

CAT/II

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2131/92
T.A. No.

(35)

199

DATE OF DECISION 4.3.98

Sh. Harmesh Chandra

Petitioner

Sh. B.B. Raval

Advocate for the Petitioner(s)

Versus

Union of India and Ors.

Respondent

Sh. R.P. Aggarwal

Advocate for the Respondent

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman(A)

The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal: *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 2131/92

New Delhi this the 4th day of March, 1998.

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Harmesh Chandra,
S/o late Shri Phole Ram,
R/o C-4-E/120, Janakpuri,
New Delhi. ... Applicant.

By Advocate Shri B.B. Raval.

Versus

1. Union of India through
the Secretary,
Ministry of Information and
Broadcasting,
Government of India,
Shastri Bhawan,
New Delhi.
2. The Chief Producer,
Films Division,
Ministry of Information,
and Broadcasting,
24, Peddar Road,
Bombay.
3. Administrative Officer,
Films Division,
Ministry of Information
and Broadcasting,
4, Tolstoy Marg,
New Delhi.
4. Shri C.L. Dogra,
Asstt. Admn. Officer,
Films Division,
Ministry of Information
and Broadcasting,
Government of India,
Paryavaran Bhavan,
CGO Complex,
Lodhi Road,
New Delhi. ... Respondents.

By Advocate Shri R.P. Aggarwal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who was posted as Assistant
Administrative Officer in the Films Division, Ministry of
Information and Broadcasting, Lodhi Road Complex, New Delhi,
has sought the following reliefs in this application:

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"To quash the impugned Annexures 'A' and 'B' dated 24.10.1991 and 31.7.1992 and consequently give him leave on medical grounds and pay and allowances and costs of this application".

At the time of hearing, Shri B.B. Raval, learned counsel for the applicant, has submitted that the actual relief he now seeks is that the three periods, namely, (i) 14.7.1992 to 7.4.1993, (2) 8.4.1993 to 26.4.1993 and (3) 27.4.1993 to 8.11.1993 when the applicant was compulsorily made to stay at New Delhi should be treated as on duty and not leave. According to him, on medical grounds the respondents have already granted the applicant medical leave from 15.10.91 to 13.7.92 and 9.11.93 to 23.5.94 by their order dated 8.11.94.

2. The applicant had filed earlier O.A. 1330/91 which was dismissed by the order dated 23.9.1991. In that O.A. the applicant had challenged the transfer order dated 26.4.1991 transferring him from New Delhi to Bombay as Assistant Administrative Officer in the Films Division. The applicant states that he had taken LTC for 16 days from 30.9.1991 to 15.10.1991 and he was asked to report at Bombay by 10.10.1991. The Tribunal in the earlier order dated 23.9.1991 ~~had~~ dismissed the application and the interim order staying the transfer passed on 6.6.1991 was vacated. According to the applicant while he was on sanctioned leave he could not be transferred on 10.10.1991. After his return from leave, he had to extend the leave from 15.10.1991 till 11.12.1991 on medical grounds. During this period, he says that he met with a serious accident and sustained fracture in his left arm as a result of which

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He was on further medical leave w.e.f 12.12.1991 to 15.1.1992 and was being attended to by the Doctors in Dr. Ram Manohar Lohia (R.M.L.) Hospital, New Delhi.

3. The learned counsel for the applicant has referred to the facts noted in the Tribunal's interim order dated 7.9.1992 and submitted that the respondents had unnecessarily referred the applicant for second medical opinion/Board to the All India Institute of Medical Sciences, then Safdarjung Hospital and then Dr. R.M.L. Hospital. In the interim order dated 7.9.1992, the Tribunal, after noting these submissions and the submissions of the learned counsel for the respondents, that the applicant would be allowed to resume his duty at Bombay, even without his medical examination at Dr. R.M.L. Hospital for the time being and after regularisation of his absence from 18.10.1991 onwards, the pay and allowances for the period involved shall also be released according to rules, held that no further orders are considered necessary to be passed. This was followed by another order dated 8.4.1993 given in M.A.2889/93 filed by the applicant, in which the learned proxy counsel for the respondents had submitted that there was a communication gap and the order of the Tribunal dated 7.9.1992 could not be communicated to the authorities at Bombay and hence the Bombay authorities had informed the applicant in the meantime that he should join only after medical examination at Dr. R.M.L. Hospital. The learned proxy counsel had, therefore, submitted that the applicant can join duties at Bombay. The applicant had contended that he had not been relieved as 'No Demand Certificate' was not issued to him as he had not been allowed to hand over charge of stores. The

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Tribunal had noted that the parties agree that handing over of the charge of store can take place on 27.4.1993 on which date the applicant was directed to remain present for this purpose. The learned counsel has submitted that in spite of these orders and the applicant being present in the office, the respondents did not take over the stores and 'No Demand Certificate' was not issued. Shri B.B. Raval, learned counsel, has submitted that the respondents had continued to harass the applicant by not granting him 'No Demand Certificate' and had also sent him unnecessarily to various Hospitals for second medical opinion.

