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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2433/2002

This the 28th day of January, 2003.

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Shankar Prasad, Member (A)

Mr. Roop Narain S/o Late Shri Moti Lal
R/o F-128, Sarojini Nagar, New Delhi
employees as Assistant Engineer in "L" Division,
CPWD, I.P. Estate, New Delhi

....Applicant

(Applicant in person)

Versus

1. Union of India through Secretary,
Ministry of Urban Affairs & Poverty
Alleviation, Nirman Bhawan,
New Delhi-110011.
2. The Director General Works, CPWD,
Nirman Bhawan,
New Delhi-110011.

.....Respondents

(By Advocate : Shri M.M. Sudan)

O R D E R (Oral)

Shri Shanker Prasad, Member (A) :

We have heard applicant in person and Shri M.M. Sudan, learned counsel for the respondents.

2. The applicant has preferred the present OA, aggrieved by OM dated 10.3.2000 vide which he has been asked to apply for leave w.e.f.14.4.1999 to 15.9.1999 in order to regularise his period of absence.

3. The case of the applicant, in brief, is that even though he was not due for posting outside Delhi, he opted for hard area posting in Border Fencing Circle-II, Jaisalmer at Indo Pak Border for a tenure of 18 months, where he joined on 15.7.1998. Certain officers posted in Jaisalmer were involved in corrupt activities, which prompted the applicant to complaint against them to higher authority. These officers

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managed to get him transferred from Jaisalmer to Jodhpur, which is not a hard area, even before the completion of 18 months tenure vide order dated 12.4.1999. He was also relieved from his duty on 13.4.1999 afternoon. The applicant has submitted his representation against the aforesaid transfer but the Superintending Engineer, Border Fencing Circle-I, Jaisalmer did not forward his representation and he had to send his representation direct to D.G. (Works), CPWD, New Delhi. A revised order dated 22.6.1999 was passed posting him to Balurghat at Indo - Bangladesh Border against a newly created post created w.e.f. 1.7.1999. He has filed OA 168/1999 in the Jodhpur Bench of the Tribunal against the transfer order dated 12.4.1999 and also the order dated 22.6.1999, which was disposed of vide orders dated 24.8.1999. Thereafter he took over his charge at Balurghat and submitted an application for regularising the period from 14.4.1999 to 15.9.1999, by extension of Joining Time. The then Chief Engineer also recommended the same. The headquarters, however, issued the impugned order. He has also filed a Contempt Petition No.36/2001 in the said OA. The said petition was dropped vide orders dated 10.8.2001, as the issues raised ^{therein} could not have been adjudicated through a contempt petition.

4. Respondents have indicated that in terms of the FR-108 "A Govt. servant, who does not join his post within the joining time is entitled to no pay or leave salary after the end of the joining time.

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Willful absence from duty after the expiry of joining time may be treated as misbehaviour for the purpose of Rule-15". It has further been indicated that ~~in terms~~ ~~of~~ section 8 of Chapter IV "Implementation of Transfer Rules" of the CPWD Manual, Vol-I, reads as under:-

"Whether an incumbent prefers to wait rather to avail of a vacancy and made request approaching the competent authority for particular posting, the incumbent should be asked to take leave and leave application should be obtained from him and kept in the file before any action is taken."

5. The party in person has argued that instructions quoted under "Miscellaneous" Head in Chapter 17 of Swamy's Handbook 2003 reads as follows:-

"When transfer is cancelled. - When the order of transfer is cancelled after the employee has handed over charge of the old post but before taking over charge of the new post, the period intervening between the dates of handing over and taking over is treated as joining time."

6. It is clear from paragraph 1 of judgment in OA 168/1999 that the matter relating to regularisation of the period of relieving and joining from 14.4.1999 to 22.6.1999 was a subject matter of the earlier OA. The said period had to be regularised as per the decision in the said OA.

7. The instructions cited by the applicant apply to a situation where a person has handed over charge of his earlier post and the transfer order is cancelled before taking over charge of the new post. The facts in the instant case are totally different. In the instant case, a new transfer order has been issued.

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Rule 6 (3) of CCS (Joining Time) rules refers to a situation where fresh transfer orders are issued during transit. On receipt of the new transfer order dated 22.6.1999, he ought to have taken over the new post within the admissible joining time. The said transfer order also indicates that it is till further orders. The said transfer order was also challenged before the Jodhpur Bench of the Tribunal and it appears that no stay was granted by the said Bench. Thus the pendency of the said OA cannot be a ground for not joining his new place of posting at Balurghat.

8. Thus for the period beyond the admissible joining time, the applicant has to apply for leave in accordance with rules. We were told at the bar that the joining time is upto 6th July, 1999.

9. In the result, we partly allow the present application. The impugned order is quashed in the terms that the applicant shall have to apply for leave from 7th July, 1999 to 15th September, 1999. There will be no order as to costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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