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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3709/2014 and CM APPL. 7518/2014**

SHAKEEL AHMED

..... Petitioner

Through: Ms. Monica Kapoor, Advocate with
Petitioner in person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. S. Sunil, Advocate for R-2.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **25.09.2019**

1. The Petitioner has challenged the order dated 4th April, 2011 of Central Administrative Tribunal (i.e. in OA No. 3/2010 titled *Shakeel Ahmed vs. Union of India & Ors.*). The relevant portion of the said order is reproduced here under:-

“The basis issue for adjudication is essentially a factual one i.e. non availability of any leave in the leave account of the Applicant, that has occasioned the impugned order treating the periods in question as leave not due, instead of Earned Leave or Commuted Leave as prayed for. This in turn is linked with the earlier decision of the Respondents vide the order dated 26.08.2008 to regularise the period from 01.08.2006 to 28.07.2008 (728 days in total) as leave of various kinds.

7.3 In support of their stand that the Applicant had not reported for duty in NMPB, the Respondents have enclosed a copy of their OM dated 25.05.2006 on the subject of this transfer with the direction to join duty there immediately. Further, it had also mentioned that the payment of the salary and other allowances were to continue to be released from CCRUM on receipt of the monthly attendance report from the Chief Executive Officer of

the NMPB. Besides, a copy of a letter dated 08.09.2006 from the CEO, NMPB addressed to the head office has also been enclosed. It is to the effect that the Applicant had not yet reported for duty in NMPB and hence the question of providing his monthly attendance did not arise.

On the part of the Applicant except a bald assertion, no material has been provided to rebut these contentions of the Respondents. No proof, by way of the representations or any letters or other communications sent by the Applicant on this subject have been enclosed to enable us to take a view to the contrary. The meticulous reliance placed by the Applicant's learned counsel on the salary slips (Annex A-12) being for the periods June, 2010 – September, 2010, are not found to be relevant to the issue at hand.

7.4 The other plank of argument is the observations of the Hon'ble Delhi High Court in the Writ Petitions referred above. As stated earlier the WP (C) 13870/2004 was in the context of the transfer order dated 23.07.2004 to Lucknow. Similarly, the WP (C) 8454/2005 had also challenged the OM's issued to the Applicant after the cancellation of this transfer vide the order dated 17.02.2005. We have also observed in the foregoing paragraphs that the complete proceedings of the Writ Petitions are not available before us. The WP (C) 2454/2005 had been finally disposed vide the Delhi High Court's order dated 28.07.2008 (Annex. A-11) recording the posting of the Applicant at Drugs Standardisation Research Unit, Jamia Hamdard, Tuglakabad. Para 10 had mentioned about the OA being rendered as infructuous.

The relevant extracts are cited below:

“10. Parties state that with the Petitioner being posted at Jamia Hamdard no other issue survives for consideration in the Writ Petition and hence jointly pray that the WP may be disposed of as infructuous.”

Any specific directions by the Hon'ble High Court regarding treating the period in NMPB – 01.08.2006 to 28.07.2008 – as

on duty and payment of salary with regard there to, have not been brought to our notice.

8. In view of the foregoing, we find no justification for our interference in the impugned order passed by the competent authorities which is indisputably within their legitimate domain. The OA being found bereft of merit is dismissed hereby with no order as to costs.”

2. In brief, the case of the Petitioner is that he had joined the Respondent No. 2 Organisation as a messenger in the year 1984. Thereafter, he was appointed to the post of Hindi Typist by the Respondent on ad-hoc basis. He was put under suspension on 7th June, 1995 on the ground of alleged indiscipline but memorandum of charges was served on him on 11th August, 2002 and the said suspension was revoked on 19th September, 2003. The Petitioner was transferred on 23rd July, 2004 from Delhi to Lucknow which was challenged by way of filing W.P. (C) No. 13870/2004 in which the transfer order was stayed and the said petition was disposed of on 17th January, 2005 as transfer letter had been withdrawn by the Respondents.

3. As per the Petitioner, on 19th February, 2005 he was not allowed to mark his presence in the attendance register and on 7th March, 2005 a memo was issued to him stating that he was absent from his duty. Thereafter again, memos were issued on 21st March, 2005 and 6th April, 2005. So, the Petitioner was concerned to file a writ petition having W.P. (C) No. 8454/2005 for quashing the said memos. This writ petition was disposed of on 20th July, 2008 and the Petitioner was directed to join his duties. Although, the Petitioner was getting the salary but, in the meantime, he was not allowed to mark his attendance and he wrote several letters requesting the

Respondents to mark his presence.

