

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/2582/2014

New Delhi, this the 5th day of February, 2020



Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)

Santosh Jaiswal, Personal Assistant
S/o Late Shri K.P. Chaudhary,
R/o 580, Sector-4
Govt. Residential Colony,
Type-II, Timarpur,
Delhi-54

...Applicant

(Through Shri Sachin Chauhan, Advocate)

Versus

1. Union of India through
The Secretary,
Ministry of Development of North Eastern Region,
Govt. of India
Vigyan Bhawan Annexe
Maula Azad Road,
New Delhi
2. The Joint Secretary (Admn)
Ministry of DONER
Vigyan Bhawan Annexe
New Delhi
3. The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-1
4. The Deputy Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-1

... Respondents

(Through Shri Satish Kumar, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman



The applicant was appointed as Steno Grade `D' in the Ministry of Home Affairs (MHA) on 2.06.1998. Thereafter, he was promoted to the post of Steno Grade `C' in the year 2011. On 1.07.2011, he was transferred and posted in the Ministry of Development of North Eastern Region (DONER).

2. The applicant states that he remained absent between 3rd and 12th October, 2012 and, in the meanwhile, he was surrendered to the MHA through order dated 11.10.2012. It is also stated that when the applicant reported for duty on 14.10.2012 in the MHA, he was not allowed and on the next day itself, he came back to DONER to give his joining report.

3. On 1.07.2013, the applicant was issued a memo requiring him to explain as to why the period between 15.10.2012 and 18.03.2013 be not treated as unauthorized absence and disciplinary proceedings be not initiated. Another Show Cause Notice was issued with reference to the period of absence between 19.03.2013 and 8.07.2013. The applicant submitted his representation and not satisfied with that, the concerned authority passed an order dated 31.12.2013 directing that the period between 15.10.2012 and 8.07.2013 will be treated as "Dies-Non". The applicant filed this OA challenging memo dated 1.07.2013 and

consequential orders dated 18.09.2013 and 31.12.2013. He contends that for no fault of him, a substantial period of his service has been treated as “Dies-Non” and there was no basis for taking that step.



4. On behalf of respondents, a detailed counter affidavit is filed. It is stated that the applicant is a habitual absentee and vexed with his conduct, DONER surrendered him to MHA. It is further stated that instead of reporting to the concerned ministry, he remained unauthorizedly absent and made an attempt to give an impression that he was serious enough to join duty. The respondents contend that the impugned order was passed strictly in accordance with law.

5. We heard Shri Sachin Chauhan, for the applicant and Shri Satish Kumar, for the respondents.

6. The applicant was initially appointed in the MHA but was later on transferred to DONER. When he was on leave between 3rd and 12th October, 2012, DONER surrendered him to the MHA. Though the applicant contends that the MHA refused to take him on duty and soon thereafter he reported to DONER, the record is not clear about it. After the memo dated 1.07.2013 was issued, the applicant approached this Tribunal by filing OA No.1484/2013. On the basis of an interim order passed on 4.07.2013, he is stated to have been taken on duty on 7.07.2013. For reasons best known to him, the applicant has withdrawn

that OA. Though the orders which are impugned in this OA were very much in existence in the year 2014, the applicant withdrew OA 1484/2013 and filed the present OA.



7. We have gone through the entire record and noted that both the ministries have virtually treated the applicant as an undesirable person. On his part, the applicant took advantage of this and remained unauthorizedly absent for the spells referred to above. The decision taken by the respondents to treat the two spells of period as "Dies-Non" could have certainly been upheld but for the fact that, it appears to be result of disharmony between the two ministries. This is evident from the observation made by the MHA in their letter dated 27.05.013. The relevant portion reads as under:

"The undersigned is directed to refer to the representation of Sh. Santosh Jaiswal, Adhoc PA of CSSS Cadre of MHA, presently working in M/DONER (copy enclosed for ready reference), and to say that the prayer of Sh. Jaiswal may please be settled by M/DONER. It is once again made clear that Sh. Jaiswal is presently working in M/DONER and the request of M/DONER for his surrender has never been accepted. M/DONER has recently provided vigilance clearance in respect of him for the DPC conducted a couple of day before, where the representative of M/DONER had participated and recommended inclusion of his name in the Select List of PAs for the year 2011, being finalized by DOPT. It is also noted that Sh. Jaiswal has all along on the rolls of M/DONER, who has issued a 'Memo' and 'Advisory' to Sh. Jaiswal in months of December 2012 and January 2013 respectively, including his vigilance clearance in April, 2013. It is also noted that the language written in the M/DONER's O.M. dated 14th May, 2013 that "Sh. Jaiswal is presently not on the rolls of this Ministry" under the signature of Sh. R. K. Das, Under Secretary is very disturbing to the Cadre Controlling Authority, i.e., MHA."



8. In this scenario, it cannot be stated that the failure of the applicant to report for duty was solely on account of any negligence on his part. Be that as it may, the record does not disclose that the applicant made a representation when he was not permitted to join duty. Since he remained unauthorizedly absent and was taken on duty in compliance of the orders of the Tribunal, we are of the view that the period can be treated as the one of leave which the applicant is otherwise eligible or the one without pay, depending on the facts. The direction to treat the period as “Dies-Non” is set aside. O.A. is disposed of accordingly. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/dkm/