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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1416 of 2002

New Delhi, this the 15<sup>th</sup> day of March, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri S.P. Arora  
S/o Shri Ramjit Dass  
R/o 6712/A Navi Karim  
New Delhi-110 055. -APPLICANT  
(By Advocate: Ms. Arati Mahajan, proxy counsel for  
Sh. Abhay N. Dass, Counsel)

Versus

1. The Chief Secretary,  
NCT of Delhi.
2. The Commissioner of Sales Tax,  
Office of the Commissioner of Sales Tax,  
Government of NCT of Delhi,  
Bikrikar Bhavan, I.P. Estate,  
New Delhi-110 002.
3. The Sales Tax Officer,  
Ward No.106,  
Sales Tax Department,  
Bikrikar Bhavan,  
New Delhi.
4. Deputy Secretary (Services),  
Services-II Department,  
Government of NCT of Delhi,  
Delhi Secretariat,  
'A' Wing, 5th Level,  
I.P. Estate,  
New Delhi. -RESPONDENTS  
(By Advocate: Shri Mohit Madan, proxy counsel for  
Mrs. Avnish Ahlawat, Counsel)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

This is a second round of litigation. Earlier the applicant had filed an OA on the allegations that he was transferred from Sales Tax department on 16.11.1989 and was directed to report to Services-II Department who was the controlling authority of the applicant. The applicant has stated that he had reported to the Services-II Department but he was not given any posting. Ultimately the applicant was posted to NCC Department in July, 1999.

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2. The earlier OA was filed by the applicant seeking a direction to the respondents to release payment of salary for the interregnum period. The said OA was decided with the directions to the respondents to decide the period from 16.11.1998 to July, 1999 within a period of 2 months and in case the department finds that the applicant had not reported for duty then the interregnum period be treated as the kind of leave due and the admissible salary as per rules and instructions on the subject be paid to him. In pursuance of the said directions the department passed the order Annexure A-I which is being impugned in the present OA. In the impugned order after narrating the directions given by this Tribunal and other recitals regarding his transfer etc., the respondents in their concluding para of the order found that "in view of the facts that Shri S.P. Arora had not reported for duty in Services Department till 23.7.99 (F/N), necessary orders (regarding treating the interregnum period as kind of leave due etc.) may be passed by the Sales Tax Department in compliance of order of the Hon'ble CAT dated 22.1.2001".

3. The present OA has been filed for quashing of the orders dated 24.5.2001 and 25.4.2001 and consequent order passed by the accounts department dated March, 2002 etc. and a direction has been sought to treat the period as from 16.11.98 to 23.7.99 as period on duty and to grant the applicant his due regular salary for the said period. In the alternative it is also sought that the respondents be directed to conduct an enquiry into the fact whether

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or not the applicant had reported for duty during the period from 16.11.1998 to July, 1999 and only after the enquiry, pass the necessary orders.

4. The applicant still insists that after his relieving from the Sales Tax Department he had been reporting for duty and since the Services-II Department was unable to provide him posting as they were looking to help him to continue in the Sales Tax Department, applicant continue to work in the Sales Tax Department. However, the case of the respondents is that the applicant did not report for duty and continue to remain absent.

5. I have heard the learned counsel for the parties and given my thoughtful consideration.

6. The main contention raised by the learned counsel for the applicant is that the directions given by this Tribunal in the earlier OA, the respondents were under an obligation to conduct a fact finding enquiry and also to provide an opportunity of hearing in the said enquiry to arrive at a conclusion whether the applicant had been reporting for duty for the said period from 16.11.1998 to July, 1999 or not and if only after the enquiry the department had found that the applicant had not reported for duty, then the interregnum period could be treated as the kind of leave due and the admissible salary as per rules and instructions on the subject be paid to him. To support his contention the counsel for the applicant has referred to a judgment reported in 1973 (3) SCC 149 entitled as Shri B.D. Gupta VS. State of Haryana.

