

CENTRAL ADMINISTRATIVE TRIBUNAL

Original Application No. 91/2013
Jodhpur, this the 13th November, 2013.

CORAM:

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)

Sumer Singh Champawat S/o Shri Ratan Singh (Bamnu) aged about 50 years, resident of 12, Adarsh Nagar, Lalsagar, Jodhpur at present employed on the post of Dy. Manager (Marketing), Central Wool Development Board, Jodhpur.

..Applicant.

(Through Self)

Versus

1. Union of India through the Secretary, Ministry of Textile, Udhog Bhawan, new Delhi.
2. Central Wool Development Board (CWDB) through its Chairman CWDB C-3, Shastri Nagar, Jodhpur.
3. Executive Director, Central Wool Development Board, C-3, Shastri Nagar, Jodhpur.
4. Administrative Officer, Central Wool Development Board, C-3, Shastri Nagar, Jodhpur.
5. Shri K.K.Goyal, Executive Director CWDB, C-3, Shastri Nagar, Jodhpur.

...Respondents.

(Through Adv. Miss Monica Tak proxy for Smt. K. Parveen, Advocate, for Respondent No. 1.)

(Through Adv. Mr. Rakesh Arora, for Respondent No. 2 to 5.)

O R D E R

[Per Justice K.C. Joshi, Member (Judicial)]

The applicant has challenged the legality of the order Annex.A/1 dated 29.12.2011 by which he was denied leave w.e.f. 11.12.2010 to 18.02.2011 on the ground of taking leave and leaving headquarters without prior permission and thus the period in question has been treated as unauthorized absence and therefore, it has been ordered that the pay released for the above period shall be recovered in the instalments of Rs. 10,000/- per month from the salary of December 2011.

2. The short facts of the case as averred by the applicant are that the applicant is at present working as Dy. Manager, Central Wool Development Board (CWDB), Jodhpur and at the relevant time he was transferred from Jodhpur to Kullu. After joining at Kullu the applicant moved an application on 10.12.2010 (Annex.A/9) to leave the headquarters and avail holidays of Saturday and Sunday i.e. 11th and 12th December, 2010. In the office, the said application was marked to one Shri S.D.Meena who was the Establishment Clerk at the relevant time. The applicant in Annex. A/9 addressed himself as a Dy. Manager (Marketing) CWDB, Jodhpur Camp at Kullu under protest. The applicant on 13.12.2010 fell sick and after obtaining a medical certificate from the Government Hospital, applied for 5 days leave (Annex.A/11). Subsequently, in view of continued sickness, and his wife's illness and health problems, he applied for extension of leave. Further, due to operation of his son on 05.02.2011 in Goyal Hospital, Jodhpur, he applied for extension of leave. It has been averred that the respondent department was in the know of his furnishing application as the competent authority issued order dated 13.12.2010 Annex.A/10 by which the Wool Ministry (Marketing) Development Officer (WMDO) was directed to visit (WDTDC) on tour for 7 days due to some family problems, and reported sickness of the applicant. It has been also averred in the application that the transfer order issued by the competent authority was challenged before this Tribunal, but the same was withdrawn with the understanding that the applicant shall be transferred again to Jodhpur but later on again he was transferred to Kullu and the same was challenged before this Tribunal and this Tribunal while deciding the OA No. 458 of 2012 quashed the order of transfer vide order dated 01.01.2013.

3. The applicant further averred in the application that the order dated 29.12.2011 Annex.A/1 has been passed by the competent authority malafidely and without giving an opportunity of hearing and without any reason because the applicant left his headquarter after informing the respondent department and Annex. A/10 order supports the claim of the applicant that he was facing family problems and he was sick, therefore, Annex.A/1 cannot be sustained in the eye of law. Moreover, about 300 Earned Leave were in his credit but the competent authority treated the whole period as unauthorized absence whereas the applicant regularly informed to the respondent department about his sickness and family problems and the medical problems of his wife and son, but the respondent department did not consider any such reason and passed the order Annex.A/1 without any basis and substance. The applicant has also annexed document Annex. A/12 by which he requested that the earlier order of his transfer be cancelled which was challenged before this Tribunal. It has also been averred in the application that applicant is an important witness in a CBI case against the Ex. Director and, therefore, he has been harassed by the competent authority by issuing such orders. By way of this application the applicant has sought the following reliefs :

“(i)That impugned order dated 29.12.2011 (Annexure A/1)ordering to treated whole period as unauthorized absence and leave without pay and start recovery from salary of applicant, issued by the 4th respondent on behalf of 5th respondent, may be declared illegal, tainted with mala fide of respondent No. 4 and 5 and the same may be quashed and set aside and any recovery so made may be refunded with 18% interest.

(ii)That the respondents may kindly be directed to initiate appropriate action and proceedings against the private respondent for producing misleading facts due to which the applicant has suffered irreparable loss and mental agony and impose a cost Rs. 50 Lakh upon private respondent.

