

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.2045 of 1990

New Delhi, this the 15th day of March, 1994.

Hon'ble Mr Justice S.K.Dhaon, Vice Chairman
Hon'ble Mr B.N.Dhoundiyal, Member(A).

M.Y.Burney S/O Hafiz Mohd.Ibrahim,
418, Zakir Nagar Extension
P.O.Zamia Nagar,
New Delhi.

..... Applicant.

(through Mr S.M.Saif, Advocate).

vs.

1.Union of India
through Secretary
Ministry of Home Affairs
Govt. of India,
New Delhi.

2.Delhi Administration
through Secretary,
Education Department,
Civil Lines, Delhi.

3.Director of Education
Delhi Administration
Old Secretariat
Civil Lines, Delhi.

4.The Principal,
Govt. Boys Senior Secondary School,
Srinivaspuri, New Delhi. Respondents.
(none appeared).

ORDER(Oral)

JUSTICE S.K.DHAON, VICE CHAIRMAN

The order dated 7.3.1990, passed by the
Director of Education, Delhi, is being impugned
in the present application.

2. While working as a confirmed TGT Teacher in
the Delhi Administration, the applicant proceeded to
Nigeria. According to him, he had gone to Nigeria on
the basis of leave impliedly granted to him by the
Department. According to the Department, he had proceeded
without taking any leave. The department took
the stand that since the petitioner had absented himself
and thereby committed an act of misconduct, he

was removed from service.

3. The applicant preferred a Writ Petition in the Delhi High Court, that being C.W.P.No.2928/85. This petition was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and was numbered as T-1268/1985. The said petition was finally disposed of on 26.5.1989.

This Tribunal recorded a finding that the services of the applicant had been legally terminated.

However, this Tribunal held:

" In this background, we remit the case to the respondents to consider it sympathetically and to see if the petitioner can be continued in service on the post from which he left in 1981. If the alleged representation of the petitioner is not pending with him, the petitioner may be permitted to put in a fresh representation if he so desires, which may be considered by the respondents after condoning the delay and affording the petitioner an opportunity of personal hearing. This may be done within a period of one month from the date of receipt of this order. On beneficial consideration of this matter by the respondents, the petitioner's previous service will be counted towards qualifying service if he contributes his pensionary equivalents and provident fund contribution till the date of his removal alongwith such interest as may become due and the period from the date of termination of his services to the date of re-instatement will be treated as dies non for all purposes. In case he does not do so, his entire period of absence will be treated as dies non for all purposes."

2. It appears that the impugned order was passed in pursuance of the afore-quoted observations/directions of this Tribunal. The learned counsel has contended that the respondents, while passing the impugned order, did not keep the spirit of the

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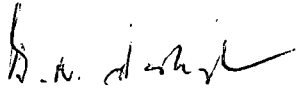
directions given by this Tribunal in mind. According to the learned counsel, the order does not indicate that the applicant's case was considered by the authority concerned sympathetically. This Tribunal could never intend to direct the authority concerned to give relief to the applicant in disregard of the law. In the order it is clearly recited that on giving careful consideration to all facts, it is found that the action taken by the Department in removing the applicant from service was justified and required no interference. Though the expression "sympathetically" has not been used in the order, the case having been considered from that angle is not ruled out. Be that as it may, the afore-quoted order of the Tribunal, if read in the proper context, did not mean that a mandatory direction was given to the concerned authority by the Tribunal. The Tribunal merely expressed its wish that some help may be given to the applicant. In these circumstances, no case for interference exists.


3. The learned counsel next contended that in paragraph IX of the grounds of this O.A., it is averred that certain teachers, similarly situated as the applicant, had proceeded abroad and they were absorbed on their return to the country. In the counter affidavit filed, it is stated that the case of those teachers stand on a footing different from that of the applicant. The learned counsel has urged that the respondents have given an evasive reply. In paragraph IX of the grounds the applicant too has made a vague allegation. The learned counsel has invited our attention to the instance given in paragraph IX(2) of the grounds of one Smt. Kamlesh Sikri. She left for abroad without permission of the Department. After returning from abroad, she has been re-instated on the post she left.

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The another instance given is of Mr P.C.Mittal. It is alleged that after remaining abroad for more than 10 years and on coming back she has been given appointment/re-instatement. The applicant cannot take advantage of the said instances for more than one reasons. Firstly, such allegations have not been made in the body of the application but to the grounds in support of the O.A. No one is expected to reply to the grounds. Secondly, it is not the case of the applicant that the services of those teachers had been terminated. In the instant case, the services of the applicant were terminated.

4. In the result, there is no substance in the application and the same is dismissed, but without any order as to costs.


(B.N.Dhoundiyal)
Member(A)


(S.K.Dharon)
Vice Chairman

/sds/