

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

**O.A. No. 290/00003/14**

Reserved on : 24.11.2014

27<sup>th</sup>  
Jodhpur this the day of November, 2014

**CORAM**

**Hon'ble Mr.Justice Kailash Chandra Joshi, Judl. Member**

Sumer Singh Champawat S/o Shri Ratan Singh (Bamnu), aged about 50 years, R/o 496, New BJS Colony, Jodhpur at present employed on the post of Dy. Manager Marketing, Central Wool Development Board, Jodhpur.

.....Applicant

(Applicant in person)

Versus

1. Union of India through Secretary, Ministry of Textile, Udyog Bhawan, New Delhi.
2. The Central Wool Developmet 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

(By Advocate : None present)

**ORDER (Oral)**

By way of this application, the applicant Shri Sumer Singh Champawat has challenged the order Annex. A/1 dated 23.12.2013 issued by respondent No. 5 and



communicated by respondent No. 4 by which decision of treating his absence as unauthorized leave has been upheld.

2. The brief facts of the case, as averred by the applicant, are that the applicant was initially appointed on 16.01.1995 on deputation to the post of Dy Manager Marketing at Central Wool Development Board (CWDB) Jodhpur. The respondent No. 5 is closed friend of Shri Om Prakash, Ex Executive Director (ED), CWDB and accused in three CBI cases of corruption pending in court and the applicant is prosecution witness in these cases. The respondent No. 5 managed to issue an unusual office order on 29.11.2010 and the applicant was temporarily transferred to WDTC Kullu along with the post and that has been got converted into permanent transfer alongwith post vide order dated 07.12.2010. The applicant filed OA No. 02/2011 before this Tribunal against the transfer order being prejudiced. The applicant left Kullu under intimation to the respondent No. 5 during closed holidays due to urgent work at Jodhpur which was agreed and marked by the respondent No. 5. Suddenly, the applicant fell sick at Jodhpur and took rest on medical advice and informed the respondent No. 5 for sanction of leave from time to time. The applicant's wife is having heart problem and son was admitted in the hospital for operation, so the applicant applied for further extension of earned leave on medical grounds. The respondent No. 5 has not rejected the leave and not objected the leave under question at that time, as he was principally satisfied and agreed for leave as applied. This was also admitted by respondent No. 5 in the reply of OA No. 458/2012 and a copy of leave application was also submitted before the CAT to prove the request transfer of the applicant which was considered by the authorities at that time. Meanwhile, the then Joint Secretary, Ministry of Textile, GOI/Chairman, CWDB considered the prayer of the applicant and cancelled the transfer order dated 08.02.2011, therefore, the

applicant withdrew the case. The previous Chairman CWDB Shri V. Srinivas has not agreed to the proposal of respondent No. 5 regarding leave of the applicant being treated as unauthorised absence and recovery of the same, but respondent No. 5 did not provide this fact to the applicant under RTI and also did not put history of case to the present Chairman. The applicant's increments were regularly sanctioned by the respondent No. 5 vide order No. 1478 dated 29.07.2011 after recording relevant certificate that leave has duly been counted for increment and the relevant column 11 and 12 also do not mentioned any without pay leave or absence. The ACP granted to the applicant was withdrawn vide order dated 29.11.2011 and recovery was ordered which is stayed in OA No. 547/2011 by this Tribunal. The applicant has made specific complaints against respondent No. 5 vide letter dated 14.12.2011 and 04.04.2012 addressed to CVC and to respondent No. 2 which are pending consideration. The 4th and 5th respondent managed to issue an office order dated 29.12.2011 and imposed penalties of treating leave as unauthorized absence from duty and recovery from pay was started under rule 5 of CWDB Employees Conduct Rules without following proper procedure. The applicant filed appeal dated 30.12.2011 in this matter before the Appellate Authority which is still pending. The applicant submitted reminder dated 02.04.2012 for deciding appeal but no decision was taken by the authorities on pending appeal. The applicant also submitted all documents regarding pending appeal vide application dated 19.05.2012 and again prayed for relief in appeal but no action was taken by the authorities. The respondent No. 5 filed complaint dated 19.05.2012 against the applicant in police which was found false and fabricated by the police. The respondent No. 5 managed to issue office order dated 29.10.2012 by which the applicant was ordered to be transferred again to Kullu with immediate effect which was challenged by the applicant vide OA No. 458/2012 in this Tribunal. This Tribunal quashed the transfer order of the