4. Another MP 3024/93 was filed by the applicant which was disposed of by Tribunal's order dated 11.1.1994. In this order, it was noted that Shri B.K. Sinha was asked to take over charge from the applicant on 27.4.1993 and when he reported for this purpose the applicant showed reluctance to hand over charge and asked to issue an order. Accordingly, Order No. 4/7/69 DFW dated 27.4.1993 was issued, but the applicant did not hand over charge on that day. The Tribunal in this order had further noted that the reliefs prayed for by the applicant for 'No Demand Certificate' and release of his salary are "trapped in coils of financial rules and procedures." No Demand Certificate cannot be issued unless the applicant accounts for the missing imported Enlarger and its substitution by an indigenous one and unless he hands over charge of 35 mm lens. In conclusion, after taking into account the facts and circumstances of the case MP 3024/93 was dismissed. The applicant filed SLP No. 6073-74/94 against the order dated 11.1.1994 which was dismissed by the Supreme Court on 6.5.1994. In the Tribunal's order dated 11.1.1994, it had

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also been noted that the salary of the applicant cannot be released because the post along with the incumbent was transferred to Bombay and as such there is no post against which he can be paid salary.

5. The applicant had filed another MA 2659/97 to bring on record certain documents. It was contended by the learned counsel for the applicant that the former Assistant Administrative Officer Shri K. Parmeshwaran, finally volunteered to pay the depreciation value of the lost Enlarger and paid a sum of Rs.100/- on that account as noted in the receipt dated 14.7.1997. He has submitted that the delay in handing over of the stores items cannot be attributed to him but it is totally the delay caused by the respondents and their officers acting in a mala fide manner to harass him and the intervening period when he was in Delhi should, therefore, be treated as period spent on duty. It was also submitted that the applicant had joined the Bombay office on 24.5.1994.

6. Normally, we would have expected the applicant to have amended the O.A. suitably to incorporate the reliefs prayed for now, but in the particular facts and circumstances of the case and having regard to the orders passed by the Tribunal in several Miscellaneous Applications filed by the applicant in the meantime, we proceed to deal with the case on merits, to dispose of the case finally.

7. We have, therefore, carefully considered the pleadings, the interim orders passed by the Tribunal in the O.A. and M.As filed by the applicant, and the order of the

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Supreme Court dated 6.5.1994 in SLP filed against the order in MP 3024/93 and the submissions made by the learned counsel for the parties. The learned counsel for the applicant has very vehemently submitted that the respondents have been harassing the applicant to get the second medical opinion and had sent him unnecessarily to the All India Institute of Medical Sciences, then Safdarjung Hospital and then Dr. R.M.L. Hospital. The learned counsel had also very vehemently submitted that immediately thereafter the applicant had purchased train ticket from New Delhi to Bombay for journey on 5.8.1992 but because of the intervening events caused by the respondents, he had to return this ticket. Therefore, he has claimed that between 14.7.1992 when he was declared fit and 8.4.1993, the date on which the Tribunal passed the order, when it is recorded that the parties agree that the handing over of the charge of the store can take place on 27.4.1993 on which date the applicant is directed to remain present for this purpose, he had to remain in Delhi and this period should be treated as on duty. Regarding the balance period from 27.4.1993 to 8.11.1993, it was very vehemently argued by Shri Raval, learned counsel for the applicant, that the delay has been caused entirely due to the wrong action and inaction of the respondents for which he cannot be held responsible.

