

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

R.A. No.29 of 1996
in
C.C.P.No.266 of 1995
in
O.A. No. 1666 of 1994

9

New Delhi, dated the 29th Feb., 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Rakesh Kumar,
S/o late Shri Chandra Prakash,
R/o M-3, Jangpura Extn.,
New Delhi.REVIEW APPLICANT

VERSUS

1. Shri Yogesh Chandra,
Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhawan,
New Delhi-110003.RESPONDENTS

ORDER (By Circulation)

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

We have perused the R.A. bearing
No.29 of 1996.

2. The applicant had initially filed
O.A. 1666/94 seeking direction that the
position of the rule quoted in Director
General, Civil Aviation's O.M. dated 17.12.93
is wrong and illegal, and the DGCA is
competent to grant the study leave in as much
as they are competent to grant Earned Leave.
The applicant had sought a direction for a
decision to grant the study leave and

10

sponsorship, and not on interpretation of leave rules mentioned in their O.M. dated 17.12.93. He further sought a direction to forward the memorial to the President of India in case the Respondents could not grant the study leave on merits.

3. After hearing both sides the said O.A. was disposed of by judgment dated 2.12.94, in which inter alia it was observed that when the applicant was a permanent employee of the DGCA and had been welcomed back by the deptt. since he had opted out from absorption in National Airports Authority of India, he could not be termed a temporary employee. The applicant was still discharging his duties in the DGCA and had been assigned certain work of inspection of airports. However, no employee had a vested right for grant of study leave, because in study leave certain benefits were granted to the employee which were not available, if he joined the study course by availing of leave of the kind due or leave without due. It was noted that the dept. had considered the case of the applicant sympathetically taking into account the course the employee intends to join and accordingly the O.A. was disposed of with the following directions:

" The original application is disposed of with the direction to the respondents after quashing the order dated 19.7.94 that memorial addressed by the applicant to the President of India be placed before the competent authority and the competent authority shall scrutinise the order dated 17.12.93 and will pass necessary speaking order according to rules. If the applicant still feels aggrieved, he shall be free to assail his grievance according to law."

4. Thereupon the Resp. in implementation of the said judgment ordered the O.M. dated 14.9.95 containing the extracts of the Secretary (M/o Civil Aviation) decision rejecting the applicant's prayer for study leave. In that decision it was noted that the grant of study leave was not a matter of right for any Govt. servant and was at the discretion of the competent authority, keeping in mind the nature of the assignment of the employee, the relationship between the proposed course of study and his work, the exigency of the work of the dept., and the effect that the leave would have on the functioning of the administration. It was noted that since the applicant was on the roll of Surplus Cell and was in the process of re-deployment, the grant of study leave to him was not considered in the public interest as the process of re-deployment would be affected if he was granted such kind of long leave. Moreover, it could not be said with certainty as to which dept. he would be adjusted and what would be the nature of his duties in which the proposed course of study leave would be useful. The proposed course

27

was not useful in the present assignment.

5. Against that the applicant filed CCP-266/95 in which he alleged that

(i) the Secretary had himself disposed of the applicant's memorial even though he was not the authority to decide on such memorial as per rules on the subject; and

(ii) that the applicant had been illegally treated as surplus officer without proper orders for more than six years and his prayer for study leave had been rejected on the ground that he was likely to be redeployed and that the redeployment had not taken place even after six years.

6. The CCP was dismissed by order dated 19.12.95, in which it was observed that the memorial to the President was disposed of in terms of the rules of transaction of business and under those rules, the Secretary was empowered to dispose of the memorial.

7. This R.A. has now been filed seeking review of the order dated 19.12.95 in CCP-266/95 on the ground that the Secretary's decision while disposing of the memorial did not discuss as to how and under what orders the applicant was declared surplus; and how and under what rule he was temporarily attached to the Civil Aviation

A

(3)

Ministry for more than six years; and how, if the Secretary was not competent to sanction the study leave as per rule 53 (2) CCS (Leave) Rules, 1972 he could refuse the same, who was the authority competent to sanction the same. It is, therefore, alleged that cause of contempt still persists as he had not passed a speaking order clarifying issues raised as directed in the judgment of the Tribunal.

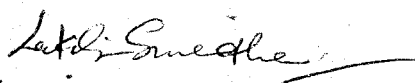
8. We have heard the applicant and considered the matter in detail.

9. In the background of Section 22(3)(f) AT Act, the decision of the Tribunal is open to review only if it comes within the scope and ambit of the Order 47 Rule 1 C.P.C. A perusal of the contents of the impugned order dated 19.12.95 makes abundantly clear that none of the ingredients contained therein bring it within the scope and ambit of Order 47 Rule 1 CPC, in as much as there is no error in that order which is apparent on the face of the record; nor has ^{there} been any discovery of any new material which was not available ^{at} within the knowledge of the party, or could not be produced by him at the time the order was passed, despite due diligence; ~~and~~ or for that matter, for any sufficient reason construed to mean analogous ~~to~~ reasons.

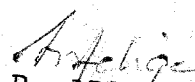
14

10. What in substance the Tribunal had directed to respondents to do by its judgment dated 2.12.94 was to consider the applicant's prayer for study leave after scrutinising the orders dated 17.12.93 and to pass a speaking order thereon in accordance with Rules. The Secretary's order is undoubtedly a speaking order and there is nothing to indicate that the earlier order dated 17.12.93 was not before him when he passed his order. If the applicant has any grievance in regard to his being treated as a surplus officer, in the DGCA, it is open to him to agitate the same through appropriate proceeding separately in accordance with law if so advised, in the event that he has not already agitated the matter. In fact that leave has specially been made available to the applicant in the operative portion of the judgment dated 2.12.94 itself.

11. We therefore hold that the order dated 19.12.95 in CCP-266/95 warrants no review and the RA-29/96 is therefore dismissed.


(LAKSHMI SWAMINATHAN)
Member (J)

/GK/


(S.R. ADIGE)
Member (A)