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Central Administrative Tribunal, Principal Bench

Original Application No. 1661 of 2001

New Delhi, this the 5th day of August, 2002

**Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. S.A.T. Rizvi, Member (A)**

Shri P.C. Mittal
H-12, Ashok Vihar, Phase-I
New Delhi-52

Retired P.G.T.
Directorate of Education
Govt. of N.C.T. of Delhi

.... **Applicant**

(By Advocate: Shri M.K. Gupta)

Versus

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

2. The Director of Education
Govt. of N.C.T. of Delhi
Old Secretariat
Delhi

3. Union of India
through its Secretary
Ministry of Human Resource Development
Department of Secondary & Higher Education
Shastri Bhawan
New Delhi-1

.... **Respondents**

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

O R D E R (ORAL)

By Mr. S.A.T. Rizvi, Member (A)

The applicant who was a PGT in the Govt. Higher Secondary School, Rajouri Garden, New Delhi proceeded on deputation to Nigeria on the basis of respondents' order dated 9.4.71. The period of deputation indicated in the order was two years extendable to three years. The applicant's period of deputation was, however, not extended. Despite this, the applicant remained unauthorisedly absent and finally joined his duties in the Directorate of Education on 11.1.85. Disciplinary



proceedings were initiated against him under Rule 14 of the CCS (CCA) Rules, 1965 on the charge of unauthorised absence from duty for imposition of a major penalty. Meanwhile the applicant retired from service on reaching the age of superannuation on 31.8.94. The disciplinary proceedings were continued in terms of Rule 9 of the CCS (Pension) Rules, 1972. By an order issued on 28.11.2000 (Annexure A-6), the respondents disposed of the aforesaid proceedings by treating them as closed. This is what the aforesaid order has provided in this regard:

"Whereas, the U.P.S.C. examined the entire case in the light of relevant Rules and Instructions advised the Govt. of India that it would be inappropriate to impose any penalty on Sh.P.C.Mittal, P.G.T.(Retired), which has been communicated by Govt. of India, Ministry of Human Resources Development vide letter no.F.No.5-29/99-UT-1 dt.15/16 November 2000.

Accordingly, the case of Sh.P.C.Mittal, P.G.T.(Retd.) stands disposed off and is hereby closed."

Notwithstanding the aforesaid order, the respondents have by the impugned letter dated 8.5.2001 (Annexure A-1), treated the period of unauthorised absence from 12.4.71 to 10.1.85 as dies-non by holding that there is no propriety in condoning the break in service under Rule 27 of the CCS (Pension) Rules based on the records available in the Ministry.

2. The learned counsel appearing on behalf of the respondents submits that treatment of the aforesaid period of unauthorised absence as dies-non does not amount to imposition of a penalty and, therefore, no fault can be

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found with the impugned letter dated 8.5.2001 (Annexure A-1).

3. The learned counsel appearing on behalf of the applicant, on the other hand, submits that having regard to the orders passed by the respondents themselves on 28.11.2000 (Annexure A-6) by which the disciplinary proceedings conducted against the applicant were closed, the respondents could not issue the impugned letter which evidently carries civil consequences and, therefore, would appear to be in the nature of a punishment order. The learned counsel has also drawn our attention to provisions of F.R.17-A to contend that based on the DOP&T's O.M. dated 20/23.5.85 reproduced below, the aforesaid F.R. as Govt. of India's order no.1, the respondents were under an obligation to issue a show-cause notice before treating the aforesaid period of unauthorised absence as dies-non.

"Government of India's Orders

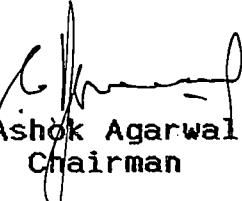
(1) **Reasonable opportunity to be given before invoking the penal provisions** - FR 17-A provides that a period of an unauthorised absence, in the category of cases mentioned therein, shall be deemed to cause an interruption or break in the service of the employees, unless otherwise decided by the competent authority for certain purposes. An order passed by the P & T authorities in the case of some of their employees, involving FR 17-A was struck down by the Lucknow Bench of Allahabad High Court on the ground that issue of such an order without giving a reasonable opportunity of representation and being heard in person, if so desired, to the person concerned, would be against the principle of natural justice. The question of amending FR 17-A as also Rule 28 of the CCS (Pension) Rules and SR 200 is under consideration in consultation with the Ministry of Law.

2. The above position is brought to the notice of all Ministries/Departments so that if

there are occasions for invoking FR 17-A, etc., they may keep in mind the procedural requirement that an order under FR 17-A, etc., should be preceded by extending to the person concerned a reasonable opportunity of representation and being heard in person if so desired by him/her."

4. On a proper consideration of the rival contentions raised, we find force in the plea advanced by the learned counsel for the applicant and conclude that the impugned letter dated 8.5.2001 (Annexure A-1) is bad as the same has been issued without giving an opportunity to the applicant to state his case. The aforesaid letter dated 8.5.2001 (Annexure A-1) is, therefore, quashed and set aside with liberty to the respondents to issue a show-cause notice to the applicant and thereafter on the basis of the representation to be filed by him, and if required, after giving him a personal hearing, pass a detailed, speaking and a reasoned order expeditiously and in any event within a period of three months from the date of receipt of a copy of this order. We direct accordingly. O.A. is disposed of in the aforesated terms.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

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