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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1761/2004

New Delhi, this the 17th day of February, 2005

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

V.K. Aggarwal
WZ-75, G-Floor,
Gali No.-4, Shiv Nagar,
New Delhi.

...Applicant.

(By Advocate Shri M.K. Bhardwaj)

Versus

1. Vice Chairman,
Kendriya Vidyalaya Sangathan,
Ministry of HRD,
Shastri Bhawan, New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi.
3. Assistant Commissioner,
Delhi Region, KVS,
JNU Campus, New Mehrauli Road,
New Delhi-110016
4. Assistant Commissioner,
KVS, Chandigarh Region,
SCO No. 72-73,
Dakshin Marg, Sector-31,
Chandigarh- 160030.

... Respondents

(By Advocate Shri S. Rajappa)

O R D E R

Hon'ble Mr. S.K. Malhotra, Member (A) :

This OA has been filed by the applicant with the prayer that the impugned order dated 1.7.2003 (Annexure A-1) and order dated 17.2.2003 (Annexure A-6) be quashed and the respondents be directed to release the salary to the

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applicant for the period from 5.11.1999 to 21.8.2001 with interest thereon and to treat the said period as spent on duty for all purposes.

2. The facts of the case in brief are that the applicant has been working as Work Experienced Teacher (W.E.T.) in K.V.S., Delhi Cantt. The respondents transferred him from Delhi to Babugarh vide order dated 30.10.1999. The applicant made a representation against this transfer order in November, 1999. When no decision was taken by the respondents, he filed an OA 110/2000 in the Tribunal. The Tribunal while issuing notice to the respondents vide order dated 1.2.2000 directed the respondents to maintain the status-quo. During the pendency of the OA, the respondents modified the transfer order on 25.7.2000 transferring the applicant to Baddowal, Chandigarh Region. During the pendency of the OA, the applicant moved an MA for amendment of the OA which was allowed. However, the OA was ultimately dismissed vide order dated 9.8.2001 by the Tribunal (Annexure A-4). Aggrieved by the order of the Tribunal, the applicant filed a Writ Petition before the Hon'ble High Court which was later withdrawn by the applicant with liberty to make a representation to the respondents for non-payment of the salary and other pensionary benefits for the period from Nov.'1999 – August, 2001 (Annexure A-7). The applicant made a detailed representation dated 10.3.2003 to the respondents, on which the respondents passed an order dated 1.7.2003 (Annexure A-1) asking the applicant to file an application for leave and in case leave was not available the period of his absence will be treated as dies-non, as he did not work for the above period. He submitted another representation on 12.6.2004 in which he requested the respondents to quash the order dated 1.7.2003 but no action has been taken. Hence this O.A.

3. It has been contended by the applicant that in view of the order of the Tribunal dated 1.2.2000 for maintaining the status-quo, he has a right to get the salary for the period of his absence mentioned above. Besides, since his transfer order was modified from Babugarh to Baddowal, the applicant who was



in transit is entitled for joining time upto the date of receipt of the revised order and a fresh spell of joining time from the date of receipt of the revised order.

4. Respondents have filed their counter reply in which they have taken a stand that the applicant is not entitled for salary from 5.11.1999 to 21.8.2001 as he did not work during this period. Despite the fact that he was relieved from 4.11.1999 to join at Babugarh, he did not join there but instead filed an OA which was dismissed by the Tribunal. The review application filed by him was also dismissed. The Writ Petition filed by him before the Hon'ble High Court was withdrawn with liberty to make representation to the respondents against non-payment of salary and other pensionsay benefits. It has been stated that a person who does not work, cannot be rewarded with the salary for the period of unauthorized absence. As regards status quo order passed by the Tribunal on 1.2.2000, the status of the applicant was that he was relieved w.e.f. 4.11.1999 but did not join the place of posting and having not worked during the said period, he cannot claim the benefit conferred under FR-17.