applicant vide its order dated 01.01.2013 (Annex. A/13) while fixing responsibility of respondent No. 5. Hon'ble CAT has also commented adversely on the order dated 29.12.2011 regarding treating without pay and commencement of recoveries observing that this clearly reflects malice on the part of the authority. The applicant again submitted request alongwith CAT's observation in this point (unauthorized leave without pay and recovery) vide applicant dated 15.01.2013 but no action was taken for deciding the matter by any authorities. The applicant being aggrieved of action of the respondents filed OA No. 91/2013 before this Tribunal and this Tribunal vide order dated 13.11.2013 quashed the order with direction to reconsider the case of the applicant for sanction of leave in view of the observations made 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 was also directed to make the payment of all recovered amount in pursuance to order dated 29.12.2011 to the applicant. The respondent No. 5 issued a letter dated 03.12.2013 to the applicant and directed to submit a representation stating all the facts alongwith relevant attachment to reconsider the matter in the CWDB within five days. The applicant submitted a representation on 09.12.2013 (Annex A/43) along with all facts and documents to reconsider the case for sanction of leave in the light of observations made by the Hon'ble Tribunal. The respondents pressurized the applicant to say sorry and the applicant submitted an Internal Office Note dated 23.12.2013 (Annex A/44) to respondent No. 5 regarding this illegal pressure being exerted on him to avoid actual facts on record. The respondent No. 5 has issued a Speaking Order dated 23.12.2013 (Annex. A/1) addressed to the Administrative Officer, CWDB for communication to the applicant in terms of orders of Hon'ble CAT Jodhpur and respondent No. 4 communicated the copy of the order to the applicant. The applicant has surprised that order dated 23.12.2013 mentions false statement of



the Chairman CWDB as well as respondent. Therefore, being aggrieved of the illegal and arbitrary action of the respondents, the present OA has been filed by the applicant seeking following relief (s) :

- (i) That impugned order dated 23.12.2013 (Annexure A/1) ordering to treat whole period as unauthorized absence of applicant, issued by 5th respondent and communicated by 4th respondent, may be declared illegal, irrational, impropriety, tainted with mala fide of respondent No. 4 and 5 and the same may be quashed and set aside and leave under question may kindly be sanctioned in view of observations made by the Tribunal at Hon'ble Tribunal level and recovered amount may be refunded with 18% interest to the applicant.
- (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 of Rs 50 Lacs upon private respondents.
- (iii) That the applicant has financially harassed by the 5th respondent with prejudice and malafide intention so costs of this application may be awarded.
- (iv) 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.

3. In this case the OA was filed on 02.01.2014 and notices were served on 23.01.2014. Thereafter, on the dates i.e. 28.01.2014, 19.02.2014, 27.03.2014, 28.04.2014 and 15.05.2014, no reply was filed. On dated 28.04.2014, it was ordered by this Bench that if the reply is not filed on the next date, the matter shall be heard finally treating that respondents do not want to file any reply. Inspite of that on 15.05.2014 no reply was filed, therefore, on 18.07.2014, the right to file reply was closed. Thereafter, the Advocates were on strike from 23.07.2014 to 09.09.2014. On 10.10.2014 none was present for the respondents. On 16.10.2014, counsel for the respondents submitted that other matters related to the applicant are listed on 11.11.2014, therefore, he prayed to list the matter on 11.11.2014. On 11.11.2014 none was present on behalf of the respondents, therefore, it was listed on 21.11.2014 and on 21.11.2014 also none was present on

behalf of the respondents, therefore, matter is listed on 24.11.2014 but none was present on behalf of the respondents. Therefore, matter was heard finally.

