

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 553/2002

New Delhi, this the 5th day of February, 2003

Hon'ble Sh. Shanker Raju, Member (J)

Sh. T.B.Tyagi
S/o Late Sh. M.B.Tyagi
R/o 1/3549, Tyagi Colony
Ram Nagar Extension
Loni Road, Shahdara, Delhi.

...Applicant

(By Advocate Sh. Amit Anand)

V E R S U S

1. Govt. of NCT of Delhi
through its Chief Secretary
Delhi Sachivalaya
I.P.Estate, Delhi - 2.

2. The Director of Education
Govt. of NCT of Delhi
Old Sectt.
Delhi.

...Respondents

(By Advocate Sh. Mohit Madan, proxy
for Mrs. Avnish Ahlawat)

O R D E R

By Hon'ble Sh. Shanker Raju, Member (J)

Applicant impugns respondents order dated 18-4-2001 whereby period over stayed with the Govt. of Nigeria from 9-8-79 to 3-8-87 has been treated as qualifying service for pension but has been declined to be treated qualifying for increments. Applicant has sought quashment of this order with directions to the respondents to release increments of the applicant from 1979 to 1987 and accordingly refix the pensionary benefits including accord of consequential benefits.

2. Applicant superannuated on 30-9-2000 as TGT Mathematics. While teaching in Directorate of Education, applicant on tripartite contract between Indian Govt., Nigerian Govt. under Policy of Export and Import of Technology went on assignment on

deputation for three years w.e.f. 9-8-74 on no objection by the Department of Education. As no rules have been framed for conditions of such deputation, applicant joined post on 11-8-74 at Nigeria. He made a request for extension of tenure on 22-3-77 and when he had not received any intimation, he sent a reminder. As the Nigerian Government did not relieve the applicant and in absence of any reply, applicant constitutes this to be no objection of the Indian Government as well as Education Department. No efforts have been made during this interregnum by the respondents to get the applicant relieved.

3. Applicant ultimately was relieved on 30-4-87. After being relieved by the Nigerian Govt. the applicant immediately gave his joining report to the Department of Education but was allowed to join back his duties on 8-3-88 subject to the disciplinary proceedings.

4. Applicant has been proceeded against in two enquiries for unauthorised overstay in Nigeria. Charges had not been proved and he exonerated. Applicant requested to treat this period as on duty for all purposes. Accordingly by an order dated 18-4-2001, period of over stay was condoned. The aforesaid period from 9-8-79 to 3-8-87 has been counted for pension and retiral benefits. Applicant has not been made entitled to earn increments during this period. Later on due to typographical error in the earlier orders condoning the period of overstay, a Corrigendum was issued on 4-5-2001.

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5. Applicant represented against this order seeking condonation of the period and release of increments which has not been responded to, giving rise to the present OA. It is stated that non-relieving of the applicant cannot be attributed to him, as Nigerian Govt. had not relieved him which prevented him from joining back the parent Department, as no rules have been framed for the tripartite agreement.

6. Learned counsel Sh. Amit Anand places reliance on the decision of this Court in N.K. Aggarwal Vs. Lt. Governor of Delhi and Ors. (1989 (9) ATC 816) to contend that if an extension has been applied on foreign assignment and no reply is given and the incumbent fail to join duty back as not relieved by the foreign employer, the penalty imposed for over stay is not tenable. In this backdrop, it is stated that in the aforesaid case, all consequential benefits have been accorded to the petitioner.

7. It is also stated by Sh. Amit that the applicant once proceeded against for overstaying and after having been exonerated, the period has been specifically condoned, is entitled for treatment of this period as spent on duty for all purposes including the increments as it was the duty of the respondents to inform about non-extension of his deputation and to ensure that appropriate measures for relieving of the applicant by Nigerian Government are taken. Once the period has been treated as qualifying for pension and retirement benefits, there is no occasion to treat the same contrary for increments.

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Sh. Amit in his rejoinder reiterated his earlier pleas taken in OA and stated that in similarly circumstance Zaheer Ahmed, PGT who had over stayed on foreign deputation was awarded a lesser punishment and the entire period is treated as spent on duty which smacks of discrimination. It is also stated that during this period, the applicant has contributed towards pensionary benefits. In this backdrop, it is stated that despite his exoneration, the penalty of withholding of increments has been imposed upon him.

8. On the other hand, Sh. Mohit Madan, proxy for Mrs. Avnish Ahlawat, for the respondents strongly rebutted the contentions of the applicant. It is stated that the applicant had over stayed the period of his deputation at Nigeria and accordingly was proceeded against but not punished for overstaya^l. For condonation of this period, matter was referred to the Govt. of India. Although the period of two years of over stay was regularised i.e. from 9-8-77 to 8-8-79 and period from 9-8-79 to 3-3-87 has not been regularised and intimation to this effect has been conveyed by a letter dated 13-11-95. Aforesaid period though treated qualifying service for pensionary benefits but has been constituted a break in service for grant of increments. As the applicant had not served the Department for the period of over stay^{he} and had not contributed anything towards pensionary benefits. Sh. Madan places reliance on a decision of High Court in CWP 2053/2000 in Director of Education Vs. H.C. Sharma to contend that even if a similar benefit is accorded to some other teacher being illegal, de hors the rules would not vest the

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applicant with an indefeasible right to claim the same as the concept of equality enshrined under Rule 14 of the Constitution cannot be enforced in a negative manner.

9. As on merits, it is stated that if the applicant had not received any sanction for further extension, he could have reported back, which he failed to do and on his own, without permission stayed beyond five years, which cannot be regularised as per Rules.

10. I have carefully considered the rival contentions of the parties and perused the material on record.

11. As I find from the record that the proposal to regularise the over stay on deputation has been sent to the Ministry of Human Resource Development by Deptt. of Education. By an order dated 13-11-95, Government has turned down the proposal to regularise the period beyond five years. The aforesaid order dated 13-11-95 resulted in issuance of order dated 18-4-2001. Admittedly applicant in this OA has not assailed order dated 13-11-95. In absence of any challenge to this order and the fact that unless the same is quashed and set aside, the necessary relief cannot be accorded to the applicant.

12. In this view of the matter, as the aforesaid order has not been impugned, the present OA can not be sustained in law and is accordingly

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dismissed. However, keeping in view the interest of justice and in the light of decision of DB in N.K.Aggarwal's case (supra), applicant is at liberty to take appropriate steps[✓] to redress his grievance in accordance with law. No costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

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