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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.679/2002

Wednesday, this the 2nd day of June, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S. K. Naik, Member (A)

Shri Tarseem Lal Verma
son of Shri Madan Lal
resident of 7-A, MS Flats, Minto Road
New Delhi-2

..Applicant

(Applicant in person)

Versus

Union of India through

1. Secretary, Ministry of Defence
South Block, New Delhi
2. Joint Secretary (Training) and CAO
Ministry of Defence
Near Sena Bhavan, New Delhi

..Respondents

(By Advocate: Shri Q.F.Rehman for Shri S.M.Arif)

O R D E R (ORAL)

Shri Shanker Raju:-

Heard the applicant in person and learned proxy counsel for respondents.

2. FR 17-A provides that period of an unauthorized absence, in the category of cases mentioned therein, shall be deemed to cause an interruption or break in service of the employees, unless otherwise decided by the competent authority for certain purposes. However, as per DoP&T Office Memorandum dated 20/23.5.1985, before resorting to an action under FR 17-A a reasonable opportunity of representation and hearing should be given to an employee.

3. On the last date of hearing, i.e., on 5.3.2004, the respondents were directed to produce the relevant

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record to show whether any show cause notice was served upon the applicant before the ~~period~~ ^[periods as per the impugned orders in the OA collectively] from April, 1991 to October, 1991 was treated as dies non. Departmental Representative appearing before us has failed to produce the aforesaid record. This is a deemed admission to the fact that no show cause notice was served upon the applicant. An adverse inference is accordingly drawn.

4. In the counter reply filed by the respondents, pertaining to the period mentioned in Annexure A-2 which had been treated as dies non, it is stated that the leave sanctioning authority vide his order dated 20.8.1993 had treated the aforesaid period as dies non. Rule 62 of P&T Manual Volume III is stated to be resorted to.

5. On the other hand, the applicant states that during the aforesaid period, he continued to have worked and is entitled for pay and allowances. According to him, the impugned order has been passed by the incompetent authority as being a Group ^[B] 'X' officer, his competent authority to treat the period as dies non is an Additional Secretary, whereas ~~from~~ the perusal of the impugned order does not indicate the designation of authority who has passed the order. From this conspectus, it is stated that the order is without jurisdiction.

6. Be that as it may, as one of the pleas of violation of natural justice has been raised, as the aforesaid period has been treated as dies non without issuing any show cause notice to the applicant, we partly

Note: [—] The correction carried out as per orders dt. 1.11.04 in M.A. No. 1410/2004 in DA 679/02

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allow the OA and set aside the impugned orders passed by the respondents. The respondents shall follow the due process of law by issuing a show cause notice to the applicant. The applicant shall produce all the material available with him before the respondents to substantiate that he had performed his duty during the period he has been treated as absent. The respondents shall take decision within two months from the date of receipt of an explanation from the applicant. If the respondents decided to treat the aforesaid period as spent on duty, the applicant shall be entitled to pay and allowances. No costs.

S. K. Naik
(S. K. Naik)
Member (A)

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S. Raju
(Shanker Raju)
Member (J)