

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.168/1997

Date of order: 1/5/2002

1. Murlidhar, S/o Chirkut, C/o Kalin Bunai Prasikshan Kendra, Uniara, Distt.Tonk.
2. Somaru Ram, S/o Sh.Hari, C/o Kalin Bunai Prasikshan Kendra, Zilai, Ditt.Tonk.
- 3/ Ram Nohore, S/o Sh.Santu, C/o Kalin Bunai Prasikshan Kendra Vatika, Distt. Jaipur.

...Applicants.

Vs.

1. Union of India through Secretary, Mini.of Textile, West Block No.7, R.K.Puram, New Delhi.
2. Development Commissioner (Handicrafts) West Block No.7, R.K.Puram, New Delhi.

...Respondents.

Mr.Shyam Arya : Counsel for applicant

Mr.Bhanwar Bagri : Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

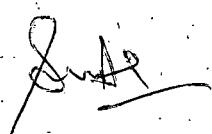
Hon'ble Mr.H.O.Gupta, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985 the applicants make a prayer to quash and set aside the impugned order dated 4.6.96.

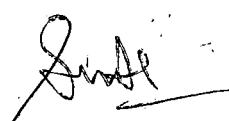
2. The applicants in this O.A have challenged the order dated 4.6.96 by which the entire period of absence from 11.12.92 to 27.11.95 have been declared as dies non.

3. The case of the applicants in brief is that shifting the Carpet Weaving Training Centre Gopa Mau to Gangashar (Bikaner) was tayed by Lucknow Bench of Allahabad High Court in Civil Writ Petition No.5070/93, vide order dated 8.9.92



and after passing the stay order, the applicants reported to Gopa Mau Centre. The CTO of Gopa Mau Centre forwarded the matter to the Assistant Director, Carpet Weaving Centre, Lucknow and till passing of any order, the applicants were directed to present at Gopa Mau Centre. It is stated that the applicants filed O.A No.523/93 before Lucknow Bench of the Tribunal and the Lucknow Bench of the Tribunal directed to decide the claim of salary of the applicants for the period from January 1993 and onwards within 4 months. Instead of deciding the applicants' claim, the respondents passed the impugned order declaring the aforesaid period as dies non. It is stated that the applicants remained present from 11.12.92 to 27.11.95 at Gopa Mau Centre and attendance was also marked in the Attendance Register at Gopa Mau and the Assistant Director, Carpet Weaving Centre, Lucknow, informed vide letter dated 3.5.93 that the representation of the applicants is under consideration and decision will be intimated to them soon. In such circumstances declaring the aforesaid period as dies non is not only arbitrary but illegal and unjust and liable to be quashed and set aside. Therefore the applicant filed this O.A.

4. Reply was filed. It is stated that the Lucknow Bench of Allahabad High Court stayed the shifting of Carpet Weaving Training Centre from Gopa Mau to Gangashar (Bikaner) but not stayed the transfer of the applicants. It is also stated that the applicants have no authority whatsoever to report at Gopa Mau Centre in place of Gangashar and they continued at Gopa Mau at their own accord without any specific order from the competent authority. It is also stated that in compliance of the order dated 5.2.95, passed in O.A No.523/93, the claim of the applicants were

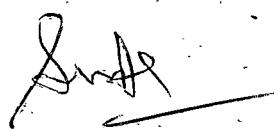


considered and decided that the period of absence from 11.12.92 to 27.11.95 shall be treated as dies non and accordingly the applicants are not entitled to any salary for the period. It is also stated that the applicants' representation was duly considered and after examination it was found that the absence of the applicants was deliberate and wilful, therefore, this period shall be treated as dies non. Thus, the applicants have no case and the O.A is liable to be dismissed.

5. Rejoinder has been filed reiterating the facts as stated in the O.A, which is on record.

6. Heard the learned counsel for the parties and also perused the whole record.

7. The applicants have categorically stated that after staying the shifting of Carpet Weaving Centre, Gopamau to Gangashar, the applicant reported to CTO, Gopamau, who forwarded their representation to the Assistant Director, Carpet Weaving Centre, Lucknow vide letter dated 22.1.93 and communicated that till passing of any order/decision, the applicants will remain in Gopamau Centre. The applicants have also made categorically that they remained present at Gopamau Centre from 11.12.92 to 27.11.95 and their attendance was also marked in the Attendance Register maintained by CTO, Gopamau. It is also evident that the Assistant Director, Carpet Weaving Centre, Lucknow, informed the applicants vide letter dated 3.5.93 that their representation is under consideration but ignoring all these facts, the impugned order was passed declaring the period 11.12.92 to 27.11.95 as dies non. No disciplinary proceedings were ever initiated against the applicant under FR 17A or under any other rules. Although a show cause



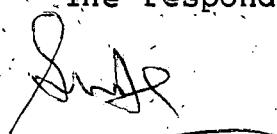
notice dated 9.4.96 was given to the applicants proposing the period of absence from 11.12.92 to 27.11.95, as dies non and the applicants filed reply but without considering all the points raised by the applicants and without making any enquiry into the matter, the period from 11.12.92 to 27.11.95 was treated as unauthorised absence and declared as dies non.

8. In Bhanwar Lal & Ors Vs. UOI & Ors, 1999(3) ATJ 498, it was held by Jodhpur Bench of the Tribunal that action under FR 17A has to be taken only after giving due notice to the affected party.

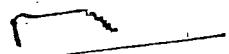
9. In Shiv Ratan Swami Vs. UOI, this Tribunal vide order dated 24.7.2001, held that absence from duty declaring as dies non without any enquiry is not sustainable.

10. In the instant case, the applicants have categorically stated that by the orders/direction of the Assistant Director, Carpet Weaving Centre, Lucknow, the applicant remained at Gopamau which fact has not been controverted by the respondents in their reply in so many words. The applicants have categorically denied their absence from duty. In these circumstances, without conducting any enquiry, it was not just and proper for the respondents to declare the period of absence from 11.12.92 to 27.11.95 as dies non and thus the impugned order dated 4.6.96 is not sustainable in law.

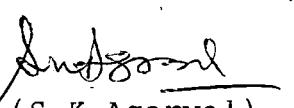
11. We, therefore, quash the impugned order dated 4.6.96 and direct the respondents to pay salary for the period 11.12.92 to 27.11.95 to the applicants within 3 months from the date of receipt of a copy of this order. The applicants shall also be entitled to consequential benefits, if any. The respondents shall at liberty to pass appropriate orders



after conducting enquiry in the matter, if so desire. No order as to costs.


(H.O.Gupta)

Member (A).


(S.K.Agarwal)

Member (J).