5. We have heard both the counsel for the parties and have also gone through the pleadings available on record.

6. During the course of arguments, the main point raised by the learned counsel for the applicant was that he was not allowed to join his duty at Babugarh where he had gone to report on 6.12.1999 but the Principal of the School did not allow him to join on the ground that there was no vacancy. According to the applicant he had reported this matter to the Assistant Commissioner, KVS, Delhi on 7.12.1999, and had sought further directions but no order was issued to him. During the course of arguments he produced a photocopy of his joining report given at Babugarh, which had no indication whether this report was received by the Principal. However the other letter dated 7.12.1999 addressed by him to the Assistant Commissioner, KVS, Delhi bore the stamp of KVS. The learned counsel for the respondents opposed this plea taken by the applicant stating that the applicant had not reported at Babugarh at all. He



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produced a letter dated 10.2.2005 signed by the Principal of KVS, Babugarh in which it is stated that no record of joining/reporting of the applicant was available in the Vidyalaya. According to the counsel the letters produced by the applicant were only an after thought. The fact is that in 1999 when he was transferred to Babugarh, the vacancy was available but he never reported for duty. On the other hand he approached the Tribunal and vide order dated 1.2.2000, got an order for maintaining status-quo. Since by this time he had already been relieved to join duty at Babugarh, the status-quo meant that he stood relieved and was supposed to join at Babugarh but the applicant preferred to stay at home and did not join duty either at Babugarh or elsewhere. The OA filed by him in the Tribunal was ultimately dismissed on merit vide order dated 9.8.2001.

7. The learned counsel for the respondents explained that the respondents department issued a modified transfer order on 25.7.2000 posting him to Baddowal due to the fact that the post of WET was abolished with effect from the session 2000-01. But the post was available in November/December, 1999 when he was transferred and is stated to have gone to join. The writ petition filed by him in the Hon'ble High Court against the dismissal of his OA was dismissed as withdrawn. But the applicant did not join his duty. In such circumstances, the respondent had no other option but to issue an order dated 17.2.2003 treating his unauthorized absence from 5.11.1999 to 21.8.2001 as dies-non (Annexure A-VI).

8. It is interesting to note that in the OA filed by the applicant, there is no mention at all that after his transfer, he had gone to Babugarh to join the duty on 6.12.2001, as now being claimed by him. This seems to be an after thought. If he had gone, an averment to that effect should have been made in the body of the OA. There is also no mention in the OA that he had reported this matter to the Assistant Commissioner at Delhi. We are, therefore, not convinced that the applicant had really gone to Babugarh to join his duty on 6.12.1999, as claimed by him. If he was told by the Principal that there was no vacancy available for him, he should have got an endorsement on his joining report to that effect.

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which he did not do. A letter has now been produced before us by the respondents to the effect that no joining report of the applicant is available in the records at Babugarh. As regards the status-quo granted by the Tribunal, since this was granted after the applicant had been relieved from Delhi, it only meant that he stood relieved and was required to join at the place of transfer i.e. Babugarh. It cannot be construed to mean that he was to sit at home based on the status-quo granted by the Tribunal. The applicant is stated to have retired in November, 2002.

9. The question to be decided now is whether the applicant is entitled for the salary for the period from 5.11.1999 to 21.8.2001 during which he remained on unauthorized absence. From the facts and circumstances of the case, it is very clear that he had been avoiding to join at Babugarh. He has been sending representations to the department and waiting for the outcome of the OA. Merely filing of an OA in the Tribunal does not give him right to remain absent from duty unless a stay order in respect of the transfer has been granted to him. No such stay order was allowed to the applicant either by the Tribunal or by the Hon'ble High Court. On the other hand, his OA was dismissed. The applicant cannot, therefore, claim any salary for the period in question. The rules of "no work-no pay" will be applicable in his case. Representation made by him on 10.3.2003 for non-payment of salary for the above period and treating this period of absence as dies-non, was considered by the competent authority and a detailed speaking order has been passed on 1.7.2003. It can, therefore, be presumed that under FR 17 (A), the applicant was given reasonable opportunity to explain his position for the unauthorized absence and denying him salary for period in question. In fact the conduct of the applicant in remaining absent and non-joining at the place of posting was a serious act of mis-conduct for which he could have been given even major penalty. However, the respondents have been quite generous enough to deny him only the salary for the period for which

he did not work. We do not, therefore, find any illegality in the action taken by the respondents in this case.

10. In view of the above, the OA turns out to be devoid of any merit and substance and is accordingly dismissed without any order as to costs.

Malhotra

(S.K. Malhotra)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

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