ii) was proved. A copy of the inquiry report was sent to the applicant for submitting his representation. He submitted his representation to the Disciplinary Authority. The disciplinary authority took a lenient view to drop the charges against the applicant as the same did not warrant a penalty under CCS(CCA) Rules and passed the impugned order dated 1.10.2001 accordingly.

4. During the course of the arguments, the learned counsel for the applicant has submitted that the Hon'ble Minister of Health & Family Welfare vide his order dated 11.9.2001, on the representation of the applicant dated 1.9.2001, had directed R-1 that the period of applicant's stay abroad ~~may~~ be regularised. However the applicant was shocked to receive the order dated 1.10.2001 treating the period of absence as dies-non. Applicant made another representation to R-1 on 12.11.2001 which has not yet been decided. In view of this position, the order dated 1.10.2001 be set aside and the period of applicant's absence from 7.10.92 till he reported back for duty in India be regularised as ordered by the Hon'ble Minister by way of his order dated 11.9.2001.

sl

OA

5. On the other hand, the learned counsel for the respondents has submitted that the Hon'ble Minister had minuted 'for regularisation of his stay abroad' on 11.9.2001 which was received in Vigilance Section on 3.10.2001 by which time the impugned order dated 1.10.2001 had already been issued. In fact the applicant himself had requested in his representation dated 3.1.93 addressed to R-1 to treat the period of his absence as 'dies-non'. He would submit that even if a penalty had been imposed in this case, the period of absence would still remain to be regularised either by sanction of leave or by treating it as 'dies non'. Having already conducted an enquiry under CCS(CCA) Rules, it was not necessary for the disciplinary authority to issue a fresh notice for treating the period of absence as dies-non.

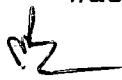
6. The learned counsel for the respondents further submitted that the applicant had not mentioned anything in his representation dated 1.9.2001 about the disciplinary proceedings already initiated against him by the Ministry and a plain reading of the same did not bring out that the applicant had sought early decision on the disciplinary proceedings. Further, the minute of the Hon'ble Minister on applicant's representation to regularise his stay abroad does not mean that the period of his absence from 7.10.92 to 14.11.94 should be treated as deputation abroad on foreign assignment. After all, the period of unauthorised absence is to be regulated in accordance with rules and instructions. Moreover, the proposal to treat the period of absence as 'dies-nnon' has been approved by the Minister of Health & Family Welfare as stated in reply to para 4.4 to 4.7 of the OA⁶.

PL

7. We find force in the contentions of the learned counsel for the respondents and we do agree with the same. The fact remains that the applicant had accepted the foreign assignment without the permission of competent authority. It is also not in dispute that the applicant himself has requested vide his letter dated 3.1.93, to treat the period of his absence as 'dies-non'. That apart, as rightly pointed out by the learned counsel for the respondents, there was no specific orders from the Hon'ble Minister to regularise the period of absence as deputation abroad on foreign assignment. The period of absence has to be regulated in accordance with the rules. The disciplinary authority has already taken a lenient view to drop the charges levelled against the applicant and has rightly ordered to treat the period of unauthorised absence as dies-non in accordance with the Rules on the subject.

7. Therefore, for the reasons recorded above, we find no merit in the present OA and the same deserves to be dismissed. We do so accordingly.

8. By way of MA 774/2002 in OA 577/2002, applicant has submitted that the recommendation of the DPC held in the year 1999 in respect of his promotion to the post of Consultant has been kept under sealed cover and since the charges levelled against him have been dropped, respondents may be directed to open the sealed cover and act upon accordingly. However, respondents in their reply to the MA have stated that the name of applicant was forwarded to UPSC for consideration for SAG posts by



the DPC held on 25.11.99. At that point of time, it was not known that the period of his absence w.e.f. 7.10.92 to 5.12.94 was to be treated as dies non. Since he was not clear from vigilance angle between the period 1992 to 2001 (Upto October, 2001), recommendations in his case were placed in sealed cover. As the period from 7.10.92 to 5.12.94 has been treated as dies non, the applicant became eligible for promotion only on 31.1.97. Hence the recommendations kept in sealed covers by the DPCs held on 25.11.99, 8.11.2000 and 25.10.2001 have no relevance at all.

9. We have considered the aforesaid contentions. In view of the fact that the charges against the applicant have been dropped by the impugned order dated 1.10.2001 and as per respondents' own admission that applicant has become eligible for promotion on 31.1.97, we direct the respondents to open the sealed covers and act upon the same in accordance with law, rules and instructions. MA is disposed of accordingly.

No costs.

M.P. Singh
(M.P. Singh)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman(J)

/gtv/