

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.586/94

NEW DELHI THIS THE 12 TH DAY OF SEPTEMBER, 1994.
MR.JUSTICE S.K.DHAON, ACTING CHAIRMAN
MR.B.N.DHOUNDIYAL, MEMBER(A)

S.J.Ravivarma
Art Designer
Weavers Service Centre
Bharat Nagar(Ashok Vihar)
Delhi-110052. ... APPLICANT

APPLICANT IN PERSON.

vs.

1. Union of India through
Development Commissioner of Handlooms
Udyog Bhawan
New Delhi.
2. The Director(Zonal) Cum-Officer-in-Charge
Weavers Service Centre
Bharat Nagar(Ashok Vihar)
Delhi-110052. ... RESPONDENTS

BY ADVOCATE SHRI M.K.GUPTA.

ORDER(ORAL)

JUSTICE S.K.DHAON:

Affidavits have been exchanged between the parties. This application though not formally admitted as yet, we have heard the same with a view to dispose it off finally and we are doing so.

2. The undisputed facts are these. On or before May, 1984, the applicant was appointed as an Art Designer and transferred from Delhi to Chamoli. On 8.8.1984, the order of transfer was modified to the effect that he was required to join at Bhagalpur instead of at Chamoli. On 16.8.1994, he was relieved from Delhi. He instituted Suit No.876/84 in the court of Sub Judge 1st Class Delhi. On 21.12.1984, an interim order of "status quo" was passed ~~in~~ that suit. On 16.8.1985, an injunction was issued to the defendants in the suit restraining them from transferring the applicant from Delhi to Bhagalpur. Immediately thereafter, the applicant

was reinstated in service and allowed to join at Delhi. Upon the coming into existence of the Administrative Tribunals Act, 1985, the suit was transferred to this Tribunal and was registered as TA No.608/86. On 24.2.1992, the Transferred Application was dismissed meaning thereby that the suit was dismissed. The application given by applicant for being granted leave from 17.8.1984 to 16.9.1985 (he actually joined on 18.9.1985) had been rejected.

3. The following prayers, as material, have been made in this OA:

- (a) the respondents may be directed to pay the forfeited increments for the years 1985, 1988, 1989, 1990, 1991 and 1993 and the difference alongwith DA and interest at GPF rate.
- (b) a direction may be issued to the respondents to pay to the applicant, the salary for 13 months for the period from 16.8.1984 to 17.9.1985 alongwith interest at the GPF rate.

4. The learned counsel for the respondents has stated at the Bar that the applicant has been given the increments as permissible under the law from 18.9.1985 onwards. Of course, this has been done after taking into account the fact that the applicant remained out of service from 17.8.1984 to 17.9.1985.

5. The short question to be considered by us is whether the applicant is entitled to the increments which he would have earned but for the interruption of his service from 17.8.1984 to 17.9.1985. We have considered Fundamental Rules 24 and 26 and we find that the said Rules do not throw any light upon the controversy before us. However, Rule 27 of the Central Civil Services (Pension)

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Rules, 1972 provides a clue to the answer to be given by us. The said rule deals with the effect of interruption in service. According to it, in a normal situation, an interruption in the service of a Government servant entails forfeiture of his past service. Certain exceptions have been given to this rule one of them being authorised leave of absence.

6. It appears to be an admitted position that the applicant remained on unauthorised leave from 17.8.1984 to 17.9.1985.

7. In Swamy's Compilation of Central Civil Services Pension Rules, a decision of the Government of India, is recorded at page 62. This is a decision taken on the basis of the Comptroller and Auditor General's U.O.No.1947-A/438-58, dated the 12th September, 1958, in Government of India's Ministry of Finance File No.11-(52),EV/58. This decision, *inter-alia*, is that wilful absence from duty, even though not covered by grant of leave does not entail loss of lien. The period of absence not covered by grant of leave shall have to be treated as "dies non" for all purposes, viz, increment, leave and pension. Thus, it is clear that the absence from duty without any leave is dealt with specifically under the aforesaid decision. The consequence of "dies non" so far as material to the present controversy is that an employee who is treated as "dies non" is not entitled to an increment during the aforesaid period. A somewhat similar inference can be drawn from a perusal of Rule 25 of the Central Civil Services(Leave)Rules, 1972 which deals with the absence after expiry of leave. The audit instruction based on para 6(iii), Chapter IV, Section I of Manual of Audit Instructions printed

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on page 26 of Swamy's Compilation of F.R.S.R.-Part-III Central Services Leave Rules has relevance and may be read. It provides that the period of overstay of leave does not count for increments in a time-scale unless under F.R.85(b), it is commuted into extraordinary leave and under the proviso to F.R.26(b) the extraordinary leave is specially allowed to count for increment. Surely, a case of overstay of leave cannot be placed at a worse footing than a person remaining on leave without any sanction. We, therefore, come to the conclusion that the respondents have taken a correct stand in refusing increments to the applicant during the period beginning from 17.8.1984 and ending on 17.9.1985. We are, therefore, unable to grant any relief to the applicant.

8. This original application is dismissed but without any order as to costs.

B.N.Dhundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K.Dhaon
(S.K.DHAON)
ACTING CHAIRMAN

SNS