

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. 657 of 1986 Date of decision 16.7.92.

Jai Pal Behl Applicant

Shri G.K. Aggarwal Counsel for the applicant

vs.

Union of India Respondents

Shri M.L. Verma Counsel for the respondents

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. I.P. Gupta, Member (A).

JUDGMENT (ORAL)

The applicant was selected by Inter-ministerial Selection Board for the post of Radio/T.V. expert under UNDP (Annex. V). The office memorandum dated 14.6.79 in this connection stated that with reference to the Director of National Institute of Communicable Diseases, Delhi, letter dated May, 1979, sanctioning leave to the applicant, he was so selected under the UND Programme for Syria. The said O.M. added that if the applicant had no leave to his credit, extraordinary leave without pay might be sanctioned to him for the period of his assignment. The Ministry of Education and Culture who had earlier issued the aforesaid memorandum subsequently issued another letter dated 21.1.1981 (Annex. VI) communicating to the Resident Representative of the U.N.D.P. in New Delhi that the Government of India had no objection to the proposed extension of the applicant's assignment upto 9th April, 1983. Accordingly, the applicant remained abroad under the U.N.D. Programme from 10.4.79 to 6.5.83.

2. The short question involved in this case is how to treat the aforesaid period and also the period between 7th May 1983 when the applicant returned to India and reported to the concerned authority

but was allowed to join only on 23.6.84.

3. The learned counsel for the respondents pointed out that the applicant himself in his letter dated 7.4.79 (Annex. II to the counter) said that he was proceeding abroad and since in view of the urgency he could not wait for the decision, he might be permitted to proceed abroad in anticipation of sanction of leave. He had also said that he would abide by the decision of the Ministry in the matter. The learned counsel for the respondents argued that though the applicant was a temporary employee and that he had given an undertaking to abide by the decision of the Ministry, the respondents have taken a liberal view in the case and granted the applicant earned leave, half pay leave, extraordinary leave for the period admissible, even by stretching the period of extraordinary leave to two years which is not permissible for a temporary Government servant and the rest of the period was treated as dies non.

4. The learned counsel for the applicant drew our attention to the Government of India (Department of Personnel) O.M. dated 10.12.81 which had clearly stated that on deputation to foreign countries, the right of the Government servants might be protected in accordance with the instructions contained in O.M. dated 1.4.81 and the O.M. dated 1.4.81 incorporated the following clause, among others:

"(iii) as regards quasi-permanent and temporary Government servants deputed abroad under these orders, they would remain eligible for being considered for confirmation/quasi-permanency etc. and the service rendered by them in the developing countries will be taken into account for determining the total continuous service, for a maximum period of five years;"

5. Therefore, the counsel for the applicant requested that at least the relief in terms of the provisions in the aforesaid paragraph should be extended and further that the period between 7.5.83 to 23.6.84 should not be treated as dies non because it was of the fault of the applicant that he remained away from The applicant had duly reported on 7.5.83, but was allowed to

over only on 23.6.84.

6. Keeping in view the provisions of the aforesaid O.M. of the Government of India (Dept. of Personnel) dated 1.4.1981, we direct that the respondents should take into account the service rendered by the applicant abroad towards the total continuous service for purposes of eligibility for confirmation/quasi-permanency. The balance of the period after grant of earned leave and half pay leave, as admissible, should be treated as extraordinary leave (and not dies non) with provision for treatment as above for eligibility for confirmation/quasi permanency, more so when his deputation and extension of deputation stood approved by Government of India. It is immaterial in so far as the applicant is concerned whether the approval was from the Institute of Communicable Diseases or the Ministry of Education when his selection in pursuance of the recommendation of the Inter-ministerial Selection Board was conveyed by the Ministry of Education. For purposes of annual increments, the period would be governed by the relevant rules in so far as they relate to earning of increments during earned leave, half pay leave, extraordinary leave.

7. As regards the period between 7.5.83 to 23.6.84, it may be mentioned that the applicant returned in less than a month of the period sanctioned for his UNDP assignment which was upto 9th April, 1983. He reported to the authorities on 7.5.83 and it was no fault of his that he was not allowed to join. He should not be adversely affected in this regard. Therefore, the period from 7.5.83 to 23.6.84 should be counted as period spent on duty for all purposes. However, in view of the nature and facts of the case, we are not inclined to grant any back wages for the period from 7.5.83 to 23.6.84 during which the applicant did not work.

8. With the aforesaid directions, the case is disposed of with no order as to costs.


(I.P. GUPTA)

MEMBER (A)


(RAM PAL SINGH)

VICE-CHAIRMAN (J)