(iii)That the respondents may be directed to produce the relevant records/file containing noting leading to decision to pass the impugned order at the time of hearing of this case, for perusal by this Hon’ble Tribunal so as to unfold the true facts.

(iv)That the applicant has financially harassed by the 5th respondent with prejudice and malafide intension so costs of this application may be awarded.

(v) That any other direction or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice."

4. By way of reply the respondent department denied the averments made in the application and it has been further averred in the reply that the applicant joined at Kullu Centre of CWDB and just after 8 - 10 days of joining he left the headquarter without permission and reached his hometown i.e. Jodhpur and continued to send leave applications on one or the other ground and the same period was treated as leave without prior permission by the CWDB and Joint Secretary Ministry of Textiles. It has been further averred in the reply that the applicant left the Headquarter without permission and continued to be absent without any leave sanction/permission and the same period was treated as leave without pay by the competent authority. It has been averred in the reply that the applicant is habitual of making complaints against the superior officers of the department and on being inquired the same were found baseless and the respondent department has Annexed Annex.A/7 and A/8 inquiry reports in this respect.

5. A rejoinder has been filed by the applicant while reiterating the same facts and denying the fact of habitually making complaints. He further averred in the rejoinder that two CBI cases are pending against the Ex. Director in which he is a principal witness.

6. Heard the applicant who is present in person as well as the counsel appearing for respondents.

7. The applicant contended that he left the headquarter after seeking permission to leave the headquarters from Kullu vide Annex.A/9 because Annex.A/9 was marked to Shri S.D.Meena the then Establishment Clerk,

therefore, he left the headquarter and soon after reached at Jodhpur and thereafter he fell sick and after consulting a Doctor he gave a sick certificate and applied for leave. Further, sick certificate was also dispatched with the leave application and further the operation of his son and the ill health of his wife were the genuine causes for being on leave and he applied for leave from time to time but without considering these facts the respondent-department passed the order Annex.A/1.

8. Per contra, the counsel for the respondents vehemently defended the order Annex.A/1 and the counsel for respondent No. 1 contended that as the applicant remained absent and left the headquarters without permission, therefore the competent authority passed the order Annex.A/1 and the order Annex.A/1 cannot be said to be a illegal order because it was within the discretion of the competent authority to pass the order Annex.A/1.

9. We have considered the rival contentions of both the parties and also perused the records.

10. Earlier transfer of the applicant was quashed by this Bench of the Tribunal while considering various facts averred in the application and it has not been denied in the reply that no leave was in his credit, but it has only been averred therein, that he left the headquarters without permission and the applicant remained absent without permission, therefore the Annex.A/1 order was passed. The order Annex.A/1 is reproduced below :-

"Shri Sumer Singh Champawat, Dy. Manager (Marketing), during his posting at WDTC, Kullu, left head Quarter without prior permission on 11.12.2010 and remain absent from duty till 18.02.2011.

As per Wool Development Board Employees" Conduct, discipline and Appeal Rules, 1993, it falls under Rule 5 Misconduct (A) Minor Misconduct (1) : Absence without leave or overstaying the sanctioned leave without sufficient grounds and satisfactory explanation.

Now, the competent authority has treated whole period as un-authorised absence and leave without pay.

Therefore, the pay released for the above period shall be recovered in an instalment of Rs. 10000/- per month from the salary of December 2011."


11. The respondents' contention that he remained absent without sufficient grounds and satisfactory explanation cannot be accepted because no explanation was called from the applicant before passing order Annex.A/1 and when the sufficient leave was due in his credit there was no reason to pass Annex.A/1.

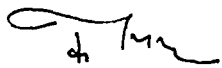
12. We have also perused the Annexes. A/9 and A/10. The initial application filed by the applicant seeking to leave the headquarter for 11th and 12th December, 2010 was marked by the competent authority to Shri S.D. Meena, the then Clerk of the Establishment Section and Annex.A/10 is the order which shows that it was within the knowledge of the Executive Director that the applicant was facing some family problems and he reported sick.

13. We are conscious of this fact that leave is not a right but at the same time the competent authority should pass orders such as at Annex.A/1 after giving an opportunity of hearing; which means the adequate opportunity should be provided before passing such an order, and in this case no such sufficient opportunity was provided by the respondents to the applicant before passing the order at Annex.A/1. Accordingly, we are of the considered view that the order at Annex.A/1 suffers from infirmity and, therefore, it is quashed and further we are not intending to pass any order regarding grant of leave because such right vests in the competent authority. At the same time respondent department is directed to reconsider the case of the applicant for sanctioning of leave in view of the observations made by us and pass an appropriate order, after giving due opportunity of hearing to the applicant, within two months from the date of receipt of this order. The respondent

department is also directed to make the payment of all the recovered amount in pursuance to Annex. A/1 to the applicant within a month from the date of receipt of a copy of this order. If the respondent department passes any order against the interest of the applicant, the applicant may further approach this Tribunal, if so desired/advised.

14. There is no order as to costs.


(Meenakshi Hooja)
Member(A)


// (Justice K.C. Joshi)
Member(J)

Mehta