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7. Besides that the counsel for the applicant has also referred to various documents annexed at A-11 Colly,, i.e. from page 62 onwards to page 97 which are sort of some notings made on the letterheads of some dealers of the ward as to whether the applicant was posted as Sales Tax Inspectors. According to the applicant's counsel these documents show that even after the relieving the applicant had been working in the ward and had been visiting the dealers so that he should be held to be working and that he was performing his duty.

8. On the contrary, the respondents in their reply pleaded that on the date when the applicant was transferred from Sales Tax Department there was another Inspector Shri D.P. Malik, who was also transferred from the Sales Tax Department by one common order dated 11.11.1998. Both of them were directed to report to Services-II for further posting. Shri Malik reported to Services-II Department and he was given posting immediately thereafter but the applicant did not report at the Services-II Department so he could not be given any posting by the Services-II Department. The applicant absented himself and continued to remain absent upto 23.7.99 when he reported to Services-II Department and vide order dated 6.8.99 the applicant was posted to NCC Department. After the earlier OA was decided by this Tribunal the case of the applicant was duly examined by the Services-II Department and then an order was passed on 24.5.2001 wherein it has been detected that the applicant has not reported for duty in Services-II Department till 23.7.99. So necessary order regarding



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the treating of interregnum period of the leave of the kind due was passed by the Sales Tax Department in compliance of the order of the CAT.

9. This was done by taking the applicant on the strength of the Sales Tax Department for the period from 16.11.1998 to July, 1999 for the purpose of salary only though he has been officially relieved w.e.f. 16.11.1998.

10. It is further submitted that the applicant made a representation for payment of interest on the delayed payment of salary and bonus which representation was duly considered by the respondents and the bonus claimed by the applicant was paid to him on 14.3.2002. Though the claim of payment of interest on the delayed payment, the same was not found admissible and was turned down vide letter dated 14/15.3.2002.

11. I have considered the respective contentions raised by the respective counsel.

12. The only question which requires determination is whether the department was bound to hold the fact findings enquiry after giving an opportunity to the applicant to participate in the enquiry or just after scanning the records they should decide the interregnum period. The learned counsel for the applicant emphasised that the Tribunal while disposing of the earlier OA had directed the respondents to decide the interregnum period and according to the applicant this decision means that this should have been made only after conducting a fact

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finding enquiry giving an opportunity to the applicant to put his case before the authorities before any decision is taken on the interregnum period. I may mention that this contention of the learned counsel for the applicant has no merit because the respondents were supposed to decide about the interregnum period only on the basis of the records available with them. In case there was any other record which may show that the applicant had ever reported for duty to the Services-II department or he had continued to work with the Sales Tax Department only then the respondents could have decided the period as "duty period" failing which as per the directions given given by the Tribunal they were to allow the leave of the kind due for the interregnum period. There were no directions to conduct any regular fact finding enquiry in this regard.

13. The documents placed on record vide Annexure A-11 Colly, pages 62 to 97 do not inspire any confidence. These are only the letter heads procured by the applicant to show that he has been visiting the dealers but the fact remains that he was relieved on 16.11.1998 was very much in his knowledge and after having been relieved on 16.11.1998 he had no business to visit the dealers. If at all he had been visiting under the instructions of the senior officers then what follow up action was taken as the reports made as per Annexure A-11? These documents are not of worth relevance. Thus I find that the Department had rightly followed the directions given by the Tribunal into the earlier OA and on the basis of the

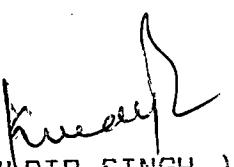


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material available in the office records and have decided the period as mentioned above.

14. The judgment relied upon by the applicant is of no help because it is a case of disciplinary enquiry which has no relevance to this case. Hence, the judgment cited by the applicant has no relevance.

15. In view of the above, OA has no merit and the same is dismissed. No costs.

  
( KULDIP SINGH )  
MEMBER(JUDL)

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