

(12)

Central Administrative Tribunal
Principal Bench

O.A. No.3308/2002

New Delhi this the 17th day of September, 2003

Hon'ble Shri V.K. Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

S.D. Narang,
Hindi Translator Gr.-I,
Office of DGM, Mausam Bhawan,
Lodi Road, New Delhi-3.

-Applicant

(Applicant Present in person)

Versus

Deputy Director General of
Meteorology(UI), Mausam Bhawan,
Lodi Road, New Delhi-3
Through
Director General of Meteorology,
Office of Director General of Meteorology,
G.O.I.; I.M.D. Mausam Bhawan,
Lodi Road, New Delhi-3.

-Respondents

(By Advocate: Shri M.M. Sudan)

O R D E R

Hon'ble Shri V.K. Majotra, Member (A)

Applicant has been working as Hindi Translator Grade-I in the office of Deputy Director General of Meteorology (Upper Air Instrument) India Meteorological department. Through the present OA, applicant has challenged Annexure A-1 dated 21.7.2001 whereby he has been asked to deposit a sum of Rs.40439/- within 30 days relating to other payments outstanding against him on account of leave availed by him. It is also a notice asking the applicant to show cause why disciplinary action should not be taken against him for drawing monies not due to him.

2. According to the applicant, on his transfer he submitted his joining report on 4.4.94 in the office of Deputy Director General Meteorological,

16

New Delhi. However, despite several communications to the office of Deputy Director General, he did not receive any written orders of posting in a specific section. Till 6.6.2001 he has been waiting for written orders relating to his posting. After a gap of seven years, he submitted another joining report on 6.6.2001 in the office of Director General of Meteorology, New Delhi but no written orders of his posting were issued. While pay bills were prepared and drawn every month from 4.4.94 to 6.6.2001, these salaries were not paid to him. He has sought that the entire period from 4.4.94 to 6.6.2001 should be treated as duty and the recovery made amounting to Rs.40439/- with interest should be refunded to him. He has also asked for costs.

3. On the other hand, respondents have stated that applicant has been working as Hindi Translator Grade-I since August 1987. His request for voluntary retirement was accepted w.e.f. 5.3.2002. He joined DDGM (UI) on transfer from Pune in March 1994. He was issued warning vide OM dated 26.9.97 (Annexure R-5) for misconduct. Despite this warning he filed complaints to the police on 5.1.99 regarding non-payment of salary, which was dismissed on 23.9.2000. His criminal review petition No.10/2000 against order dated 23.9.2000 was also dismissed on 3.9.2001. Respondents have stated that applicant never attended to any Hindi Translation work. He ~~was~~^{has} returned such work with the remarks that no PUC bearing initial of Shri A.B. Lal, Hindi Officer will

b

be considered by applicant because Hindi Officer was illegally recruited. He used unparliamentary language in his OA-1954/2002 against Shri J.S. Arya, Head of Office stating that Shri Arya was an illegally recruited officer. By indulging in this kind of court references he had exhibited scant record for his superior officers (Annexures R-12 and R-13). Respondents have disclosed that applicant has not come with clean hands. He has wilfully concealed that he had sought voluntary retirement under Rule 48-A of CCS (Pension) Rules vide his application dated 23.1.2002 which was accepted w.e.f. 5.3.2002. This voluntary retirement was upheld by the Tribunal in OA-1954/2002 vide order dated 4.12.2002 (Annexure R-31). Applicant had been facing two enquiries for major penalty under Rule 14 of CCS (CCA) Rules when his voluntary retirement was accepted. These cases were dropped. Learned counsel of the respondents pointed out that in OA-1954/2002 he had raised the issue of non-payment of salary, issuance of order of posting in one specific section and unauthorised absence, This OA was dismissed on 4.12.2002. Thus, learned counsel of the respondents stated the present OA is hit by principle of res-judicata. Applicant had raised issues related to his pay by filing MAs in OA-2541/94. The said OA was disposed of on 25.7.2000 with MAs 812, 813, 815, 836 and 1162 of 2000. Applicant had accepted this in his representation dated 2.6.2000 (Annexure R-28). In OA-3022/2002 filed on 5.11.2002 also applicant has raised issues similar to those in the present OA e.g. non-payment of salary, issuance of posting order, duty

11

in terms of FR 9(6) (b), cancellation of all OM's issued to him. In the present OA, applicant has filed false declaration dated 5.11.2002 that he has not previously filed any application or suit regarding the matter in respect of which the present application ~~application~~ has been made. Applicant is also stated to have filed a Writ Petition in High Court on 12.4.2002 raising almost similar grounds. Respondents have stated that applicant has remained unauthorisedly absent for months together from 1999. During this period whenever he attended office he used to attend the office at 1500 hrs. or even late and left the office early. From March 99 to December, 1999 of 10 months he attended the office only for very few days. He has been drawing the full salary from the period March, 99 to December 99. After regularisation of his unauthorised absence by granting EOL, he was asked to deposit the over drawn amount of Rs.40,439/- as per rules. Respondents have also taken the plea that applicant has sought plural remedies in the present OA. Learned counsel of the respondents also stated that the OA is time barred as the applicant is seeking relief to treat the period from 1994 as duty. Annexure R-9 is OM dated 26.2.1999 informing the applicant that he was absenting himself from duty without prior permission/leave applications. He was asked to submit leave applications upto 6.3.99 for various periods from 23.6.98 to 30.12.98, January, 99 and February, 99. Applicant did not receive this reference and returned reference after writing the following remarks thereon on 26.2.99:

lb

"I have not been absenting so question of leave application does not arise. I have been applying for Casual Leaves or R.H. leave wherever applicable. Please do not harass me".

