

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 789 OF 2004.

ALLAHABAD THIS THE 05TH DAY OF MARCH 2008.

Hon'ble Mr. Justice Khem Karan, Vice Chairman

Musafir Singh, son of late Sri Sheodhani, Resident of Village Bawari, Post Banjaripur, District Ghazipur.

.....Applicant

(By Advocate: Shri A.P. Mishra/Shri R.K. Yadav/Shri I.P Singh/Shri A.K.

Malviya)

Versus.

1. Union of India through its Secretary Ministry of Textile Office of the Development Commissioner, New Delhi.
2. Director (Central Region), Office of the Development Commissioner (Handicrafts), Central Region, Kendriya Bhawan, 7th Floor, Sec-H, Aliganj, Lucknow.
3. Carpet Weaving Centre Regional Director (H), O/O OC (H) Lucknow Carpet Weaving Centre.
4. C.T.O. Incharge ATC, Habinagar, District Maldah, West Bengal.

.....Respondents

(By Advocate: Shri Saumitra Singh)

ORDER

Applicant has prayed for quashing the order dated 28.8.2003 (Annexure A-11) so passed by the respondent no. 2 and for commanding the respondents to treat the period mentioned in the said order as on duty and accordingly provide all the benefits such as increment, seniority etc. and pay salary.

2. In short, the case is that while being posted as Chaukidar at Dharmapur in District Jaunpur, he was shifted vide order dated



9.8.1995, to Habinagar in District Maldah, West Bengal. He continued representing to the Authorities for accommodating him at some nearby place and when nothing was done by the respondents, he filed one O.A. NO. 1255/95, which this Tribunal disposed of vide its order dated 13.12.1999, directing the respondents to consider his representation for accommodating him ~~at~~ some nearer place. The applicant gave his representation as per the directions of the Tribunal, but nothing favourable came out, so he filed another O.A. NO. 85/03. This subsequent O.A. was also disposed of vide order dated 6.2.2003, directing the respondents to consider the request of the applicant as per his representation and to pass appropriate orders in accordance with law. It is said that Director (Central Region) issued a letter dated 25.6.2003 asking the applicant as to whether he was willing to work at Sewa Kendra, Varanasi/Central Store Unit at Aurari, if so to send his willingness. The Authority concerned passed a speaking order on 28.8.2003, which the applicant is challenging in this O.A. By the impugned order, the Authority concerned permitted him to join in Sewa Kendra, Varanasi, if he so like^d but made it clear that he will not be entitled to any pay and allowances etc. for the period of unauthorized absence, nor that period will be treated to be on duty for pensionary benefits. The applicant joined on 8.9.2003 and the joining report is Annexure A-11. What he alleges in this O.A. is that as his wife was ailing and he was repeatedly requesting for his accommodation at some nearer place and was also giving applications so the period from 12.8.1995 to 7.9.2003 could not have been dealt with in the manner, it has been done by the impugned order. He says that, that period should have been regularized by grant of one leave or the other and applicant should have been treated as on duty for all purpose including for earning rent, increments. He wants to say that offending portion of the impugned order is arbitrary and illegal.



4. The respondents have filed reply contesting the claim. They say that in the exigency of service, Unit at Dharmapur in District Jaunpur was closed and shifted to Dehradoon and Maldah and officials were accordingly shifted alongwith equipments etc. They say that in the same process, applicant was also shifted from Dharmapur to Habinagar, Maldah but he did not join and wasted time in giving representations and filing O.As etc. They say that the shifting of the Unit together with the employee was upheld by the Hon'ble High Court also. They say that after the applicant ~~has~~ joined pursuant to the order impugned in this O.A. ^{he} has no valid ground to assail that order. They say that it was open to the applicant not to join and press for his compulsory retirement but he joined. They say that period of unauthorized absence has rightly been treated to be not on duty and it cannot be regularized.

5. I have heard Shri R.K. Yadav, appearing for the applicant and Shri Saumitra Singh, learned counsel for the respondents. This much is not in dispute that the applicant did not discharge his duties during the period in question from 12.8.1995 to 7.9.2003. It is never his contention that he joined at Habinagar, District Maldah or worked there for any time. His total case is that his request for accommodating at some nearer place remained pending with the respondents and his request for compulsory retirement was also not dealt with properly. Shri R.K. Yadav could not show to me any Rule, which entitles, a Government servant to have the period of unauthorized absence treated as on duty for any purpose. One can think that leave of one kind or the other as may be permissible under the Rules can be considered or granted by the Competent Authority. Applicant never says that he submitted any application for any kind of such leave during the period in question or for any part of period. From that point of view, the respondents were not ^{any legal obligation} ~~any legal obligation~~ to grant or refuse the leave, ^{employee who} ~~so prayed for to~~ remains away from work on the ground that ^{the} ~~employee~~ is not being accommodated at the desired place but is being shifted to far off



place, by itself will not justify ~~unauthorized~~ absence from duty. It was open to the applicant to move for one kind of leave or the other but he did not do that. It is not possible for this Tribunal to interfere with that portion of impugned order dated 28.8.2003 by which the period of unauthorized absence (12.8.1995 to 7.9.2003) has been treated to be not on duty. Shri R.K. Yadav has informed that applicant has since retired in 2006. I am of the view that O.A. is devoid of merits, ~~and is dismissed~~. It is, accordingly, dismissed but with no order as to costs.

C. J. Dharan
05.3.08

Vice-Chairman

Manish/-