

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 445 of 2009

Reserved on 23.4.2014

Pronounced on 21st May, 2014

**Hon'ble Mr. Navneet Kumar, Member -J
Hon'ble Ms. Jayati Chandra, Member-A**

Brijesh Kumar Srivastava, S/o Sri B.N. Srivastava, R/o Flat no. 4 (Type IV), Akansha Parisad, Sector F, Jankipuram, Lucknow.

.....Applicant

By Advocate : Sri R.K. Upadhyay

Versus.

1. Union of India through Principal Secretary, Ministry of Home Affairs, Government of India, Central Secretariat, New Delhi.
2. Director, Intelligence Bureau, (MHA) Govt. of India, Central Secretariat, North Block, New Delhi.
3. Joint Director, Subsidiary Intelligence Bureau, Kohima.
4. Assistant Director/E, Subsidiary Intelligence Bureau, Kohima.
5. Sri P.N. Angurala, Assistant Director, Subsidiary Intelligence Bureau, Dimapur, posted at Subsidiary Intelligence Bureau, 12 Albert Road, Mohindra House, Amritsar.

.....Respondents.

By Advocate : Sri K.K. Shukla.

O R D E R

Per Ms. Jayati Chandra, Member-A

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

"(a) to issue an order setting aside impugned termination order dated 12.2.08 terminated the services of the applicant (Annexure no.1) order dated 29.12.2008 rejecting the representation of the applicant (Annexure no.2) and the order dated 4.2.2009 rejecting the review petition of the applicant (Annexure no.3).

(b) to issue an order to reinstate the applicant back in service on the post of Security Assistant (Executive) with all consequential benefits of pay and allowances.

(c)

(d)"

J. Chandra

2. The facts of the case are that the applicant joined as Security Assistant (Executive) at Tizit, Distict Mon in Nagaland on 9.6.2006. He was posted at Dimapur w.e.f. 4.12.2007. During his posting at Dimapur, he was required to perform work normally done by Farash/Peon and was detained in office much beyond duty hours risking his life while returning home late, in an insurgency prone area. He was also not allowed holidays or weekly offs. As a result, he developed severe headache and stomach's pain and sent a Casual Leave application for one day on 20.12.2007, but the same was not sanctioned. He received a telephone message in the evening of 21.12.2007 that his mother was ill and after leaving a three day's C.L. application with permission to available prefix/suffix he left for Lucknow.

3. He sent a FAX message from Lucknow on 1.1.2008 to extend his leave for another 15 days (Annexure-5). He received a letter dated 12.1.2008 through Lucknow office (Annexure no.6) by which it was ordered that the applicant be treated as unauthorisedly absent from duty.

4. He sent a reply informing the respondents that he will rejoin as soon as possible after appearing in the recruitment examination of ministerial cadre of Allahabad High Court. He was required to appear in the said examination on 3.2.2008. So, he sent another FAX message datd 18.1.2008 to grant him leave without pay for another 20 days (Annexure no.7). He received letter dated 23.1.2008 (Annexure-8) which gave no reason for not sanctioning his leave as prayed for. He sent a 3rd letter dated 7.2.2008 for extension of leave (Annexure-9). But he was communicated with the termination order dated 12.2.2008. Despite the fact that the applicant was entitled to one month's notice from the date of receiving of the order or one month's pay in absence of such notice, he was not given the salary for the notice period. Hence, the termination order is liable to be set-aside.

5. The applicant preferred a representation dated 10.6.2008 before the Director (IB) (respondent no.3). He was communicated order dated 19.12.2008 (impugned order no.2) by which he was

J. Chaudhary.

informed that his representation has been rejected on the ground of delay in filing such representation.

6. The applicant has challenged the said rejection letter on the ground that 03 months time is allowed to him for filing a representation. This period should be counted from 20.3.2008 when the impugned order was served upon him and also that the order has been issued by Assistant Director and not the Head of Department (Respondent no.2). He preferred a Review Petition dated 10.1.2009 before the respondent no.2 (Annexure no.12) again reiterating their stand that the period for making such representation would count from 12.2.2008 and not from 20.3.2008. Further, he was not given an opportunity to defend his case as is required under Article 311 of Constitution of India & CCS (Temporary Service) Rules, 1965.

7. The respondents have filed their Reply denying the averments of the applicant. They have stated that the applicant joined at Tizit on 12.6.2006 and to Dimapur on 26.11.2007. He sent two applications on 20.12.2007 asking for (a) one day's Compensatory Off and also (b) 3 days leave (26.12.2007 to 28.12.2007) and one day's RH on 24.12.2007 without getting his leave and station leave sanctioned. He sent a FAX message on 1.1.2008 requiring for extension of his leave by 15 days.

8. He was asked to rejoin his duties by messages sent to him at Lucknow on 12.1.2008 and 23.1.2008. He sent a message on 10.1.2008 asking for grant of leave without pay for 20 days so that he could appear in a recruitment examination at Allahabad High Court. As per I.B. Hqrs. Memo no. 23/80/CI/72 (1) dated 31.12.83 and 23/80(CW)/76/2) dated 6.11.1976 he was required to obtain prior clearance before applying elsewhere. He was in the habit of taking a few days leave and thereafter extending the same. The applicant's past record is as under :-

- (a) 05 days C.L. from 16.10.2006 to 20.10.2006 extended upto 20.11.2006. These 36 days were treated as Dies-non vide Office Order no. 959 dated 27.11.2006.

