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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.256/1995

New Delhi this the 8th day of November, 1995.

HON'BLE MR.B.K.SINGH, MEMBER(A)

Shri H.L.Singh
S/o Sh.P.Singh
R/o 73, Sector-I
R.K.Puram
New Delhi

Applicant

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(By Advocate Shri M.A.Chinnaswamy)

vs.

1. Director of Education
N.C.T.Delhi
Old Secretariat
Delhi-54
2. The Administrative Officer(GOC-I)
Directorate of Education
Gazetted Officers' Cell
Old Secretariat, Delhi.
3. Dy.Education Officer, Zone,
S.XVIII, Defence Colony,
Delhi.
4. Shri M.L.Rakheja
Vice-Principal
Govt.Boys Sr.Secondary School
'A' Block, Defence Colony,
Delhi.

Respondents

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(By Shri Ajesh Luthra, proxy counsel for
Ms.Jyotsna Kaushik, counsel for the respondents)

ORDER

This application is directed against Order No.FEO/Z-S/18/94/908 dated 14.7.1994 which is a communication to the applicant from Deputy Education Officer, Zone SW-18, Distt. South, Defence Colony, New Delhi directing him to apply for leave as admissible to him for the period from 25.5.1993 to 6.9.1993. This is in continuation of previous letters on the subject. Reliefs prayed for in the OA are these:-

- (a) to issue appropriate direction declaring that the decision of the Respondents Nos.1 to 3 as contained in impugned letter dated 14.7.94 and letter No.F.9(2)/94-Edn/GOC dated 18.7.94 by which a direction has been sought to be issued

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to the applicant to submit his leave applications for the period from 25.5.93 to 6.9.93 immediately failing which the abovesaid period was directed to be treated as unauthorised absence and for taking action as per provision of the Rules as illegal, arbitrary, discriminatory and violative of Articles 14,16 & 21 of the Constitution of India;

(b) to issue a direction to Respondent Nos.1 to 3 to release the salary of the applicant from the month of June,93 onwards with interest @ 18% p.a.

(c) to direct Respondent Nos.1 to 3 to pay costs of the present proceedings undertaken by the applicant.

2. As an interim measure, the applicant was allowed a sum of Rs.10,000/- as withheld salary to be adjusted after the matter is finally settled. This amount has since been paid to him by the respondents as per directions of the court.

3. On notice, the respondents filed a reply contesting the application and grant of reliefs prayed for. Heard the learned counsel for the parties, perused the records of the case and the attendance registers produced by the respondents.

4. After going through the pleadings on record and the submissions made by the parties and after a careful perusal of the attendance registers for Defence Colony school and T.V.School produced by the respondents, it is clear that the applicant attended G.B.S.S.School 'A', Defence Colony till 18.5.1993. He did not sign the attendance registers from 19.5.1993 onwards. The school was also closed for summer vacation with effect from 19.5.1993. He was transferred from this school to T.V.school and was relieved as per orders of the D.D.E(S) with

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effect from 24.5.1993 and Shri M.L.Rakheja, respondent No.4 was declared as Head of Office immediately. Annexure R-1A enclosed with the counter-reply establishes this fact. The attendance register disproves the contention of the applicant that he continued to work in the G.B.S.S.School, Defence Colony, New Delhi even after the transfer. This is not borne out by the attendance register. The plea that he was not allowed to sign the register by Shri M.L.Rakheja, Vice-Principal, who had been declared as Head of Office by DDE(S) cannot be accepted in view of the conflicting statements made by him in the OA and the rejoinder filed by him. Annexure R-2 with the reply states that Shri M.L.Rakheja after assuming charge of the Head of Office with effect from 24.5.93 sent a letter dated 7.6.93 to the applicant which was not received by him. A perusal of the record also shows that the Last Pay Certificate was issued to DDO,TV School showing the salary of the applicant as having been paid till 31.5.1993. Subsequently the order of transfer dated 24.5.93 to TV School was cancelled and he was transferred to G.B.S.S.Noor Nagar vide Additional Director of Education(Admn)'order No.DE-6.9(2)/92-Edn./GOC/1601 dated 6.9.1993. The applicant, as is revealed by the record, joined the said school on 8.9.1993 without bothering to send any intimation or taking any relieving order from the authorities concerned. During the period from 19.5.1993 till 7.9.1993, he had neither attended G.B.S.S.School, Defence Colony nor did he attend his duties as Principal of TV. School where he had been transferred by the order dated 24.5.1993. He had filed a representation against his transfer to TV School and during the

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entire intervening period, he neither attended to his duties in G.B.S.S.School, Defence Colony nor in TV. School. It is also admitted by both the parties that the applicant had been paid his salary till 31.5.1993 although he had been transferred with effect from 24.5.93 and he had signed the register with Defence Colony School till 18.5.1993.


5. The dispute relates to the period from 1.6.93 to 7.9.93. He was not on duty in any of the two schools either in Defence Colony or in TV branch school. If his contention that he attended the school in Defence Colony is accepted, the attendace register would not have shown ^{him} as absent from 19.5.93 onwards. The averment in the rejoinder that he was not allowed to perform his duties by Shri Rakheja cannot be accepted since he did not file any complaint to any of the higher authorities that he is not being allowed to perform his duties in that school. There is no representation and there is no complaint about it and, therefore, this contention cannot be accepted. It is a bald statement without any supporting evidence. The learned counsel for the respondents vehemently argued that the applicant was busy in manoeuvring and manipulating the cancellation of his transfer order dated 24.5.93 and did not care to go to either Defence Colony school or to TV school and when he succeeded in getting that order cancelled on 6.9.1993 without receiving any orders relieving or taking over from the superior authorities he went and joined Noor Nagar school on 8.9.93 as per the Additional Director of Education's order dated 6.9.1993. Thus the fact remains that he was not on duty with effect from 1.6.93 till 7.9.93. As a matter of fact, he was not on duty from 19.5.93 . Although the schools

are closed for summer vacation but the Principals are atleast required to remain functional and attend to matters of urgent nature since the declaration of results of the CBSE and ICSE take place during this period and the admissions are also made during this period. It is clear that he wilfully defied the transfer order from Defence Colony school dated 24.5.93 and did not join the TV school on the plea of having filed a representation against his transfer. He succeeded only on 6.9.93 when the previous order of transfer to TV school was cancelled and he was transferred to Noor Nagar and he joined his new place of posting on 8.9.93. The presumption is, therefore, that he did not comply with the order of transfer dated 24.5.93 and this transfer remained in existence till it was cancelled on 6.9.93 and he remained absent and did not comply with the previous order which remained valid and legal till it was cancelled on 6.9.1993. Thus the period of absence from 1.6.1993 to 7.9.1993 is an unauthorised absence unless the same is regularised against any kind of leave due to him. He exposed himself to disciplinary action by not complying with the order dated 24.5.93 since he remained absent from 19.5.93 till he joined his new place of posting at Noor Nagar on 8.9.93. He cannot be treated as on compulsory waiting since he did not go to attend his duties in Defence Colony school nor did he go to TV school to attend to his duties. It is a bald statement that he was not allowed to join his duties and cannot be accepted for want of any evidence. If the representation would have been rejected, he could have been charged of wilful defiance of

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orders and he would have exposed himself to disciplinary action. Since the representation was accepted, the disputed period will have to be treated against any kind of leave due to the applicant. He cannot be treated as on compulsory waiting or as on duty. If he does not apply for leave due to him, the period will have to be treated as unauthorised absence or declared as dies non.

6. In the event, the OA fails and is dismissed but without any order as to costs.


(B.K.SINGH)
MEMBER(A)

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