

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 516 of 2000

Jabalpur, this the 31st day of July, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

K.S. Duggal, aged 57 years,
S/o Late Shri Jaswant Duggal,
Asstt. Foreman, Controllorate of
Quality Assurance (Ordnance Factory,
Vehicle), Vehicle Factory, Jabalpur.
R/o MIG 40, Govind Bhawan, South
Civil Lines, Jabalpur (MP).

APPLICANT

(By Advocate - Shri Manoj Sharma)

VERSUS

1. Union of India through Secretary,
Ministry of Defence, Deptt. of
Defence Production, South Block,
New Delhi.
2. The Director Genral, Quality
Assurance, Directorate of Quality
Assurance, South Block, New Delhi.
3. The Director Quality Assurance
(Vehicle) D.H.Q. Post Office,
New Delhi - 110 011.
4. The Controller of Quality Assurance.
Controllorate of Quality Assurance
(OFV), Vehicle Factory, Jabalpur.
482 009.
5. The Controller, Controllorate of
Quality Assurance (ICV), Yeddumail-
aran, Distt. Medak (A.P.)

RESPONDENTS

(By Advocate - Shri S.C. Sharma)

O R D E R

By J.K. Kaushik, Judicial Member -

Shri K.S. Duggal has filed this Original Applica-
tion under Section 19 of the Administrative Tribunals
for
Act, primarily/seeking a direction to the respondents to
quash the entire Departmental enquiry proceedings in
question and also restraining the respondents from
taking any adverse action against the applicant on the
basis of the Departmental enquiry in question.

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2. The brief facts of the case are that the applicant is holding the post of Assistant Foreman in the Controllerate of the Quality Assurance (C.F.V.), Vehicle Factory, Jabalpur. His wife is a State Government employee working as a Teacher in the Education Department of State of Madhya Pradesh. The applicant was sought to be transferred from Jabalpur to Medak in the year 1995. The applicant challenged the transfer order in OA No. 341/1995 which came to be disposed of with a direction to the respondents to consider his representation in accordance with law. A review was filed against the same and the same was rejected. The applicant proceeded on medical leave with effect from 14/10/1995 and he remained under treatment in a Government hospital. On recovery from his ailment he tried to join his duties on 13/11/1995, but he was prevented from entering into the factory premises. His status was also not disclosed. He suffered further deterioration of his health and was requiring further medical treatment. He was not given any valid movement order and his salary was drawn upto April 1996 and for none of his fault he was subjected to extreme harassment in as much as he was not permitted to join at Jabalpur and no valid movement order was issued to him.

3. The further case of the applicant is that he approached this Bench of the Tribunal by filing OA No. 568/1999 seeking a direction that he may be permitted to join his duties and be treated as continuing in service since October 1995 and also be allowed all consequential benefits. This Bench of the Tribunal disposed of the same

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on 08/10/1999 with an observation that a fresh order was required to be passed with regard to joining of the applicant in new station and if the applicant joins at new station his absence should be regularised as per rules. Subsequently review was sought on the said order which was turned down. Contempt proceedings were also been taken in the matter. A notice came to be published in the local newspaper that enquiry is being conducted under Rule 14 against the applicant for remaining unauthorisedly absent from duty from 20th October, 1995. The notice was also sent to him by registered post, but the same was returned with the endorsement as refusal to accept, and he apprehended that extreme penalty is likely to be imposed on ~~applied~~ him.


4. Number of grounds have been mentioned in the original Application, which shall be dealt with at appropriate place in the later part of this order.

5. The respondents have contested the matter and have filed a very detailed reply to the Original Application. They have submitted that the applicant was relieved on 19/10/1995 AN and SOS with effect from the same date to join the new establishment. The movement order was pasted on the main door of residence of the applicant and it was also sent through registered post, but the same came back as undelivered as the same was refused by the applicant. ~~to accept~~. Hence major penalty proceedings were initiated against the applicant. The applicant did not co-operate with the enquiry proceedings and the respondents had to proceed ex-parte against the applicant. The

applicant is on the roll of Medak and therefore he on the day the application was filed before the Hon'ble Tribunal of Jabalpur was not posted within the territorial jurisdiction of this Tribunal and therefore the application was jurisdictionally incompetent and it was not entertainable. His leave application on medical grounds has not been sanctioned by the competent authority and the entire period was treated as absence. However the applicant has not joined at Medak so far. Since he has been relieved from Jabalpur for joining at Medak question of his taking back on duty does not arise. Hence the original Application deserves to be dismissed.

6. We have heard the learned counsel for the parties at a considerable length and have carefully perused the pleadings and the records of this case.

7. At the very outset the learned counsel for the applicant has drawn our attention to one of the Misc. Application No. 1023/2003, wherein an order of the Hon'ble High Court in writ Petition No. 2242/2000 has been requested to be taken on record. It has been submitted that this is the order which was filed against the judgment of this Bench of the Tribunal passed in OA No. 568/1999 and order dated 20/01/2000 passed in RA No. 44/1999. The order dated 08/10/1999, passed by this Tribunal has been ordered to be modified to the extent that absence of the applicant should be computed only for the purpose of pension and not for other purposes. Therefore the learned counsel for the applicant has

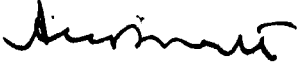
 submitted that the respondents cannot be allowed to take


any
/disciplinary action against him except to regularise the period of absence and the disciplinary proceedings may be ordered to be dropped.

8. On the contrary the learned counsel for the respondents has submitted that the applicant did not deliberately join at the new place of posting and his absence has not so far been regularised. He has also pointed out that in the review application No. 44/1999, it was contended by the learned counsel for the applicants (Union of India & Ors.) that proceedings under Rule 14 were pending against the respondent (K.S. Nuggal). The Tribunal observed that "we do not think that our order imposes any bar for the applicants to proceed with the proceedings." Thus no bar has been imposed against proceeding with the disciplinary proceedings. This order has also not been modified by the Hon'ble High Court. He has also submitted that the proceedings which are being conducted do not go contrary to the order of the Hon'ble High Court also, since the High Court has directed that the absence of the applicant should be computed for the purpose of pension and not for other purposes. He has further explained that the period of absence has to be regularised and if it is found that it was unauthorised absence, it has to be ascertained that whether the absence was unauthorised absence or it was authorised and the respondents cannot afford to travel beyond the circumference fixed by this court or by any other court including the High Court. The disciplinary authority shall definitely take into account the direction of the Hon'ble High Court while passing the appropriate order.

9. We have considered the rival contentions raised on behalf of the parties. From the complete pleadings one thing is very clear that there is no embargo put by any of the court on the disciplinary proceedings and the High Court has only stated that absence of the applicant should be computed only for the purpose of pension and not for other purposes. Once the learned counsel for the respondents has submitted that they will pay due regards to the orders of this Bench of the Tribunal and High Court, there hardly remains any point of re-adjudication in the matter. Thus the in-escapeable conclusion would be to permit the respondents to proceed with the disciplinary proceeding and finalise the same as early as possible in accordance with the rules keeping in view the observations of the Hon'ble High Court as discussed above.

10. In view of what has been said and discussed above, we do not find any force in the Original Application and the same is devoid of any merits and thus stands dismissed. The rule already issued in this case stands dis-charged. However in the peculiar facts and circumstances of the case the parties are directed to bear their own costs.


(Anand Kumar Bhatt)
Administrative Member


(J.K. Kaushik)
Judicial Member