4. Vide Annexure R-10 dated 9.4.2002, various periods from 20.6.2001 to 15.2.2002 have been treated as dies-non for all purposes. Similarly, several periods from 1.10.2001 to 28.2.2002 have been treated as dies-non for all purposes vide Annexure R-10(ii). In Annexure R-14 with reference to his representation dated 20.11.98 made to the Hon'ble Prime Minister, it has been stated as follows:-

"a) He worked in DDGM (UI) office, New Delhi as Hindi Translator Gr.I from 28.3.89 to 31.10.91 and again since 4.4.94 on transfer from the office of DDGM(SI) Pune. He is in the strength of Admn. Section of DDGM(UI) office, New Delhi and he is marking his attendance in the attendance register kept for this section;

b) He remained absent unauthorisedly from 23.6.98 to 3.12.98 and also on different days in Dec. 98 and subsequent months, for which he did not submit leave applications. However, his salary has since been released after regularisation of his absence and also he was paid ad hoc bonus for the year 1997-98 on 23.11.98 and arrears of Ist and IInd instalments of pay, arising due to Vth CPC recommendations, on 19.11.97 and 3.6.98 respectively. It is also found that he had filed a case in CAT New Delhi, through OA No.2541/94 dated 15.2.99, regarding non-disbursement of salary to him, which was dismissed vide order dated 6.8.99".

As per

5. ^{of U₂} Annexure R-15 dated 22.9.2000 the undermentioned periods of unauthorised absence have been treated as EOL not countable towards increment and pension:-

U₂

- "1) E O L w/o M.C. from 9.3.99 to 7.5.99.
- 2) E O L w/o M.C. on 11.5.99
- 3) E O L w/o M.C. from 13.5.99 to 20.5.99
- 4) E O L w/o M.C. from 24.5.99 to 31.12.99"

6. Respondents have stated that as periods from 9.3.99 to 31.12.99 were treated as unauthorised and EOL was granted, salary for the same which had been drawn was recovered. Learned counsel of the respondents drew our attention to Annexure R-16, R-26, which is the attendance roll for the month of April 1994. From this, it is established that applicant joined as Hindi Translator on 4.4.99. He had been marking his presence in attendance register. Vide Annexure R-25 dated 29.1.2003 details of recoveries amounting to Rs.40,439/- have been shown with reference to the period of EOL for which pay had earlier been drawn and paid. Learned counsel of respondents has stated that there is only one Hindi Translator Grade-I in the entire establishment and there is no need to post the Hindi Translator in any specific section. Since his joining in the office of DDGM (UI), he has been posted, working and marking his attendance in the Administrative section as is established by Annexure R-20 dated 13.7.2000.

7. We have carefully considered the rival contentions and also the material available on record.

8. It is clear from the records that applicant has concealed material facts. He had sought voluntary retirement under Rule-48 of CCS (Pension) Rules vide his application dated 23.1.2002. He was

lb

relieved of his duty w.e.f. 5.3.2002 which was upheld vide order dated 4.12.2002 in OA-1954/2002 (Annexure R-31). As a result of his voluntary retirement two disciplinary proceedings against him were dropped. While applicant has stated that he has not filed any cases on the issues taken up in the present OA, it is found that he had raised most of the present issues such as non-payment of salary, issuance of order of posting in one of the specific section, definition of duty in terms of FR 9(6) (b), unauthorised absence etc. In OA-1954/2002 which was dismissed on 4.12.2002 (Annexure R-31), similar issues relating to his pay were raised in OA-2541/94 which was disposed of on 25.7.2000 (Annexure R-28). He has filed another OA-3022/2002 on 5.11.2002 on similar issues. The present OA is certainly hit by principle of res-judicata. Applicant has also sought plural remedies such as non-payment of salaries, withdrawal of recovery of overdrawn amount, non-issuance of posting order, issuance of OM's, duty in terms of FRSR and withdrawal of pay recovery order. Plural remedies are also impermissible under Rule-10 of CAT (Procedure) Rules. Applicant has also asked relief to the effect that period from 1994 be treated as duty. Such a demand is time barred in terms of Section 21 of the Administrative Tribunals Act.

9. While the present OA is not maintainable on the grounds of res-judicata, limitation, plural remedies etc., the OA does not have any merit also. We are in agreement with the respondents that there

h

has been no need to issue posting orders of the applicant. There is one post of Hindi Translator Grade-I who has to cater for official requirements of translation of various sections, his posting in the Administration Section as established by Annexure R-20 cannot be faulted with. He has been marking his attendance in the Administration Section. In case he had any grievance regarding posting in the Administration Section, he could not have waited for such an imaginary posting for several years before seeking redressal in the court.

10. Vide Annexure R-14, it is clear that dispute relating to salary upto December 1998 had been settled on dismissal of his OA-2541/94 vide order dated 6.8.99. Vide Annexure R-15, he had been granted EOL for various periods from 9.3.99 to 31.12.99. While grievance in this regard could have been brought up within limitation that was not done and respondents have not erred in ordering recovery of amounts drawn in respect of the periods for which EOL was granted vide Annexure R-15. It is found that applicant has not challenged Annexure R-15. Thus, there is nothing wrong with ordering recovery of Rs.40,439/- through Annexure A-1 dated 21.7.2001. Annexure A-1 is also a notice requiring the applicant to show cause why disciplinary action should not be taken against him for drawing monies not due to him. Respondents have followed principles of natural justice in asking the applicant to show cause in this regard. Again, there is nothing wrong with this.



(20)

- 9 -

11. Having regard to the facts and circumstances as discussed above, this OA is not maintainable. In addition, there is no merit in the claims made. Accordingly, this OA is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

cc.