

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2053/95

New Delhi this the 5th day of January 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri Manoj Kumar
S/o Shri Ram Swaroop
Senior Store Issuer
under Coaching depot Officer
Northern Railway
Balamau (U.P.)

...Applicant

(By Advocate: Mrs Meenu Maine proxy for
Mr. B.S. Maine)

versus

Union of India: through

1. The General Manager
Northern Railway
Baroda House
New Delhi

2. The Chief Personnel Officer
Northern Railway
Headquarter office
New Delhi.

3. The Divisional Railway Manager
Northern Railway
Moradabad.

...Respondents

(By Advocate: Shri R.P. Aggarwal)

ORDER (Oral)

By Mr. R.K. Ahooja, Member (A)

The applicant while working as a Store Clerk under Carriage and Wagon Superintendent, Moradabad was transferred from Moradabad Division to Ferozepur Division by an order dated 25.8.92.

2. The applicant filed an OA-2524/93 before the Principal Bench of the Tribunal which was decided in his favour by an order dated 7.1.94, a copy of the judgment is annexed at Annexure A-2. The respondents thereafter took him back in Moradabad Division and posted him to Balamu by

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an order dated 21.5.94. The intervening period from 21.8.92 was treated as 'Leave as due' to the applicant. The grievance of the applicant is that ^{as} he was illegally transferred from one Division to another, the respondents should have treated the entire period of absence from 21.8.92 to 21.5.94 as spent on duty and should have paid him full pay and allowances with all consequential benefits.

3. The respondents in the reply have stated that there is no direction in the order of this Tribunal regarding the intervening period. The applicant was absent from duty till he was re-posted under Moradabad Division. A lenient view was taken regarding his period of absence and the same was regularised on the basis of the leave entitlement to him.

4. We have heard the counsel. The order of this Tribunal dated 7.1.94 shows that on 6.12.93 the Tribunal had passed an order staying the transfer. According to the respondents' reply the stay order was served on them on 10.12.93. It is correct, as contended by the learned counsel for the respondents, that there is no direction in the order of this Tribunal that the period of absence should be regularised as spent on duty. The indisputable fact is that the applicant was absent from duty even though there was no order of this Tribunal prior to 6.12.93. In view of this position the applicant is not entitled to treat the period of his absence till the order of the Tribunal was served on the respondents as spent on duty with all consequential benefits.

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5. However, the period subsequent to 10.12.93 is to be treated as spent on duty. As has been contended by the learned counsel for applicant and is not specifically denied by the respondents and that the order of posting him to Balamu was issued on 21.5.94. The applicant could not have re-joined under Moradabad Division till such time the order of his posting was issued by the respondents. In view of this position, the absence of the applicant from his duties was not of his own volition but on account of the delay on the part of the respondents in issuing his posting orders.

6. In the result, we allow the OA partly. The period w.e.f. 10.12.93 to 21.5.94 will be treated as spent on duty. The applicant would be entitled to the benefit of full pay and allowances for this period. The same will be paid to him within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

~~R.K. Ahuja~~
(R.K. Ahuja)
Member (A)

cc.

Chintamany
(V. Rajagopala Reddy)
Vice-Chairman (J)