

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No.
File No.

144/99

199

DATE OF DECISION 24.7.2001

Shiv Rattan Swamy

Petitioner

Mr. P. V. Calla

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. Sanjay Pareek

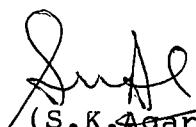
Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. xxx

1. Whether Reporters of local papers may be allowed to see the Judgement ? X
2. To be referred to the Reporter or not ? YES
3. Whether their Lordships wish to see the fair copy of the Judgement ? YES
4. Whether it needs to be circulated to other Benches of the Tribunal ? X


(S.K. Agarwal)
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.144/99

Date of order: 24/7/2001

Shiv Ratan Swami, S/o Sh.Gangadhar Swami, working as Senior Accountant, O/o Accountant General Rajasthan, Jaipur.

...Applicant.

vs.

1. Union of India through Finance Secretary, Govt of India, New Delhi.
2. Controller & Auditor General of India, Bahadr Shah Zafar Marg, New Delhi.
3. Accountant General, Rajathan, Jaipur.

...Respondents.

Mr.P.V. Calla : Counsel for applicant

Mr.Sanjay Pareek : for respondents.

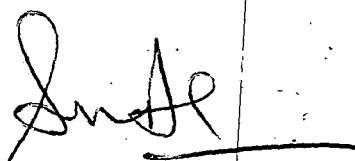
CORAM:

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

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

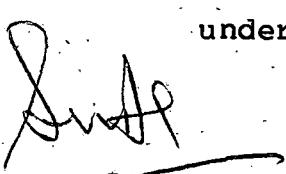
In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant has challenged the order dated 6.8.97 and order dated 23.9.97 and makes a prayer to direct the respondents to grant leave due to the applicant for the period w.e.f.15.1.97 to 19.3.97 and further to treat the applicant on duty for the period w.e.f. 20.3.97 to 8.5.97 with all consequential benefits.

2. In brief the case of the applicant is that his wife Smt.Manju Bala on 14.1.97 caught fire suddenly on her sari when she was cooking food. The applicant took her to SMS Hospital to save her life but there she died. The father-in-law of the applicant lodged an FIR at Police Station Bajaj Nagar, Jaipur and a case under Sec.498(A) read with Sec.306



IPC was registered on 21.1.97. It is stated that the applicant sent leave application on 15.1.97 thereafter extended his leave from time to time. The respondents communicated vide memo dated 31.1.97, 3.2.97 and 3.3.97 to the applicant to resume his duty failing which directions were given to take disciplinary action against him. But the applicant was not in a position to join duty due to his involvement in the false criminal case and to lookafter his three children. It is stated that the applicant was granted bail on 19.3.97 by the District and Session Judge, Jaipur City. It is stated that on 20.3.97, the applicant submitted his joining report but he was not allowed to join. A detailed representation was also submitted but he was not allowed to join duty and he remained under awaiting orders from 20.3.97 to 8.5.97. It is stated that vide order dated 6.8.97, the period from 15.1.97 to 19.3.97 has treated as dies-non and the period 20.3.97 to 8.5.97, the applicant was directed to apply for any kind of leave. The applicant filed representation against the order dated 6.8.97 which was rejected by the competent authority vide order dated 23.9.97. Thereafter, the applicant filed revision/review which is still pending hence the applicant filed the O.A for the relief as above.

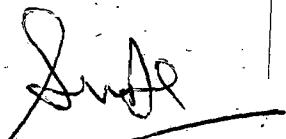
3. Reply was filed. In the reply, it is stated that the applicant challenged orders dated 6.8.97 and 13.9.97 in the year 1999, therefore, this application is barred by limitation. It is also stated that on the report of Sh.Purushottam Das, father-in-law of the applicant, a case was registered at Bajaj Nagar Police Station for the offence under Sec.306 and 498(A) of IPC and the applicant requested



AAO to sanction him 15 days Earned Leave w.e.f. 15.1.97 on the ground of hospitalisation of his wife but the said leave was not sanctioned and the applicant was directed to report back on duty vide memo dated 29.1.97 and 3.2.97. It is also admitted that the application for leave extension was received in the office but again a memo was issued to the applicant to resume duty on 17.2.97 and a telegraphic message was also given to this effect but the applicant did not join duty, therefore, the impugned order was passed treating the aforesaid period as dies-non and for rest of the period, the applicant was directed to apply for leave. The applicant applied for leave for the period commencing from 20.3.97 to 8.5.97 and the leave was accordingly granted. Therefore the applicant has no case for interference by this Tribunal and the O.A devoid of any merit is liable to be dismissed.

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

5. On a perusal of the averments of the parties it becomes abundantly clear that the applicant submitted an application for sanction of Earned Leave initially for a period of 15 days and thereafter he also submitted application for extension of leave upto 19.3.97. It is also undisputed fact that the respondents have issued memos dated 31.1.97, 3.2.97 and 3.3.97 for resuming duty failing which disciplinary action would be taken against the applicant. It is also an undisputed fact that no disciplinary proceedings were ever initiated against the applicant to take any action under Rule 17-A of the Fundamental ^{Rules} or any other Rules. No show cause notice except memos as referred above was given

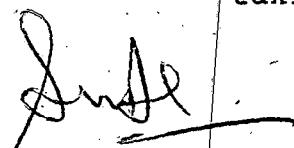


to the applicant for treating the period w.e.f. 15.1.97 to 19.3.97 as dies-non. The impugned order dated 6.8.97 makes it very clear that the period from 15.1.97 to 19.3.97 was treated as dies-non on the ground that the applicant was absconding with a view to escape arrest in the criminal case registered against him. No preliminary or any kind of enquiry appears to have been conducted by the respondents to know as to why the applicant was remained absent during the period from 15.1.97 to 19.3.97. Therefore, I am of the opinion that there was no ground available with the respondents to treat the period from 15.1.97 to 19.3.97 as dies-non on the ground that it was wilfull absence from duty by the applicant or he was absconding to escape the arrest. No show cause notice or an opportunity of hearing was granted to the applicant before passing the impugned order.

6. In Mateen Ahmad Vs. Director Postal Services & Ors, 2000(2) ATJ 50, it was held by Lucknow Bench of the Tribunal that show cause notice is necessary before passing the impugned order.

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

8. In the instant case, memos were issued to the applicant with a view to give direction to him to resume his duties failing which disciplinary action may be taken but it is an undisputed fact that no disciplinary proceedings were initiated to take action against the applicant under FR 17A or any other rules. No show cause notice was given before taking any action vide the impugned order, therefore, the



impugned order so far as it relates treating the period from 15.1.97 to 19.3.97 as dies-non is liable to be quashed.

9. As regards the period 20.3.97 to 8.5.97 is concerned, the applicant submitted an application for sanction of leave at the direction of the department and the leave was sanctioned in pursuance, thereafter. It is also the established fact that the applicant did not remain on duty for the aforesaid period and he failed to prove this fact that he was not allowed to join his duties on 20.3.97 and thereafter. On a perusal of the averments of the parties I do not find any arbitrariness in sanctioning the leave for the period from 20.3.97 to 8.5.97.

10. In view of above all, this O.A is disposed of with a direction to the respondents not to treat the period 15.1.97 to 19.3.97 as dies-non for all purposes and to this extent the order dated 6.8.97 stands modified. The respondents may sanction the leave of any kind due to the applicant for this period within a period of one month from the date of receipt of a copy of this order and thereafter the applicant shall be entitled to all consequential benefits.

11. No order as to costs.



(S.K. Agarwal)

Member (J).