J.Chandrasekhar

- (b) 05 days Earned Leave from 19.2.2007 to 23.2.2007 extended upto 9.3.2007 extended for 19 days regularized by granting E.L. vide Office Order no. 297 dated 11.4.2007
- (c) 05 days Casual Leave from 16.4.2007 to 20.4.2007 extended for 35 days upto 18.5.2007 regularised as (i) 09 days E.L., (ii) 18 days HPL and (iii) 06 days EOL vide Office Order no. 73 and 531 dated 19.1.2007 and 23.5.2007 respectively.
- (d) 12 days Earned Leave from 22.10.2007 to 2.11.2007 extended upto 13.11.2007. His absence for 23 days was regularized as RH for one day, E.L. for 15 days, E.L. for 03 days and HPL for 08 days vide office order dated 4.10.2007.

9. The applicant was offered appointment on a temporary post vide letter dated 12.5.2006 (Annexure no.7 to Counter Reply) under the following conditions:

- (i) *The appointment is temporary. His/her appointment to the post in permanent capacity will, however, depend on various factors governing permanent appointment in such posts in force at the time and will not confer on him/her the title to permanency from the date the post is converted.*
- (ii) *The appointment may be terminated at any time by a month notice given by either side viz. the appointee or the appointing authority without assigning any reasons. The appointing authority, however, reserves the right of termination of service of the appointee forthwith or before the expiration of the stipulated period of notice by making payment to him/her of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.*
- (iii)
- (iv)"

In view of his unauthorized absence and failure to rejoin despite repeated notices, his services were terminated by giving one month's notice vide SIB Kohima dated 12.2.2008, received by him on 21.2.2008. Under sub rule (1) of Rule 5 of CCS (Temporary) Rules 1965, he remained absent for 63 days (from 20.12.2007 to 20.2.2008) which was treated as Dies-non and he is not entitled to any pay and allowances for this period.

T.Chandrashekar

The applicant gave a reply dated 10.6.2008 to Joint Director, SIB, Kohima. Under Sub-rule (2) of Rule 5 of CCS (Temporary) Rules, 1965 no case will ordinary be reopened after three months from the date of issue of notice. There is no provision for appeal/representation.

10. Rejoinder Reply has been filed by the applicant denying the averments made in the Counter Reply and reiterating the stand taken in the Original Application.

11. We have heard the learned counsel for the parties at length and have perused the pleadings on record.

12. During the course of arguments, learned counsel for the applicant has cited place reliance on the decision rendered by Hon'ble Supreme Court in the case of **Krushnakant B. Parmar Vs. Union of India reported in JT 2012 (2) SC 352** wherein it was held that the employee is not guilty if it was not possible on report for duty on genuine and compelling grounds.

12. The applicant was a temporary employee against a temporary post as demonstrated in the initial offer of appointment and its acceptance as the case is, therefore, covered under the terms and conditions of his appointment & CCS (Temporary Servants) Rules, 1965.

The chronology of dates and for seeking leave and the reasons thereof are common in both the versions of the applicant and the respondents.

13. It is generally recognized in the service rules that leave cannot be claimed as a matter of right. This view has also been upheld by Hon'ble Supreme Court in the case of P.D. Shanker Vs. State of Haryana & Others reported in 1968 SLR 235. Infact leave granted may even be reckoned in Public interest as per Rule 7 (2) of CSS (Leave) Rules, 1972. If an employee continues to overstay even the end of leave granted this amounts to un-authorized absence and amounts to misconduct and is liable to be taken as a breach of discipline as held in the case of E.C. Joy Vs. the Principal Bharatmath of College reported in 1981 (2) SLR 773) The competent authority may initiate the disciplinary proceedings

J. Chaudhary

resulting into termination. It is not demonstrated anywhere that the leave prayed for were actually granted to the applicant. Infact he simply left some apprehension and left his place of posting. Thereafter he simply sent extension applications taking it for granted that they will be sanctioned. This act was highly presumptions.

14. In this case, the respondents by notices dated 12.1.2008 and 23.1.2008 had asked the applicant specifically to rejoin his duties, which he failed to do so.

15. The case of Krushnakant B. Parmar (supra) cited by the applicant is of no help to him as the facts and circumstances of the present case are totally different. The applicant was a temporary employee as per his appointment letter. It has been held by the Hon'ble Supreme Court in a catena of decisions that a temporary employee has no right to his post (in this case, even the post was a temporary post). Further service of such employee may be terminated in terms of his appointment. The relevant judgments are **State of U.P. Vs. K.K. Shukla reported in (1991) 1 SCC 691** and **Inaka Ltd. Vs. Dharmendra Kumar (JT 2000 Suppl.1) SC 280** wherein it has been held that temporary government servant has no right to hold the post whenever the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant .

16. Pursuant to terms & conditions mentioned in the appointment order dated 12.5.2006, quoted hereinabove, the respondents gave notice by their letter dated 12.2.2008. The applicant has also claimed that he has not been paid for one month's pay i.e. the notice period.

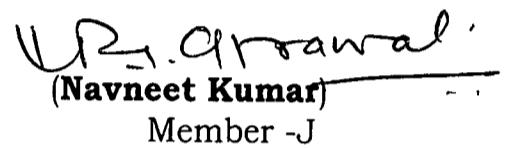
17. The termination notice was received by the applicant on 21.2.2008. The period of unauthorized absence from 20.12.2007 to 20.2.2008 (63 days) was treated as 'Dies-non' vide order no. 77

dated 6.3.2008. This order has not been challenged by the applicant. The applicant continued to remain absent from his place of posting during the notice period without any application for leave or its consequent absence. Hence, on the principle of 'No work No pay' the applicant is not entitled to any payment for the notice period.

18. In view of the above discussions, the O.A. has no merit and is liable to be dismissed and is so dismissed. No costs.



(Ms. Jayati Chandra)
Member-A


(Navneet Kumar)
Member -J

Girish/-