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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 10.04.2001

ORIGINAL APPLICATION NO. 52/1999.

Rajat S. Pal, I.F. S., aged about 39 years, son of Shri R.B.S. Pal, presently posted as Divisional Forest Officer, Zunheboto Forest Division, Zunheboto - 793 620, Nagaland and resident of A-465, H. I. G., Indira Nagar, Lucknow.

...APPLICANT..

VERSUS

1. Union of India through its Secretary, Ministry of Environment & Forests, Paryavaran Bhawan, C.G.C. Complex, Lodhi Road, New Delhi.
2. Indian Council of Forestry Research and Education (I.C.F.R.E.), P.O. New Forest, Dehradun-248 006, through its Director General.
3. Arid Forest Research Institute (A.F.R.I.), P.O. Krishi Mandi, Bhagat Ki kothi, New Pali Road, Jodhpur, Pin Code No. 342 005, Rajasthan, through its Director.
4. Shri R.N. Misra, adult, son of name not known to the applicant, the then Director, Arid Forest Research Institute (A.F.R.I.), Jodhpur, Rajasthan and presently posted in Madhya Pradesh Forest Development Corporation, C/O Managing Director, Madhya Pradesh Forest Development Corporation Bhopal, Madhya Pradesh.
5. Shri H.C. Bhawan, adult, son of name not known to the applicant, the then Head Silviculture Division, A.F.R.I., Jodhpur, and presentl, as Conservator of Forest National Capital REGION, New Delhi.



... RESPONDENTS ..

Mr. Pankaj Nath, counsel for the applicant.

Mr. D.N. Yadav, Adv. Brief holder for

Mr. B.M. Bohra, counsel for respondents.

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Hon'ble Mr. A. K. MISRA, Judicial Member.

Hon'ble Mr. GOPAL SINGH, Administrative Member.

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ORDER

(per Hon'ble Mr. Gopal Singh)

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant Rajat S. Pal has prayed for quashing the last Pay Certificate of the applicant dated 04.12.1997 (Annexure A-1) as also letter dated 04.12.1997 (Annexure A-2). The applicant has also prayed for quashing the orders dated 22.04.1997, 01.05.1997, 19.05.1997, 23.05.1997, 23.05.1997, 29.05.1997 and 12.06.1997 at Annexures No. A-2(i) to A-2(vi) and for a direction to the respondents to pay the applicant his all arrears of salary for 18 days of August, 1996 to 31.05.1997 and further to revise his salary in the Pay scale recommended by the 5th Central Pay Commission and pay the arrears alongwith interest at the rate of 24% per annum. The applicant has also prayed for providing him the correct minutes and of the meeting dated 28.11.1995 issuing afresh, the last pay certificate and sending the correct leave account of the applicant. Applicant has impleaded 5 respondents as indicated in the title sheet. While it was ordered that notices of the O.A. be issued to respondent no.1, 2 and 3 vide Tribunals order dated 26.04.1999, it was also ordered that no notice be issued to respondent no. 4 and 5 for the reasons recorded in Tribunals order dated 26.04.1999. Reasons recorded in Tribunals order dated 26.04.1999 are reproduced below :-

" So far as the respondent No. 4 is concerned, there are number of allegations of mala fide against the respondent no.4 and basing all those allegations, the applicant has sought

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to be compensated by respondents in the interest of justice but at the same time he has not made any prayer as against respondent no. 4 that he should be personally made liable to pay the compensation to the applicant. All what the applicant has stated in his prayer is that compensation as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice, be awarded and the amount be recovered from the respondent no. 4. But in my opinion, simply by making a request about "recovery from respondent no. 4", it cannot be said that the applicant is seeking any relief as against respondent no. 4. It is for Government of India after successful termination of this case to ponder over the matter as to who should be made liable for the compensation or who should make good, the loss suffered by the Government of India for having compensated the applicant. Therefore, no notice can be issued to the respondent no. 4 in absence of any direct prayer against him.

As regards respondent no. 5, there is no prayer whatsoever which is being sought as against him. He has been made a party because he was an immediate superior of the applicant. He has passed orders in his official capacity about which no mala fides have been alleged and no explanation is required to be called from respondent no. 5. Therefore, no notice can be issued to the respondent no. 5".

