

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 19th day of July, 2006

ORIGINAL APPLICATION No 552/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Nahar Singh,  
s/o Shri Bhadai Ram,  
aged 59 years,  
r/o 4/28, A.G.Colony,  
Bajaj Nagar, Jaipur (Raj.)  
Sr. Audit Officer in the  
Office of P.A.C. Raj. Jaipur,  
A.G.Office (Raj.)

.. Applicant

(Applicant present in person).

Versus

1. Union of India through  
the Secretary to the Government of India,  
Ministry of Finance,  
New Delhi.
2. The Principal Accountant General,  
Rajasthan, Jaipur.
3. Shri B.P.Yadav,  
Sr. Deputy Accountant General,  
Rajasthan, Jaipur.
4. Shri Rajesh Kumar Goel,  
Sr. Deputy Accountant General,  
Rajasthan, Jaipur.
5. Shri Kulwant Singh,  
Deputy Accountant General (Admn.)  
Rajasthan, Jaipur.

.. Respondents

(By Advocate: Mr.Gaurav Jain)

## O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- I) by appropriate order or direction, the entire relevant record of the non-applicants, pertaining to the case, may be summoned.
- II) by an appropriate order or direction the impugned order dated 8.2.2005 (Annexure-A/I) may kindly be quashed and set aside.
- III) By an appropriate order or direction the respondents be directed to grant commuted leave to the applicant for the period from 27.1.2005 to 2.2.2005 and to pay the salary to the applicant for the period.
- IV) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper in the facts and circumstances of this case.
- V) Cost of the Original Application may also be awarded in favour of the humble applicant.”

2. Facts of the case are that the applicant who was at the relevant time working as Senior Audit Officer in the office of respondent No.2 was proceeded with departmental proceedings and he was required to appear before the Enquiry Officer on 27.1.2005 for preliminary hearing. It is alleged that the applicant addressed an application to the Deputy Accountant General, IC-II Group on 27.1.2005 for grant of two days leave for 27.1.2005 and 28.1.2005 alongwith photocopy of medical certificate. This application was received in the office of respondents on 28.1.2005. This fact is also not disputed by the respondents in the reply. Since the applicant did not attend the departmental proceedings fixed on 27.1.2005, the same

was adjourned for non-participation of the applicant and next date of the enquiry was fixed on 31.1.2005 as 29<sup>th</sup> and 30<sup>th</sup> January, 2005 were closed holidays. It is case of the applicant that he sent another application on 29.1.2005 for extension of his leave upto 2.2.2005. This application was received in the office of respondents on 31.1.2005. Since the competent authority was not satisfied with the reasons given by the applicant for the purpose of leave and according to the respondents the original medical certificate was not sent, as such the respondents were precluded from obtaining second medical opinion and the said period of leave was treated as dies-non without causing interpretation in service vide impugned order dated 8.2.2005 (Ann.A1). It is this order, which is under challenge in this OA.

3. The respondents have filed reply. By way of preliminary objections, the respondents have stated that the present OA against order 8.2.2005 whereby absent of the applicant w.e.f. 27.1.2005 to 2.2.2005 has been treated as dies-non, is liable to be dismissed as premature as the applicant has not availed alternative remedy by filing appeal against the said order, rather he has directly preferred the OA before this Tribunal.

4. I have heard the applicant who is present in person and the learned counsel for the respondents.

5. Without going into merits of the case and the fact that the applicant has got an efficacious remedy by way of appeal before the appropriate authority, I am of the view that this OA can be disposed of at this stage with directions to the appellate authority to decide appeal of the applicant. Though the applicant has stated that he has filed an appeal and for that purpose the applicant has also annexed photocopy of the appeal at Ann.A10 with the rejoinder and also photocopy of receipt whereby the said representation/appeal was sent to the Principal Accountant General, but the respondents have stated that no such representation/appeal has been received by them. In order to do justice between the parties ~~and also~~ that the applicant has already retired and the impugned order Ann.A1 has been passed without giving opportunity of show-cause to the applicant, I am of the view that instead of setting aside the impugned order on this short account, it will be appropriate if direction is given to the appellate authority to decide appeal of the applicant and give him opportunity so that he could put up his case effectively.

6. Accordingly, the applicant is directed to file fresh representation/appeal before respondent No.2 within a period of 10 days from today. On receipt of such representation/appeal, respondent No.2 shall decide the same on merits and pass speaking order within a period of four weeks from the date of receipt of the appeal. In case the applicant is still aggrieved, it will be open for him to approach this Tribunal again.

7. With these observations, the OA is disposed of with no order as to costs.



(M.L.CHAUHAN)

Judicial Member

R/