

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2863/2001

New Delhi this the 13<sup>th</sup> day of March, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Badri Dutt Prohit,  
working as Group "C" Technical Staff,  
in the office of Sports Authority of  
India, Dr. Karvi Singh Shooting Range,  
Tuglakabad,  
New Delhi. -Applicant

(By Advocate Shri K.K. Patel)

-Versus-

1. Director General,  
Sports Authority of India,  
Jawahar Lal Nehru Stadium,  
Lodhi Road,  
New Delhi-110003.

2. Assistant Director (Personal),  
Sports Authority of India,  
Jawahar Lal Nehru Stadium,  
Lodhi Road,  
New Delhi-110003.

-Respondents

(By Advocate Sh. Rajender Khatter, proxy for Sh. Arun Bhardwaj)  
Counsel)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 5.4.99 wherein his absence period from 30.7.96 to 2.11.98 has been treated as not spent on duty and recovery has been ordered for the salary drawn but the same has not been treated as break in service. He has sought quashment of the same with direction to pay the recovered amount back with interest.

2. Applicant who was working as groundsman as group "D" employee, was issued a show cause notice on 18.2.99 to treat the period of absence from 30.7.96 to 2.11.98 as not spent on duty. As applicant has failed to

produce any proof as to his presence on duty and performance of duty the aforesaid period has been treated as unauthorized absence and the pay and allowances already paid to him are sought to be recovered. He was again issued a show cause notice on 18.2.99 and thereafter the impugned order dated 5.4.99 has been passed.

3. Applicant proceeded on casual leave on 21.7.96 to 29.7.96 and had failed to re-join duty at Jawahar Lal Nehru Stadium under the charge of Administrator Stadia. Though under the impression that he has reported for duty and working at National Stadium pay and allowances have been paid to him. However, in the month of August, 1998 on discovery that applicant had neither worked in Jawahar Lal Nehru Stadium and was absent from duty his salary was stopped and on his representation as he failed to produce any credible record of his presence and he was found making false statement as from the attendance register it did not transpire that he has worked for the aforesaid period. Merely because he has applied for Festival Advance does not indicate that he was performing duty at the place of work and on enquiry from the then Administrator Mukesh Kumar it reveals that applicant had not worked. Accordingly advance and LTC which have been inadvertently paid have been recovered.

4. Learned counsel for applicant Sh. K.K. Patel contended that the action of the respondents is arbitrary, mala fide and is violative of Articles 14, 15, 16 and 21 of the Constitution of India. As applicant was present but at the instance of certain officials he has been harassed. It is contended that on meeting Sh. K.N. Sharma, Administrator of Stadia it has been apprised that

no record of attendance of applicant since March, 1996 is available, whereas he has been working since March, 19<sup>th</sup> 96 at Stadia under Mukesh Kumar, Administrator and was not allowed to mark his presence for 20 days. He was transferred to Management Department. It is stated that during this interregnum he has been paid his LTC advance on Holi and given salary and uniform charges which clearly shows that he had<sup>h</sup> worked and was present on duty. He has also sought production of the attendance register to prove his presence.

5. On the other hand, respondents counsel vehemently rebutted the contentions and produced the record and stated that as per FR 17 as applicant was unauthorizedly absent from duty after accord of sufficient opportunity to show cause period has been treated as dies non which deprives applicant of his salary for the period and as he has been erroneously paid pay and allowances the same have been recovered which does not suffer from any legal infirmity.

6. By producing record it is stated that applicant on availing the casual leave and on his transfer has never reported to the Stadia, as such he was relieved in May, 1996 to report to DDI, JNS, where he has never reported and his attendance has not been marked which is mandatory for all the employees. In absence of this and despite opportunity in pursuance of a show cause notice having failed to produce any documentary evidence mere grant of advance would not be sufficient to draw a presumption that he was working. It is contended that any

mistake on the part of Government or erroneous action can be corrected and while doing so principles of natural justice have been observed.

7. I have carefully considered the rival contentions of the parties and perused the material on record. Mere grant of LTC advance as well as pay and allowances would not be sufficient to conclude that applicant had worked whereas from the documents on record it clearly transpires that applicant who after availing leave has been transferred but he has stopped coming and also not marked his attendance, which is compulsory for all the lower staff in Group 'D' and to this effect a certificate of Mukesh Kumar, Deputy Director, the then Administrator clinches the issue. Moreover, under FR 17 period of absence has been treated as dies non ~~unconsonance with~~ <sup>in</sup> ~~unconsonance with~~ the principles of natural justice.

8. Merely because applicant has applied for Festival Advance in March, 1997 would not indicate that he has performed his duty at any place of work. Enquiry from Administrator clearly reveals that the employee was not working with the Administrator during the period of absence. Moreover, when applicant has been asked to provide any proof of duty, as the onus lies on him he has the responsibility to mark his presence in the attendance register but as the same is not marked applicant cannot take advantage of his own wrong. As applicant has absented himself, he is not entitled to get salary for the aforesaid period which has been rightly recovered from him. He has

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not produced any iota of evidence in the form of documents from controlling authority to show his presence and performance of duty.

9. Accordingly, I am satisfied from the perusal of the record that applicant has not marked his presence and has not reported for duty as directed to him and has remained unauthorisedly absent. Though erroneously he has been paid allowances which the respondents have recovered. Merely because no disciplinary proceedings have been held would not lessen the gravity of his misdemeanour which is an unauthorized absence on his part which has been dealt with in accordance with law.

10. In the result OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)  
Member (J)

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