4. The Petitioner has thereafter mentioned that in September, 2009 he fell ill and submitted an application on 15th June, 2009 for Earned Leave on medical grounds and he remained on medical leave from 7th July, 2010 to 16th October, 2010 but EL was not granted and his salary was deducted. Respondents passed an order on 7th July, 2010 stating that no EL would be granted to the Petitioner on medical grounds as 363 days Leave Not Due (LND) had been credited to his account on 12th July, 2010. Petitioner made a representation to Respondents seeking clarifications regarding his leaves and in response thereto Respondents sent a communication dated 18th July, 2010 stating that no leave was available in his account till 30th June, 2010 and 363 LND were available. A back dated order of 26th August, 2008 was also sent to him but this back dated order was never served upon him and it was created only in 2010 to deprive the Petitioner of his legitimate rights. The Petitioner challenged these actions of the Respondents by filing the OA No. 3699/2010 before CAT to which counter affidavit was filed by the Respondents and the learned Tribunal did not consider any submission made by the Petitioner and dismissed the OA with an impugned order dated 4th April, 2011, which has been challenged by way of filing the present petition on the grounds that the impugned order is illegal and unjustified; the Petitioner had been always present in the Respondent's office and performing his duties but he was not allowed to mark his attendance; Petitioner was receiving his salary regularly along with allowances; even the High Court in W.P. (C) No. 8454/2005 had allowed the Petitioner to withdraw his salary so he was performing his duty; Petitioner had been

subjected to torture and harassment continuously by the Respondents; earlier the Petitioner was illegally transferred from Delhi to Lucknow and later on this order was withdrawn; at the time of disposal of Writ Petition (C) No. 8454/2005 nothing was whispered by Respondents about unauthorised absence of the Petitioner; Respondents had wrongly, illegally and unconstitutionally entered 363 LND in the account of the Petitioner so as to deprive him from taking any further leaves and copies of attendance register were not provided to him.

5. Counter affidavit has been filed by Respondent No. 2, in which it has been mentioned that the Petitioner has been irregular in his duty, apart from being aggressive and rude to his senior officers. The Petitioner had accepted to be transferred on all India basis at the time of joining the Council as Hindi Typist and accordingly he was transferred to Lucknow due to exigencies of work but consequent upon his persistent claim of being harassed, he was deputed to National Medicinal Plant Board (NMPB) at New Delhi during the course of hearing of CM No. 5200/2006 in W.P. (C) 8454/2005. An Office Memorandum dated 25th May, 2006 was issued to him to report for duty at NMPB, New Delhi but a report was received from the said organisation on 8th September, 2006 that the Petitioner did not report for duty at NMPB. Despite his absence, Respondent No. 2 continued to make payment of pay and allowances to the Petitioner as the matter was *sub judice*. The Petitioner joined duty at Drug Standardisation Research Unit (DSRU), New Delhi on 27th September, 2008 as per orders of this Court. Period of his absence from work comes to 728 days with effect from 1st August, 2006 to 28th July, 2007 against which full payment of salary was

made. This period was regularised by sanctioning leave admissible to the Petitioner and the shortfall period was regularised as LND with a view to avoid recovery of pay and allowances from him for the period he did not actually attend the duty. He was informed on 7th July, 2010 that unadjusted LND needs to be settled before any further leave can be granted to him. However, he deliberately absented from duty w.e.f. 7th July, 2010 to 16th July, 2010. Hence, he was treated absent from duty without pay.

6. During the course of the arguments, it was specifically put to the learned counsel for the Petitioner as to why he did not comply with his order of transfer to NMPB but the learned counsel for the Petitioner had no specific answer to the same but he tried to justify his absence from NMPB on the ground that the Petitioner was appointed as Hindi Typist in Respondent No.2 Council which is an autonomous body, so he could not have been transferred to NMPB. The Petitioner has till date not challenged his transfer to NMPB vide Office Memorandum dated 25th May, 2006. So, he has no basis to make an excuse now that since NMPB is not under the Respondent No. 2 Organisation, so he was not liable to serve in NMPB. The other contention raised by the learned counsel for the Petitioner is that the Petitioner was regularly attending his office of Respondent No.2 Organisation but he was not allowed to mark his attendance. Since, the Petitioner stood transferred to NMPB, hence there was no question of allowing the Petitioner to mark his attendance at the office of Respondent No. 2 Council. Learned counsel for the Petitioner has further submitted that the Petitioner was being paid full salary and allowances only because he was regular in his attendance and work at Respondent No.2 Organisation. The

Respondent No.2 Council has also admitted that although full salary and allowances were paid to the Petitioner but because of his absence from work which comes to 728 days, the leaves due to him were adjusted and the remaining period was considered as LND being 363 days. The Respondent No. 2 Council, on humanitarian grounds did not order recovery of the excess payment made to the Petitioner and the same cannot be read as a weakness on their part to defend the present proceedings.

7. The circumstances as explained above makes it clear that there is no ground to interfere with the order of CAT in OA No.3/2010 dated 4th April, 2011 as it was the Petitioner himself who on his own had decided to defy the transfer order issued by Respondent No.2 Council and he deliberately did not report for work for about two years at his place of posting, i.e. NMPB and no fault can be found with the impugned orders of Respondent No.2 Council dated 7th July, 2010 and 19th July, 2010 and consequent order of CAT dated 4th April, 2011 in OA No. 4699/2011 titled *Shakeel Ahmed vs. Union of India*.

8. In view of the above, the impugned order of CAT does not call for interference. Accordingly, the petition is dismissed. No order as to costs.

S. MURALIDHAR, J

TALWANT SINGH, J

SEPTEMBER 25, 2019/pa