2. Applicant's case is that he is a member of Indian Forest Service. He was offered deputation for a period of 4 years at the level of Deputy C. F. ~~xxxxxx~~ in Arid Forest Research Institute, Jodhpur (AFRI) and accordingly, the applicant joined the above mentioned post on deputation on 04.06.1993. It is stated by the applicant that Director-General, I.C.F.R.E. had visited AFRI, Jodhpur between 27.11.1995 to 29.11.1995 and the applicant was apprised of the said visit of Director General, I.C.F.R.E. He was also advised to come with relevant problems and suggestions for the meeting with Director General, I.C.F.R.E. On 28.11.1995 the applicant, pointed out the non-availability of funds to the tune of Rs. 8,65,000/- under the head " Equipments and Instruments ". The Director General had also

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conveyed his verbal approval to the demands of funds. This incident was not taken kindly by respondent no. 4 (Shri R. N. Misra) who was holding the post of Director, A.F.R.I., Jodhpur and the applicant was served with a letter dated 08.12.1995 whereby respondent no. 4 while making uncalled for allegations against the applicant expressed his displeasure for placing the fact of non-availability of funds before the Director in General I.C.F.R.S. This resulted in ^{unpleasant} exchange of correspondence between the applicant and respondent no. 4. The applicant had also demanded the exact copy of the minutes of the meeting held on 28.11.1995, but the same was never supplied to the applicant. The respondent no. 4 started torturing the applicant mentally and physically. The applicant had cited many cases in this regard. Finally, the applicant was ordered to be repatriated to his parent cadre of Nagaland vide respondents letter dated 14.05.1997 (Annexure A-59). Accordingly, the applicant was relieved of his duties in A.F.R.I., Jodhpur in the afternoon of 23rd of May 1997. While issuing the last pay certificate of the applicant a recovery amounting to Rs. 78,514 was indicated on account of unauthorised absence of the applicant from the duty, it was also indicated in the L.P.C. that the applicant has been paid up to 31.07.1996. The contention of the applicant is that he was relieved from A.F.R.I. Jodhpur in the afternoon of 23.05.1997 and therefore, he should have been paid pay and allowances up to that date, however, recovery on account of unauthorised absence of the applicant as indicated in the L.P.C. was never brought to the notice of the applicant. He came to know of it through a statement that was

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attached with the L.P.C., wherein various periods from 04.01.1996 to 23.05.1996 were shown as " no work no pay " and excess payment made on account of pay and allowances for these periods was indicated in the L.P.C. to be recovered. The applicant had been requesting the authority for release of his pay and allowances but to no avail. Hence this application.

3. In the counter, it has been stated by the respondents that the A.F.R.I. Jodhpur is a constituent Unit of Indian Council of Forestry . Research and Education which is an autonomous organisation. The Central Government has not issued any notification placing the matter of the Indian Council of Forest Research and Education within the purview of Central Administrative Tribunal. Thus, the subject matter pertaining to this organisation does not come within the jurisdiction of Central Administrative Tribunal. It has also been stated by the respondents that the applicant has not produced on record and has not challenge various orders which were passed by the competent authority giving detailed reasons as to why the amount in question was liable to be recovered from the applicant as indicated in the L.P.C. and in the absence of laying challenge to the various orders, on the basis of which last pay certificate was issued, no relief can be granted to the applicant in this case. These orders had been placed by the respondents at Annexure R-3 to R-8, it has therefore, been averred by the respondents that the application is devoid of any merit and deserves dismissal.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

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5. On the question of jurisdiction, we have considered the pleadings and the rival arguments. It is not disputed that the applicant is an IFS Officer and was appointed on deputation in AERI, Jodhpur. Section 14 of the Administrative Tribunals Act, 1985 (for short, the Act), relates to the jurisdiction, power and authority of this Tribunal. In this section, it is clearly mentioned that the Tribunal shall exercise all jurisdiction, concerning a member of any All India Services. In this Section, it is also mentioned that the service matters of the members of such All India Services shall also be within the jurisdiction of the Tribunal, whose services pertain to Union or State or under the control of any Corporation or Society or owned or controlled by the Government.

6. In view of the specific provisions as contained in Section 14 of the Act, it cannot be argued that the applicant cannot seek redressal of his grievances in this Tribunal simply because his services were placed at the disposal of a Society which has not been notified to be included in the Schedule under section 14 of the Act. Non-inclusion of such Society in the Schedule would only result that the service matters relating to the employees of the Society would not be adjudicated upon by the Tribunal. Since the applicant was, at the relevant time, a member of India Forest Service, therefore, the grievance relating to the service matters is well within the jurisdiction of the Tribunal.

7. The objection of the respondents with regards to jurisdiction of Tribunal is devoid of any force and deserves to be rejected and is hereby rejected.

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8. It is the contention of the applicant that orders produced by the respondents at R-3 to R-8 were never received by him and he came to know of these ~~letters~~ only when reply to the present O.A. was filed by the respondents. Accordingly, he sought permission to file amended O.A., wherein the applicant has challenged these orders. It is not disputed that the applicant is an Indian Forest Service Officer and was in the regular employment of the Government. It would be appropriate to reproduce below the Government of India Instruction no. (5) under Rule 11 of C.C.S. (C.C.A.) Rules, 1965, that talks of action for unauthorised absence, which reads as under :-

" (5) Action for unauthorised absence from duty or overstayal of leave :-

(i) -----

(ii) -----

(iii) If a Government Servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences, viz., that the entire period of absence would be treated as unauthorised, entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. If, however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he has not been placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorised resulting in loss in pay and allowances for the period of absence under proviso to F.R. 17(1) and thus a break in service. The question whether the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard.

