

(11)

Central Administrative Tribunal  
Principal Bench

O.A. No. 2710 of 2000

1<sup>st</sup> JANUARY 2002

New Delhi, dated this the \_\_\_\_\_

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri B.D. Prasad,  
S/o Shri Lal Prasad,  
R/o 50/2B, Type III, Sector II,  
D.I.Z. Area, K.B. Marg,  
New Delhi-110001. .... Applicant

(By Advocate: Shri George Paracken)

Versus

1. Union of India through  
the Secretary,  
Ministry of Information & Broadcasting,  
Shastri Bhawan,  
New Delhi-110001.
2. Director,  
Publications Division,  
Patiala House,  
New Delhi-110001. .... Respondents

(By Advocate: Shri Rajinder Nischal)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns Respondents' order dated 16.11.2000 (Annexure A-1) and seeks a direction to Respondent No.2 to treat the period from 27.10.99 to 22.2.2000 as spent on duty.

2. Pleadings reveal that applicant who was posted as Assistant Business Manager (ABM), Patna <sup>was transferred to Delhi</sup> vice Shri A.K. Duggal, ABM who was promoted as Business Manager (BM) to take charge at Chennai vide Respondents' order dated 22.7.99. Applicant reported at Delhi, but Shri Duggal did not hand over the charge to applicant and submitted his application that owing to family circumstances he could not move

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to Chennai and in case it was not possible to retain him on promotion as Business Manager at Delhi, he would prefer to continue as ABM in the present posting by foregoing the promotion. This was the second time that Shri Duggal had forgone his promotion to the post of BM in view of his domestic circumstances. In view of this development, it was necessary to find another posting for the applicant. He was transferred and posted to Guwahati vide order 22.10.99 (Annexure A-2).

3. After the receipt of the aforesaid order dated 22.10.99 applicant submitted a representation dated 1.11.99 for cancellation of the transfer. He subsequently submitted an application dated 12.11.99 (Annexure A-7) for grant of E.L. from 27.10.99 to 19.11.99 on the ground of his son's illness, which was allowed, ~~vide order dated 12.11.99~~.

4. Respondents conveyed their decision on applicant's representation for cancellation of transfer order to Guwahati on 24.11.99, but meanwhile applicant filed O.A. No. 2448/999 before the Tribunal against his transfer to Guwahati. He also prayed for stay of the transfer order during the pendency of the O.A. That O.A. was disposed of by order dated 7.12.99 (Annexure A-4) with a direction that applicant would make a detailed representation to Respondent No1 who was to take a decision within a specified time frame. Upon issue of order dated

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7.12.99 applicant submitted a representation dated 11.1.2000 (Annexure A-5) addressed to Respondent No.1 against his transfer to Guwahati. After due consideration of the same, it was decided that applicant should be retained in Delhi, and in compliance with the decision, applicant was posted in Delhi vide order dated 22.2.00 and he joined duty on 23.2.2000.

5. By impugned order dated 16.11.2000 read (Ann R-2), with subsequent corrigendum order dated 1.2.2001, the period from 27.10.99 to 19.11.99 i.e. 14 days has been treated as period spent on Earned Leave, while the period from 20.11.99 to 22.2.2000 i.e. a little over three months has been declared to be unauthorised absence in continuation of leave of absence not entailing forfeiture of past service.

6. We have considered the matter carefully.

7. In so far as the period 27.10.99 to 19.11.99 is concerned as applicant himself has prayed for E.L. for the aforesaid period vide his application dated 12.11.99 (Annexure A-7), Respondents cannot be faulted for treating the aforesaid period from 27.10.99 to 19.11.99 as period spent on E.L. However, in so far as the period from 20.11.99 to 22.2.2000 is concerned there can be little doubt that applicant's representation dated 11.1.2000 against his transfer to Guwahati was under <sup>respondents</sup> consideration. It is true that after the Tribunal has passed its order dated 7.12.99 in O.A. No.

2448/99, applicant should not have taken more than a month to make his representation to R-1, <sup>but</sup> ~~and~~ it is also true that authorities should not have taken more than one month to dispose of that representation by order dated 22.2.2000. It must also be remembered that after being transferred from Patna to Delhi, applicant had a legitimate expectation that he would have no difficulty in his joining duty in Delhi pursuant to the transfer order, and it is only because Shri Duggal refused to handover charge, <sup>that</sup> ~~not~~ applicant, instead of being ~~accommodated~~ <sup>adjusted</sup> elsewhere in Delhi <sup>itself</sup>, was transferred to Guwahati. When applicant's representation against his transfer to Guwahati was under active consideration of Respondents, ~~Respondents~~ <sup>and they</sup> subsequently cancelled that transfer and posted applicant in Delhi itself vide order dated 22.2.2000, it is clearly arbitrary for Respondents to treat the period from 20.11.99 to 22.2.2000 as unauthorised absence on the part of applicant. In this connection in the impugned order dated 16.11.2000 it is stated that applicant has not been performing his normal duties during the period under consideration. Respondents have not clarified whatg they mean by "normal duties" A person ~~can~~ <sup>can</sup> be either on duty or on not duty. Indeed from the contents of Para (iii) of Respondents' Office Order dated 22.10.2000 (Annexure A-2) it is clear that applicant was reporting at the office in Delhi from time to time during the aforesaid period.

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8. Under the circumstances the O.A. succeeds and is allowed to the extent that Respondents should further modify the office order dated 16.11.2000, which already stands modified by corrigendum dated 1.2.2001 (Annexure R-2) such that the period from 20.11.99 to 22.2.2000 is not treated as unauthorised absence on the part of applicant, and he is not denied his salary and allowances for the period from 20.11.99 to 22.2.2000. These directions should be implemented within two months from the date of receipt of a copy of this order. No costs.

A Vedavalli

(Dr. A. Vedavalli)  
Member (J)

S. R. Adige

(S.R. Adige)  
Vice Chairman (A)

Karthik