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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R

Date of order : 06.06.1997

O.A.No.333/1995

MAHENDRA KISHORE SHARMA, R/O VINAY NAGAR COLONY, OPP.
PALBISLA POST OFFICE, AJMER (RAJ) AT PRESENT AT UDAIPUR.

..... Applicant

Vs.

1. UNION OF INDIA THROUGH THE SECRETARY TO THE
GOVERNMENT OF INDIA, MINISTRY OF DEFENCE, NEW DELHI.
2. GARRISON ENGINEER, EKLINGGARH CANMT. UDAIPUR.
3. COMMANDER WORKS ENGINEER (ARMY), JODHPUR.
4. ENGINEER-IN-CHIEF (MES), ARMY HEADQUARTERS, KASHMIR
HOUSE, DHQ, P.O. NEW DELHI.

..... Respondents

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THE HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

For the Applicant	-	Mr. D.Kachhwaha
For the Respondents	-	Mr. B.S.Rathore

BY THE COURT :

The applicant has filed this O.A. with a prayer
that the respondents be directed to pay him the salary
for the period of May 1992 to August 1992 with interest.

2. I have heard the learned counsel for the parties
and gone through the record.

3. The learned counsel for the applicant has argued
on the lines and grounds taken in the O.A. He has

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argued that applicant was not permitted to sign the attendance register from 10.2.92 to 2.6.92 whereas, he was always present in the office during this period. He has also submitted that due to earlier litigation the departmental authorities are prejudiced against him and, therefore, salary for the months of May 1992 to August 1992 has not been paid to the applicant. He has also argued that the applicant had communicated to the higher authorities the fact that he was not permitted to sign the attendance register, as early as on 18.2.1992 Vide Annex.A/12. Since the applicant was present in the office during the disputed period, therefore, he cannot be called upon to apply for leave for that period and no adjustment of pay already paid, can be made against the subsequent period.

4. On the otherhand, it was argued by the learned advocate for the respondents that after the transfer order of the applicant was quashed by the Tribunal, the applicant joined his duties on 10.1.1992 and continued to discharge his duties till 9.2.92. Thereafter, he at his own, stopped coming to the office from 10.2.92 till 2.6.92. The applicant was informed by the department by various letters that he is absenting himself from 10th Feb. on-wards without any reasonable cause. All these communications remained un-challenged and unanswered. When the applicant did not apply for leave for the period of absence, the same was adjusted against the extra-ordinary leave and salary upto the month of October was paid to him vide salary Bill/ Voucher No. 58/05/1258 dated 16.10.92 after regularising the period of absence as extra-ordinary leave. Thus, no salary of any kind is due to the applicant.

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5. I have considered the rival arguments. The applicant vide its telegram dated 18.2.92 (Annex.A/12), had informed the Commander Works Engineer (Army), Jodhpur that "Garrenger, Udaipur refused to sign attendance register. No work since rejoining". The telegram was confirmed by the applicant vide his letter dated 18.2.92 (Annex.A/11). There is no subsequent communication by the applicant in respect of applicant's regularly attending the office of Garrison Engineer, Udaipur and Garrison Engineer, Udaipur, prohibiting him to sign in the register of attendance. On the otherhand, number of letters were written by the concerned authorities to the applicant in respect of his continuous absence. These letters are Annexs. R/1 to R/4. The applicant did not controvert or dispute such letters by replying suitable and by asserting that he was continuously attending the office. Therefore, it cannot be said that the applicant was prohibited from signing the attendance register inspite of his remaining physically present in the office during the aforesaid period. If the applicant was not permitted to sign the register, he could have continuously written letters to the Garrison Engineer, Udaipur or to higher authority about his remaining present in the office or he could have delivered a copy of such letter every day to the receipt clerk of Garrison Engineer, Udaipur, showing him to be present in the office but the applicant has done nothing of this sort. Thus, it cannot be said that the applicant remained present during the disputed period.

6. The applicant had filed one OA No.48/95 in the past for getting the aforesaid disputed period regularised.

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In that QA it was ordered by the Tribunal that "applicant be provided a personal hearing and the Inquiry Officer should record his finding in respect of every objection raised by the applicant and the Commander Works Engineer (Army), Jodhpur, should examine the findings of the Inquiry Officer and give an appropriate reply by a speaking order to the applicant. In case the applicant is found entitled to receive the salary for the period May 1992 to August 1992 the same should be paid to the applicant within one month of completion of inquiry." On this direction, an inquiry was conducted and it was concluded that applicant remained absent from 10.2.92 to 2.6.92. The report was submitted to the Commander Works Engineer (Army), Jodhpur, who informed the applicant to remain present before him, but the applicant did not attend such inquiry on one ground or the other. In this connection, it was argued by the learned counsel for the applicant that the applicant was not permitted to leave headquarter and was also not provided with travel facilities like advance T.A. etc. and, therefore, he could not attend the inquiry as desired. But, I do not find any material on record supporting this contention of the applicant. On the contrary, from the documents Annex.R/6, produced by the respondents, it is clear that applicant was spared to attend the inquiry at Jodhpur and was also permitted to draw advance T.A. by moving application in writing. This clearly shows that he was given an opportunity to attend the inquiry conducted by the Commander Works Engineer (Army) Jodhpur. Therefore, it cannot be said by the applicant that he was not permitted to leave the headquarter and was not provided with travel facilities. If all what applicant says is correct even

2/11/92

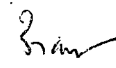
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then the applicant should have gone from Udaipur to Jodhpur to participate in the inquiry in his own interest and could have sought reimbursement of his expenses as per Rules. But the applicant did not attend the inquiry inspite of repeated notices by the Commander Works Engineer (Army), Jodhpur, on one pretext or the other which in my opinion amount to wilfully absenting from inquiry.



7. From the material available on record, it is not established that the applicant remained present in the office from 10.2.92 to 2.6.92 and is entitled to pay for the aforesaid period.

8. The O.A., therefore, deserves to be dismissed and is hereby dismissed with no order as to costs.


(A.K.MISRA)
Member (J)

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Received Copy
John S. Silway
General

Part II and III destroyed
in my presence on *2/3/03*
under the supervision of
section officer () as per
order dated *4/13/03*

[Signature]
Section officer (Record)