

(B)

19.04.2007

OA 360/2005 with MA 259/2005

Present : Mr. N.K. Gautami, counsel for applicant.
Ms. Kavita Bhati, proxy counsel for
Mr. Kunal Rawat, counsel for respondents.

2 This case has been listed before the Deputy Registrar due
~~to non-availability of the Division Bench. Be listed before the Hon'ble~~
Bench on 11.07.2007.

akv


(GURMIT SINGH)
DEPUTY REGISTRAR

OA No.360/2005 with MA No.259/2005.

11.07.2007.

Mr. N. K. Gautam counsel for the applicant.
Mr. Kunal Rawat counsel for the respondents.

This case has been listed before the Deputy Registrar due to non availability of Division Bench. Be listed before the Hon'ble Division Bench on 26.07.2007.


(GURMIT SINGH)
DEPUTY REGISTRAR

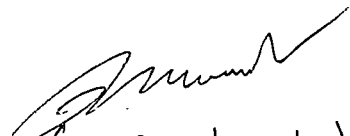
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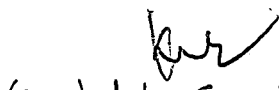
26.7.07

Mr. N.K. Gautam, Counsel for applicant

Mr. Kunal Rawat, Counsel for respondents

Heard. The OA is disposed of by a separate order.


(J.P. Shukla)
M(A)


(Kuldeep Singh)
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 26th day of July, 2007

ORIGINAL APPLICATION NO.360/2005

CORAM :

HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Het Singh
S/o Shri Ghamandi Singh,
R/o Village and Post Mawanpur via Bandh Baretha,
District Bharatpur (Rajasthan).

... Applicant

(By Advocate : Shri N.K.Gautam)

Versus

1. Union of India through
Chief Engineer,
Southern Command,
Pune.
2. Chief Engineer,
Commander Works Engineer,
Zone Jaipur.
3. Senior Engineer Commander,
Works Engineer,
Jaipur.
4. Garrison Engineer,
MES Itrana Palace,
Alwar.

... Respondents

(By Advocate : Shri Kunal Rawat)

ORDER (ORAL)

PER HON'BLE MR.J.P.SHUKLA

The applicant has filed this OA under
Section 19 of the Administrative Tribunals Act,
1985, aggrieved by the non-payment of subsistence

Shukla

allowance and thereafter illegal dismissal from service.

2. Brief facts of the case, as stated by the applicant, are that he was initially appointed on the post of Chowkidar. In the year 1997 a criminal case was registered against him. As such, he was suspended w.e.f. 3.12.97. The applicant was paid subsistence allowance upto January, 1999 and thereafter no subsistence allowance was paid to him. He left the headquarter making representation dated 29.5.99 requesting for payment of subsistence allowance and permission to leave the headquarter till finalization of the criminal case. Thereafter, respondent No.4, without taking decision on his request for permission to leave the headquarter, issued charge-sheet dated 30.6.2000 under Section 14 of the CCS (CCA) Rules. Though the address of the applicant was available with respondent No.4 but he notified the information in the Newspapers dated 13.4.2001 and 7.6.2001 for the applicant to submit his defence statement within ten days. During inquiry, neither the appointment order of the EO nor the opportunity to participate in the inquiry was provided to the applicant and respondent No.2 vide order dated 29.9.2001 dismissed the applicant from service. The applicant filed appeal dated 15.10.2001 against dismissal, but to no avail.

3. The respondents contested the OA and have filed their reply. In the reply it is submitted that as per Rule-14 of CCS (CCA) Rules, 1965 the individual is not supposed to leave the headquarter without intimation while under deemed suspension. In spite of this, the applicant left the headquarter without proper permission and has been absent from duty without getting any leave sanctioned. Merely stating that he would attend office whenever required, does not make him eligible for his remuneration during his

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period of willful absence. Further, he had to submit his non-employment certificate regularly every month for claiming subsistence allowance. On the contrary, non-employment certificates were produced by the applicant for the period 1.4.99 to 21.11.2000 in one go on 21.11.2000. Thus, the applicant did not meet the mandatory provision of submission of regular non-employment certificates to the respondents and hence he cannot be held entitled to get subsistence allowance from the respondents in any manner. The applicant did not attend the office till his dismissal from service in spite of repeated notices/warnings. Therefore, the OA deserves dismissal.

4. Heard the learned counsel for the parties and perused the documents placed on record. Learned counsel for the applicant argued that the applicant had specifically stated his disability to stay at Alwar due to non-payment of subsistence allowance and the respondents themselves made the applicant a person with disability to stay at his headquarter by not arranging the payment of his subsistence allowance since February, 1999. It was also argued that the applicant has been regularly submitting non-employment certificates monthly since his suspension. As per averment of the respondents, non-employment certificates for the period from 1.4.99 to 21.11.2000 were acknowledged from the applicant, then what was the justification for not arranging the payment of subsistence allowance to the applicant except their malafide intention to punish the applicant and to dismiss him from service in an unconstitutional manner.

5. Learned counsel for the respondents argued that the applicant was being paid subsistence allowance up till the period when he submitted his non-employment certificates, and remained at

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the duty station.. Since the applicant had failed to meet the obligation of timely submission of non-employment certificate and to be present at his duty station, therefore, as per rules and provisions of law the subsistence allowance was not paid to him.

6. After hearing the leaned counsel for the parties and keeping in view the facts and circumstances of the case, it is observed that the applicant had willfully remained absent from duty and the respondents have rightly not made the payment of subsistence allowance to him and subsequently dismissed him from service.

7. Accordingly, the OA stands dismissed with no order as to costs.


(G.P.SHUKLA)
MEMBER (A)


(KULDIP SINGH)
VICE CHAIRMAN

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