

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1482/2000

(5)

New Delhi this the 23rd day of January, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Shri Joginder
S/O Shri Ramphal
R/O H-10, J.J. Colony
Shakur Pur
Delhi.

... Applicant

(By Shri S.K.Gupta, Advocate)

-versus-

1. Union of India through
Secretary
Ministry of Information & Broadcasting
Shastri Bhawan, New Delhi.

2. Executive Engineer (C)
C.C.W., A.I.R.
Division No.1
Pushpa Bhawan
New Delhi.

3. Assistant Engineer (Civil Construction Wing)
All India Radio
II M.C. JNU Campus
New Delhi.

... Respondents

(By Shri J.B.Mudgil, Advocate)

O R D E R (ORAL)

Shri S.A.T.Rizvi, AM :

The grievance in this OA arises from the respondents' order dated 14.6.2000 which deals with the release of pay and allowances to the applicant and proceeds to sanction leave under FR 17(1) treating the matter as one of absence(of the applicant) from 22.9.1995 to 26.9.1999.

2. The facts of this case are brief. The applicant was arrested on a criminal charge under Section 302 IPC on 22.9.1995 and was later placed

under suspension with effect from the same date by an order passed by the respondents on 10.7.1996. The applicant was tried and acquitted by the criminal court on 30.8.1999 whereafter his suspension was revoked on 29.9.1999. The applicant has accordingly been reinstated.

3. The contention raised by the learned counsel appearing for the applicant is that in the circumstances of this case, the respondents should have more appropriately considered and dealt with the absence of the applicant in accordance with the provisions of FR 54-B instead of considering the same under FR 17(1). The reason advanced is simple. According to him, the applicant was admittedly put under arrest on 22.9.1995 and thereafter remained on trial in the criminal court until 30.8.1999, on which date he was acquitted. Thus according to the learned counsel, the absence of the applicant should not have been treated as unauthorised absence. The absence aforesaid obviously arose on account of the applicant's arrest as already stated.

4. The learned counsel for the respondents has, on the other hand, contended that following his arrest, the applicant did not inform the respondents and in the circumstances they correctly treated his absence as unauthorised absence. According to the learned counsel, the fact of applicant's arrest was subsequently brought to their notice in the report
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they received from the concerned Police station.

They have, in the circumstances, proceeded against the applicant assuming his absence to be unauthorised from day one. According to him, the situation might have been different if the applicant had taken the trouble to inform the respondents about the fact of his arrest as he was indeed required to do.

5. We have considered the arguments advanced by the learned counsel and find merit in the arguments advanced by the learned counsel for the applicant. We agree with the learned counsel for the respondents that the absence of the applicant did start as unauthorised absence. However, after the fact of his arrest had been brought to their notice, they should have viewed the situation differently and should have treated the absence from the date of his arrest, which is the date of the start of his absence, as one occasioned by the arrest. We thus find that the respondents have taken a narrow and technical view of the matter.

6. Nevertheless, the matter can be set right if the respondents are directed to consider the absence of the applicant in terms of the provisions of FR 54-B (3) read with Administrative Instructions at (1)(d) of Government of India, Ministry of Finance OM No.F.15 (8) E IV/57, dated 28.3.1959. We direct the respondents accordingly. We also direct the respondents to consider the matter as above and take a final decision. *on*

(8)

7. The learned counsel for the applicant contends that subsistence allowance for the period of suspension from 22.9.1995 to 29.9.1999 is in any case admissible to the applicant in accordance with FR 53. However, the same has not been paid. The prayer made is for payment of the same together with interest at the rate of 18% per annum. In the circumstances of the case, we find merit in this argument also and direct the respondents to make the aforesaid payment together with interest at the rate of 12% p.a.

8. Directions contained in the abovementioned paragraphs 6 and 7 will be complied with within a period of three months from the date of service of a copy of this order.

9. In the circumstances, the present OA is allowed in the aforesated terms and the impugned order dated 14.6.2000 is quashed and set aside. No costs.

S.A.T.Rizvi

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

/sns/

Ashok Agarwal

(Ashok Agarwal)
Chairman