

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

30.08.2011

OA No. 280/2010

Mr. C.B. Sharma, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Last opportunity of three weeks is granted to the applicant to file rejoinder.

Put up on 29.09.2011.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(Justice K.S. Rathore)
MEMBER (J)

AHQ

[Signature]

[Signature]

29.9.2011

Mr. C.B. Sharma, Counsel for applicant
Mr. V.S. Gurjar, Counsel for respondents.

Heard. The OA is partly allowed by
a separate order.

Anil Kumar
(Anil Kumar)
M(A)

K. S. Rathore
(Justice K.S. Rathore)
M(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 29th day of September, 2011

ORIGINAL APPLICATION No. 280/2010

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Dharam Raj Meena son of Shri Radha Kishan Meena, aged about 32 years, resident of Quarter type 3-3, Staff Quarters, Jawahar Navodaya Vidyalaya, Chhan District Tonk and presently working as Post Graduate Teacher (History), Jawahar Navodaya Vidalaya, Chhan District Tonk.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through Joint Director (Administration), A-28, Kailash Colony, New Delhi.
2. Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi.
3. Dy. Commissioner, Navodaya Vidyalaya Samiti, Jaipur Region, 18, Sangram Colony, Mahaveer Marg, C-Scheme, Jaipur.
4. Principal, Jawahar Navodaya Vidyalaya, Chhan, District Tonk (Rajasthan).
5. Principal, Jawahar Navodaya Vidyalaya, Jaswantpura, District Jalore.

... Respondents

(By Advocate: Mr. V.S. Gurjar)

ORDER (ORAL)

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

- "(i) That the respondents be directed to treat the period from 15.4.2008 to 9.7.2008 on spent on duty and to allow due pay and allowances alongwith interest at the market rate by quashing memo dated 21.6.2009 (Annexure A/1) with all consequential benefits.
- (ii) That the respondents may be further directed not to forced the applicant to submit leave application for the period 15.4.2008 to 09.07.2008 by quashing letters at Annexure A/13, A/15, A/17 and A/19.

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- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

2. Brief facts of the case are that the applicant joined in Tonk District in 2007 on request. On 13.03.2008, he was placed under suspension under provisions of sub rule (1) of Rule 10 of CCS (CCA) Rules, 1965 and his headquarter was also changed from Tonk to Jalore (Annexure A/2). The suspension of the applicant was revoked on 15.04.2008 and he was also transferred by the same order from Tonk to Jalore. The respondents have issued a memorandum dated 21.06.2009 (Annexure A/1) stating that the applicant was asked to submit leave application for the period of absence w.e.f. 15.04.2008 to 09.07.2008 by various letters but the respondents did not receive any leave application for the said period from him. Therefore the period of absence from 15.04.2008 to 09.07.2008 was declared 'dies non' for all purposes. The applicant aggrieved by this order has filed this OA.

3. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that the applicant remained on duty from 15.04.2008 to 09.07.2008 and, therefore this entire period may be treated as spent on duty and there was no need for him to apply for leave. Therefore, the action of the respondents declaring this period as 'dies non' is illegal &

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arbitrary and hence it should be quashed. He has stated that the order regarding revocation of suspension order, transfer & relieving order was received on 16.05.2008. That he left the Jalore on 25.04.2008 and to this effect, he submitted an application to the competent authority through Principal of the College (Annexure A/8) in which he has stated that he should be allowed to leave college with effect from 25.04.2008 to 15.05.2008 and then on receipt of his transfer order, he approached the Hon'ble Tribunal filing OA No. 202/2008 and the Hon'ble Tribunal vide its order dated 03.06.2008 stayed his relieving order. Subsequently, OA NO. 202/2008 was allowed and his transfer order was cancelled by the Tribunal vide order dated 07.08.2008 (Annexure A/12).

4. In compliance of the interim order dated 03.06.2008, the applicant approached the Principal of J.N.V. Chan, District Tonk and reported for duty. But he was not allowed to join duty. On 12.06.2008, he sent his joining by registered letter stating that on 11.06.2008 he went to college to join the duty but LDC Himmat Singh refused to take his application and, therefore, having no option he is sending his joining report by Registered post. Then again he send a letter dated 07.07.2008 (Annexure A/11) to the Principal, JNV Chan, District Tonk with the request that he has been coming to the college every day but he has not been allowed to teach PGT (History) and finally he was allowed to join on 10.07.2008. Thus the period from

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15.04.2008 to 09.07.2008 be treated as spent on duty and pay & allowances be paid to him.

