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In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.645/91

Date of decision: 29.01.1993.

Shri Prem Pal Singh

...Petitioner

Versus

General Managaer, Delhi Milk Scheme

...Respondent

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri S.N. Shukla, Counsel.

For the respondent

Shri M.L. Verma, Counsel.

Judgement(Oral)

Heard the learned counsel for both the parties.

2. The petitioner, Shri Prem Pal Singh is an employee of the Delhi Milk Scheme. He was suffering from Tuberculosis (TB for short) and was referred by the respondents to T.B. Hospital, Mehrauli vide their letter dated 20.5.1977. He attended the hospital and reported back for duty, submitting Card No.53 given by the hospital on 3.6.1977. Thereafter the services of the petitioner came to be terminated on 11.11.80 as according to the respondents the petitioner was unauthorisedly absent. This matter came up for adjudication before the Industrial Tribunal. From the facts of the case narrated in the award given by the ^{Industrial} Tribunal it is noted that the petitioner has been applying for leave on account of his sickness right from 28.2.1975. The grievance of the petitioner in this O.A. is that while the petitioner was reinstated in service from 12.11.1980 in accordance with the award of the Industrial Tribunal the period from 26.2.1975 to 10.11.1980 has been treated as dies non by the respondents thereby denying him his salary and increments.


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3. The respondents have raised the objection that this period was ordered to be treated as dies non vide order dated 24.9.1987 and, as the O.A. has been filed in 1991, the petition is time barred. The said order, however, is said to have not been received by the petitioner nor has it been produced by the respondents. The learned counsel for the petitioner, however, stated that the petitioner had been making representations to the respondents and that he came to know about the period of 26.2.1975 to 10.11.1980 being treated as dies non vide their memorandum dated 13.3.1990 which he received in response to his representation dated 19.4.1989. Keeping in view the circumstances, as brought out in the O.A. and evidenced from the award of the Industrial Labour Tribunal, I am of the opinion that the respondents were fully aware of the circumstances in which the petitioner was absent from duty. It cannot, therefore, be said that he was absent from duty without any advice to the respondents. The leave sanctioning authority is empowered to treat the period as dies non in the following circumstances:-

- "i) when the official remains absent from duty without prior information;
- (ii) when on duty in office the official leaves the office without proper permission; and
- (iii) the official remains in office but refuses to perform duty assigned to him."

None of these circumstances obtain in the present case. In fact, it is clear from the records produced before me that the respondents were fully aware of the fact that the petitioner was suffering from T.B., as they had referred him for medical check up to T.B. Hospital, Mehrauli. After attending the hospital he also reported for duty.

4. In the above facts and circumstances of the case, there is no justification for treating the said period as dies non. Accordingly, the orders of the respondents dated 13.3.1990 and 20.4.1987 are set-aside and quashed. The respondents are further directed to treat the period of absence of the petitioner as leave of the kind due and if such leave was not available as leave not due or extraordinary leave as per rules. The O.A. is disposed of accordingly. No costs.


(I.K. RASGOTRA)
MEMBER(A)

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