4. During the course of argument, it was found that reply was filed by the respondents on 23.9.2014 without there being any prayer to allow to file the same showing reasons etc., therefore, it is hereby ordered that the reply may be kept in deep heart. However, in the reply it has been averred that the applicant was absent from the duty without proper permission, therefore, it was treated as without pay. There is a general denial of the averments in the reply and further it has been averred that there is no malice or biasness against the applicant because the applicant left headquarter without permission and continued to extend his leave without any sanction/permission and the same was treated as leave without pay. Further the respondents prayed to dismiss the OA and in support several documents have been filed by the respondents.

5. Heard the applicant, present in person. The present OA has a chequered history, because original controversy arose when the applicant was transferred from the post of Dy. Manager Marketing from Central Wool Development Board, Jodhpur to Weaving & Designing Training Centre, Kullu and the same was challenged by the applicant by way of OA No. 458/2012 and this Tribunal vide order dated 01.01.2013 passed in OA No. 458/2012 while observing that judicial intervention is limited, but one has to look to the general environment of the country which reflects overwhelming concerns of integrity and transparency in public services and public life. And it is necessary to intervene on the side of the injured which in this case happens to be the applicant and considered that logic and law lies heavily on the side of the applicant. Therefore, transfer order dated 29.10.2012 was quashed by this Tribunal while considering all the arguments. This Tribunal also referred the Annual Appraisal Reports of the applicant and relied

upon the several judgments of the Hon'ble Apex Court. When the applicant was under transfer, his wife and son both were sick then he filed an application for leave but the same was denied to him and he was treated absent without pay. The applicant challenged that order by way of OA NO. 91/2013 and it was decided by this Tribunal on 13.11.2013 by quashing the order with direction to reconsider the case of the applicant for sanctioning of leave in view of the observations made by this Tribunal and pass an appropriate order after giving the opportunity of hearing to the applicant within 2 months from the date of receipt of the order. In compliance to that order respondents issued letter dated 03.12.2013 and directed the applicant to submit representation stating all the facts. The applicant submitted representation dated 09.12.2013 in the light of observations made by this Tribunal. The respondent No. 5 called the applicant asking him to feel sorry and asked that Court/Tribunal will nothing to do in your case if you do not accept sorry from me. At last on 23.12.2013 the applicant submitted an Internal Office note dated 23.12.13 at 13:30 PM to the 5<sup>th</sup> respondent regarding illegal pressure imposed by the 5<sup>th</sup> respondent on the applicant to avoid actual facts on record. The 5<sup>th</sup> respondent issued a speaking order dated 23.12.2013 (Annex. A/1) addressed to the Administrative Officer (AO) CWDB to communicate to the applicant in terms of orders of CAT Jodhpur Bench and 4<sup>th</sup> respondent communicated the copy of the order refusing to sanction leave. The applicant by way of this OA has challenged the legality of the order Annex. A/1 and sought the reliefs mentioned in para 2 of the order.

6. The applicant submitted that the respondents issued order Annex. A/1 with highest prejudice as at the time of filing of the application, the applicant's wife and son were seriously ill and it was not possible for the applicant to attend the office and in spite of the order of the Tribunal to consider the representation of the

applicant in a legal way, the respondent No. 5 issued Annex. A/1 speaking order.

The Executive Director in its speaking order at page No. 57 of the OA observed as under :

“After going through the Order, I asked Shri Champawat to make his representation stating all facts so that his case can be reconsidered. Meanwhile he personally called by me and his grievance was heard and was asked that “if submit a leave application stating that this kind of incident will not be repeated in future, his application may be considered favourable but he responded no.”