5. On the contrary, learned counsel for the respondents argued that applicant himself left the college from 25.04.2008 vide his letter dated 25.04.2008 (Annexure A/8) and requested that he may be allowed to leave college from 25.04.2008 to 15.05.2008. Thus by his own admission, the applicant was not on duty from 25.04.2008 to 15.05.2008. They have further stated that vide order dated 11.05.2008 (Annexure R/1) the applicant has himself admitted that due to his family problems, he had taken leave upto 15.05.2008 but he is still having some pending work and the main examination of RAS are in the month of June. Therefore, he will not be able to attend Headquarter upto 30.06.2008 and, therefore, he requested for leave for this period. Thus by his own admission, the applicant has been absent from the college from 15.04.2008 to 09.07.2008. Therefore, the applicant was requested to apply for leave for the said period but when he did not apply for leave, this period has been treated as 'dies non'. They have also pointed out a letter dated 16.01.2010 (Annexure A/21) of the applicant addressed to the Commissioner, Navodaya Vidyalaya Samiti in which he has given chronological status of his attendance in the college or otherwise. Even in this letter he has stated that on 25.04.2008, he left Jalore headquarter after taking permission upto 15.05.2008 and from 16.05.2008 to 11.06.2008, he has not been able to state whether he

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joined back at Jalore after the expiry of leave i.e. 15.05.2008. Therefore, the contention of the applicant that this period (15.04.2008 to 09.07.2008) may be treated as spent on duty is not acceptable. He left the headquarter leaving the application on the table of the Principal without taking permission of the competent authority i.e. respondent no. 3. Thus, this period is unauthorized absence of the applicant from headquarter. That when the applicant went to join the duty on 11.06.2008 after the stay order being granted by the Tribunal, the officiating Principal recorded the remarks to the effect that "Put up to the Principal". However, this application was taken back by the applicant and thereafter he did not submit any application in the office for further course of action. The respondents have also denied the contention of the applicant that from 01.05.2008 to 30.06.2008 was the vacation. Therefore, it was not necessary for the applicant to remain at headquarter. In this regard the respondents have stated that vacation cannot be availed in conjunction or in continuation with any kind of leave except Casual Leave. Accordingly, the applicant was directed to submit the leave application. Therefore, the action of the respondents in issuing the office memorandum dated 21.06.2009 (Annexure A/1) is perfectly within the rules and OA has not merit and, therefore, it should be dismissed with costs.

6. Having heard the rival submission and going through the documents on record, we are of the opinion that the

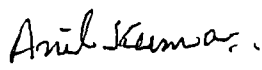
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respondents have not been able to prove that the applicant was not present in the Headquarter Jalore w.e.f. 15.04.2008 to 25.04.2008. There is no record either to show the absence of the applicant during his period at Headquarter at Jalore. According to the applicant's own admission at Annexure A/8, he left the college on 25.04.2008 till 15.05.2008. Therefore, the applicant was not at Headquarter during this period. Similarly, perusal of Annexure A/21 shows that the applicant did not reported to Headquarter on 15.06.2008 but on expiry of this leave period, absence ~~from~~ ^{from} 16.05.2008 to 10.06.2008 has not been explained by the applicant. He has also not submitted any proof or document to show that on 16.05.2008 he returned to his headquarter at Jalore. On the contrary document submitted by the respondents at Annexure R/1 clearly indicates that he applied for leave till 30.06.2008. However, in the meantime, he was granted stay order on 03.06.2008. In compliance to that order, he went to the college to give his joining on 11.06.2008. Thus in our opinion the applicant attended the headquarter on 11.06.2008 but he was not allowed to join on that date. Therefore, he sent his joining by Registered post and finally he was allowed to join on 10.07.2008. Therefore the period upto 11.06.2008 to 09.07.2008 cannot be said as applicant was absent from headquarter. Similarly, the period between 15.04.2008 and 25.04.2008 cannot be said that applicant was absent from headquarter and, therefore, we partly allow this OA. The respondents are directed to treat the period between 15.04.2008 to 25.04.2008 and the period

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between 11.06.2008 to 09.07.2008 to be spent on duty by the applicant and for the remaining period (25.04.2008 to 10.06.2009), the applicant may be asked to apply for leave. In case the applicant fails to do so, the respondents are free to pass order for that period in accordance with the provisions of law.

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


(Anil Kumar)
Member (A)

AHQ


(Justice K.S. Rathore)
Member (J)