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2. It is made clear that a Government servant who remains absent unauthorisedly without proper permission should be proceeded against immediately and this should not be put off till the absence exceeds the limit prescribed in Rule 32 (2) (a) of the C.C.S. (Leave) Rules, 1972. However, the disciplinary authority should consider the grounds adduced by the Government servant for his unauthorised absence before initiating disciplinary proceedings. If the disciplinary authority is satisfied that the grounds adduced for unauthorised absence are justified, the leave of the kind applied for and due and admissible may be granted to him.

(D.G., P. & T.'s Letter No. 6/28/70-Disc. I (aPB-I), dated the 5th October, 1975.) *

9. It would be seen from above that unauthorised absence constitute a misconduct and can be dealt with under the ~~new~~ C.C.S. (C.C.A.) Rules, 1965 and while imposing the recovery of pay and allowances, the principles of natural justice have to be followed. It is also seen that the Annexure R-3 to R-8 were dated 22.04.1997, 01.05.1997, 19.05.1997, 23.05.1997, 23.05.1997 and 12.06.1997, whereas the applicant was relieved on repatriation from A.F.R.I., Jodhpur in the afternoon of 23.05.1997. Thus, in a hurried manner all these letters/orders were issued when the applicant was being repatriated to his parent cadre. The respondents have not been able to establish the service of these orders to the applicant. Further denial by the applicant of receipt of these orders has also not been challenged by the respondents. Further, respondents have marked various periods from 04.01.1996 to 23.05.1997 as "No work no pay" in the statement attached to the L.P.C. It only implies that unauthorised absence of only the period of January 1996 was also taken up/in April, May 1997. As a matter of fact, the respondents have

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treated the applicant as a casual labour working on daily wages, he has been paid for the period on daily wages, his rights as a permanent Government servant have been overlooked and recovery of Rs. 78,514 has been ordered against him without following the principles of natural justice.

10. At this stage, we consider it appropriate to extract below with advantage the observations of Justice V.R. Krishna Iyer, xx rendered in A. Ibrahim Kunju vs. State of Kerala, AIR 1970 Kerala 65,70, as under :-

" Per V.R.Krishna Iyer, J.

Even correct conclusions and orders are upset in Courts, because there has been violation of natural justice or non-compliance with important procedural requirements. This is because of our national creed, in law and in life, that we should reach right ends through right means. All administrative officers charged with the duty to pass orders and a fortiori those in the higher echelons of authority, affecting the civil rights of citizens, should be educated in administrative laws, particularly in the basic requirements of natural justice. Administrative agencies, intent on doing justice and acting expeditiously and enthusiastically, get tripped unwittingly on account of their ignorance of the nuances or even the minimum needs of natural justice and of the obligations under Articles 14 and 19 of the Constitution. If the average administrative officer had been better informed about his procedural obligations many an order of his would not have been a casualty on judicial scrutiny and many an unwanted babe in writ jurisdiction would not have been born. After all, ephemeral victories ultimately do nobody any good.

(A.Ibrahim Kunju v. State of Kerala, AIR 1970 Kerala 65,70)".

11. In the light of above discussion, we are of the view that the orders of recovery of an amount of Rs. 78,514 from the applicant are illegal and cannot be

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for
sustained. If the department feels to issue order/such
a recovery for unauthorised absence , they can do so after
following the Rules of the game. In the result O.A.
succeeds and we pass the order as under :-

* The impugned letter dated 10.04.1998
containing L.P.C. dated 04.12.1997 and
also letter dated 04.12.1997 indicating
recovery of Rs. 78,514 are quashed and
set aside. Orders dated 22.04.1997,
01.05.1997, 19.05.1997, 23.05.1997,
23.05.1997 and 12.06.1997 (Annexure
R-3 to R-8) are declared illegal and
quashed. Respondents nos. 1,2 and 3 are
directed to pay to the applicant full
pay and allowances for 18 days of august,1996
and thereafter up to the date of his
relief from A.P.R.I., Jodhpur, in the
revised pay scale of Vtn Pay Commission
alongwith interest at the rate of 12%
per annum thereon within a period of two
months from the date of issue of this
order . The respondents are also directed
to issue revised L.P.C. after making the
payment as ordered above. No costs " .

Gopal Singh
(GOPAL SINGH)

Admn. Member

27/4/2001
(A. K. MISRA)
Judi. Member

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(as received by
Parichit. Sdn. for B.M. Bham
Par. 12/4/2001
by B.M. Bham)

Copy of order send to ~~supplement~~
vide no 134 dt 17-4-2001

Proper AD form
with
H.S.P.

Part II and III destroyed
in my presence on 28-3-2001
under the supervision of
section officer (1) as per
order dated (9/2/2001)

Section officer (Record)