8. From the facts and the orders of the Tribunal and the Supreme Court, referred to above, we are unable to accept the contentions advanced by the learned counsel for the applicant, that he should be treated as on duty for the period from 14.7.1992 to 8.11.1993, which he has split into three separate parts, as referred to in para 1 above. In the first instance, it will be necessary to see again the

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relevant portions of the Tribunal's order dated 11.1.1994 which has the stamp of approval of the Hon'ble Supreme Court in the order dated 6.5.1994. It has been held:

"A careful perusal of the various letters and representations filed by the applicant will reflect on his attitude towards the orders of the superior authorities and towards the judgement of the Tribunal (i.e. 23.9.1991). On the pretext of handing over charge, he prolonged his stay in spite of orders of the superior authorities to the contrary. In spite of having stayed for more than 2 years after the order of the Tribunal, he handed over the charge of the article shown at Annexure-B, page 258. Some of these articles were found to be in damaged condition.....The discrepancies in the charge report of substitution of an indigenous Enlarger in place of one imported from Poland was also detected.....and he was asked to explain full facts vide aforesaid letter dated 27.11.1993.

2. The reliefs which were pressed for by the applicant are 'No Demand Certificate' and release of salary. These two reliefs have been trapped in coils of financial rules and procedures. No Demand Certificate cannot be issued unless the applicant accounts ~~the~~ ~~the applicant accounts~~ for the missing imported Enlarger and its substitution by an indigenous one and unless he hands over charge of 35 mm lens.....The demand has to be satisfied in order to get a 'No Demand Certificate'. This is in tune with financial discipline and propriety.

3. The salary cannot be released because the post along with the incumbent was transferred to Bombay and as such, there is no post against which he can be paid salary. Secondly, he has not worked against that post and he has remained in New Delhi against the orders of superior authorities and as such his stay in New Delhi cannot be treated as on compulsory waiting. The whole period will be treated as "Dies-non", for which no salary will be admissible to him. The respondents can only show some magnanimity by adjusting the entire period against the leave due. Half Pay Leave or Medical Leave due to him ~~and~~ if no leave is due, this may perhaps be adjusted against the leave to be due in future. This is left to the discretion of the respondents".

(emphasis added)

9. From the above facts it is clear that the period from 14.7.1992 to 8.11.1993 have been included in the period of 2 years dealt with in the Tribunal's order. The learned counsel for the applicant has relied on certain documents which he says are relevant and which he has referred to in M.A. 2659/97. He has stressed that since the former Assistant Administrative Officer, Shri K. Parameshwaran, had volunteered to refund the depreciation value of the lost Poland made Enlarger because the same was handed over to the applicant by him and had also agreed to pay a sum of Rs.100/- which has been noted in the letter dated 17.6.1997, the applicant cannot be held responsible for not handing over the items of stores earlier and, therefore, the period of his stay in New Delhi should be treated as period spent on duty and not leave. As mentioned above, on appeal being filed by the applicant against the Tribunal's order dated 11.1.1994, the Supreme Court has dismissed the same by order dated 6.5.1994 and hence the Tribunal's order has been approved by the Apex Court. What the applicant is trying to do at this stage is to reopen the issues which have been settled at the highest level by the Apex Court by filing MA 2659/97, without even seeking amendment to O.A. 2131/92 which is not permissible. Needless to say, it would be totally improper for this Tribunal to reopen or review a matter which has been approved by the Hon'ble Supreme Court, namely, regarding treatment of the period of the applicant's prolonged stay in New Delhi for more than two years after the earlier order of the Tribunal dated 7.9.1992 had dealt with these issues and held that the period should be

treated as 'Dies Non' and the respondents were asked to adjust the entire period against the leave as due to the applicant. By referring to some later documents, the applicant cannot succeed here, as it will amount to review of the Supreme Court's order dated 6.5.1994. We, therefore, find no justifiable grounds to interfere in the matter.

10. The applicant has also alleged that the respondents had acted in a mala fide manner to harass him with which also we do not agree, as this cannot be presumed in the facts and circumstances of the case, and there are no materials on record to prove mala fide against any officer of the respondents. (see the observations of the Supreme Court in **Jatinder Kumar & Anr. Vs. State of Punjab** (AIR 1984 SC 1850) wherein it was held that "the allegations about mala fides are more easily made than made out"). The findings of the Tribunal in MP 3024/93 against which SLP filed by the applicant has also been dismissed by order dated 6.5.1994 by the Supreme Court are binding and cannot be reopened by the Tribunal.

11. In the result, in the facts and circumstances of the case, we find no merit in this application and the same is accordingly dismissed. No order as to costs.

Lakshmi
(Smt. Lakshmi Swaminathan)
Member (J)

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