Again Chairman/CWDB Shri K.L. Chaudhary called Shri Champawat on 21.12.2013 and his grievance was heard and again he was asked by Chairman/CWDB that “if he submit a leave application stating that this kind of mistake will not be repeated in future” his application may be considered favourable but again Shri Champawat stated no.

Just before passing this order on 23.12.2013, I again called Shri Champawat and told that “even now if he submit leave application stating that this kind of mistake will not be repeated in the future” his application may be considered but now also Shri Champawat stated no and even start arguing with me telling that you are putting undue pressure on me which you can’t do.”

7. The Executive Director after reconsideration of the case passed the following order :

“As Shri Champawat left headquarter Kullu on 10/12/2010 by faxing 2 days headquarter leave to Jodhpur knowing well that he can’t return back to Kullu from Jodhpur in two days and not joined office till 18.02.2011, his period of absence was treated as unauthorized absence. After going through the Hon’ble CAT order, and after personally hearing Shri Champawat twice, I do not find any reason to differ from my previous decision. Hence, I regret this case and uphold the decision taken earlier treating his absence as unauthorized absence.”

8. The applicant has assailed the legality of the order on the ground that he was called by the Executive Director for asking him not to repeat such mistakes as in the order it is stated that I called Shri Champawat and told him that “even now if he submit leave application stating that this kind of mistake will not be repeated in the future” his application may be considered but now also Shri Champawat stated no and even start arguing with me telling that you are putting undue pressure on me which you can’t do. From this order itself it is clear that the Executive Director has already made up his mind that by filing a leave application Shri Champawat



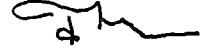
accept mistake and therefore, he told him to feel sorry or not to repeat such mistakes. In my considered view, the refusal to sanction leave by the competent authority should not be exercised to penalize a senior officer, when leave is due and sufficient documents are available on record regarding illness of wife and son of the applicant. The adamant attitude adopted by the respondent No. 5 presupposing that the applicant has committed a mistake by way of filing such an application for leave shows the prejudice attitude of the respondent No. 5. In the absence of such pleadings, in my considered view, order passed by the respondent No. 5 cannot be said to be legal one and from the order itself it can very well be inferred that the respondent No. 5 had prejudice attitude towards the applicant by pre-supposing the events. The power to refuse leave cannot be exercised to paralyze the employee. However, in appropriate cases leave can be refused by the competent authorities but in this particular case there is a chequered history of quashing of the transfer order on various grounds and then to refuse the leave on the ground that he did not apologize for his mistake shows prejudice attitude of the respondent No. 5.

9. Although, the reply has not filed in time and no application for condonation of delay or to take reply on record has been filed, but even in the reply there is bare denial of all the facts that too para-wise and simple denial of personal prejudice and biasness against the applicant. However, personal prejudice and biasness is such a fact which can be inferred from the circumstances put forth by the parties and in this particular case when the applicant did not apologize for the mistake, the respondent No. 5 was prejudiced to the applicant to ~~go~~ <sup>bow</sup> down before him and to make apology for his earlier mistake of filing the leave on the ground shown in the application. Even after considering reply filed by the respondents, no case is made out to refuse the leave to the applicant.

10. Having considered all the relevant documents available on record and arguments advanced by the applicant himself, I find force in the application, therefore, order Annex. A/1 is quashed and set aside. The respondents are directed to sanction leave to the applicant as applied, within 2 months from the date of receipt of this order. Further, the respondents shall pay the amount due on account of refusal of leave to the applicant. It is further made clear that in case of non-payment of salary of the leave period applied, within period stipulated above, the applicant shall be entitled to have interest on the amount, so withheld, at the rates of interest payable on GPF by the Government from time to time for the relevant year.

11. So far as other reliefs claimed by the applicant are concerned, the interest cannot be awarded to the applicant because there is no pleadings on record that when the amount fell due and for how much period it remained unpaid.

11. Accordingly, OA is partly allowed with no order as to costs.



(JUSTICE K.C.JOSHI)  
Judicial Member

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