

**Central Administrative Tribunal
Principal Bench**

OA No.1520/2014

Order reserved on : 23.08.2018
Pronounced on : 30.08.2018

Hon'ble Mr. Ashish Kalia, Member (J)

Shri Manoj Kumar,
Aged about 51 years,
S/o Late Shri A.S. Sharma,
R/o G-447, Srinivas Puri,
New Delhi-110065
Working as UDC.

...Applicant

(By Advocate : Shri S.K. Gupta)

Versus

Union of India through

1. Secretary,
Ministry of Micro, Small & Medium Enterprises,
Udyog Bhawan, Maulana Azad Road,
New Delhi-110011.
2. Development Commissioner,
Micro, Small & Medium Enterprises,
Ministry of Micro, Small & Medium Enterprises,
Nirman Bhawan, 7th Floor,
Maulana Azad Road,
New Delhi-110011.
3. Director,
MSME-Development Institute Industrial Estate Digiana,
Jammu-180010.

...Respondents

(By Advocate : Shri Rajinder Nischal)

ORDER

The applicant has filed the instant OA seeking the following reliefs :-

- “(i) quash and set aside the communication dated 28.10.2013 (Annexure-A-1) by which, the respondent no.2 has refused to review the subsistence allowances of the applicant and also the subsistence allowances of the applicant is not being paid w.e.f. 01.08.2013;
- (ii) direct the respondents to review the subsistence allowances of the applicant under FR 54 and also pay the subsistence allowance of the applicant w.e.f. 01.08.2013 with all arrears.
- (iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice:”

2. The brief facts of the case are that, the applicant was working as UDC and was promoted on 11.04.2012 as Office Superintendent and posted in the office of Respondent No.3 at Jammu. The applicant was working on the strength of Electoral Registration Officer. He was absented from the duty and a Show Cause Notice was issued to him on 18.07.2012. Resultantly, the applicant resumed his duties with Electoral Registration Officer in public interest and as per the applicant, he was relieved by the said Electoral

Registration Officer on 29.01.2013. Thereafter, the applicant informed to the respondents that he will join after the examination of his daughter. On 05.03.2013, respondent No.3 – Director, MSME, Jammu, has not considered the leave application of the applicant and declared him absconding since 14.07.2012. The applicant on 19.03.2013, joined in the office of respondent No.3. He was placed under suspension on 24.05.2013 and he was also declared entitled for subsistence allowance. The respondent No.3 has declared the period of absence w.e.f. 14.03.2012 upto 01.03.2013, as '*dies non*' without giving show cause notice. The applicant filed appeal challenging the aforesaid order as applicant was on the strength of AERO and he has also made representation that he has not been paid salary for last eight months. On 19.08.2013, the applicant was asked to attend the office of the respondent No.3 at Jammu, on each Monday and Wednesday, but the applicant attended the office almost delay. It is further submitted by Shri S.K. Gupta, learned counsel for applicant that since no subsistence allowance was paid, the applicant left Jammu as he was not having any alternative source of income and it was very difficult for him to stay in the rented accommodation. He also made a representation to that effect.

3. Notices were issued and reply has been filed by Shri Rajinder Nischal, learned counsel for respondents who has submitted that the applicant was suspended vide order dated 24.05.2013, and subsistence allowance was paid to him by MSME, Jammu for the period 24.05.2013 to 31.07.2013. As per order dated 24.05.2013, the headquarters of the applicant was Jammu. Further, while reviewing the subsistence allowance of the applicant, it was found that he left the office without prior permission on 09.07.2013 and, thereafter, the applicant attended the office only on 02.08.2013 and was again absented himself from the headquarters. The applicant did not obtain prior permission from the competent authority for leaving headquarters. He even vacated the rented accommodation on 09.07.2013, after settling all the dues with the landlady. It is further submitted that in terms of Rule 10(7) of CCS (CCA) Rules, suspension period is not valid after a period of 90 days, unless it is extended after review for further period before the expiry of 90 days. Since the suspension period of the applicant was not extended before the expiry of 90 days, therefore, the same stood revoked on completion of 90 days and the applicant was expected to join duty at MSME-D1, Jammu, but he did not report for the duty on due date

i.e. 24.08.2013. The headquarters of the applicant was kept at Jammu. It is further submitted that entire period of absence after 02.08.2013 is to be treated as unauthorised absence. The applicant is not eligible for full pay allowances on the principle of '*no work no pay*' and prayed for dismissal of the present Application.

4 Heard the learned counsel for the parties at length.

5. The first point raised by Shri S.K. Gupta, learned counsel for applicant is that the period of absence from 14.03.2012 to 01.03.2013 is treated as '*dies non*' without giving any show cause notice to the applicant. On perusing the records, nowhere, it is found that respondents have ever called the applicant for his explanation and thereafter passed the order for '*dies non*'. The further point raised by Shri Gupta is that since no subsistence allowance was paid to the applicant, he was bound to leave his accommodation at Jammu. In reply to this, Shri Rajinder Nischal, learned counsel for respondents submitted that after 90 days, they have reviewed the suspension and revoked it, but Shri Gupta submitted that no communication whatsoever has been given for revoking the suspension order. In reply to this,

the stand of the respondents is that it is deemed to have been revoked and that this stand is taken with judicial connotations.

6. The Tribunal is of the opinion that in Administration, there is no such deeming provision. The respondents ought to have passed a speaking order on it, which was not done in the present case. Rules of natural justice demand a fair play on the part of the respondent Organisation. Similar view has been taken by the Hon'ble Apex Court in the case of ***Union of India Vs. Dinanath Shantaram Karekar*** (1998) 7 SCC 569, where it is observed as under :

“9. Where the services are terminated, the status of the delinquent as a Government servant comes to an end and nothing further remains to be done in the matter. But if the order is passed and merely kept in the file, it would not be treated to be an order terminating services nor shall the said order be deemed to have been communicated.”

7. Even the absence from the office by the applicant has not been duly notified by the respondents, as envisaged under the Rules. Thus, this Tribunal feels that the impugned order dated 28.10.2013, is liable to be set aside. Hence, set aside.

8. Accordingly, the OA is disposed of with a direction to the respondents to pass a fresh order by giving an opportunity of being heard, to the applicant, within a period of 60 days from the date of receipt of a certified copy of this order. However, the applicant is at liberty to avail his remedies, in accordance with law, if he is still aggrieved. There shall be no order as to costs.

(Ashish Kalia)
Member (J)

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