

Q 9

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH
NEW DELHI

O.A. NO. 151/1989

DATE OF DECISION : 6.8.1991

Prithi Singh

... APPLICANT

Vs.

Union of India & Ors.

... RESPONDENTS

Shri B. S. Mainee, counsel for the Applicant.

Shri B. K. Aggarwal, counsel for the Respondents.

CORAM : HON'BLE SHRI G. SREEDHARAN NAIR, VICE CHAIRMAN(J)
HON'BLE SHRI S. GURUSANKARAN, MEMBER (A)

.....

J U D G M E N T

G. Sreedharan Nair, V.C.(J) :

While the applicant was working as Wireman Grade-II there was a restructuring of the cadre w.e.f. 1.1.1984, as a result of which it is alleged that the post held by the applicant was upgraded to that of Grade-I. According to the applicant after the upgradation he was posted at the very same place under the Senior Electrical Foreman (P) in Rail Bhawan, New Delhi. It is stated that he was on sick list during the period from 11.1.1986 to 16.1.1987, and that while he reported for duty after being declared fit, the Senior Electrical Foreman (P) refused to take him on duty and directed him to proceed to work under the Senior Electrical Foreman (Special), New Delhi, on transfer. It is alleged that the applicant protested against the wrong orders of transfer as he was entitled to be posted at the very same place where he had been working prior to the upgradation. It is stated that the order of transfer is illegal and mala fide. It is pointed out that even if some staff has been rendered surplus the junior-most should have been transferred.

4 2

2. It is stated that on the representations made on behalf of the applicant the order of transfer was cancelled by the respondents, and by order dated 29.7.1987 he was posted at the same place where he had been working and accordingly he resumed duties under the Senior Electrical Foreman (P) w.e.f. 10.8.1987.

3. The applicant has prayed for a direction to the respondents for paying him the salary and allowances for the period from 17.1.1987 to 9.8.1987. It is urged that since he was all along available for duty during that period and was prevented by the respondents from attending to his duty, he is entitled for the pay and allowances.

4. In the reply filed on behalf of the respondents it is contended that the application is barred by limitation. It is stated that there is no vacancy of Highly Skilled Grade-I post at the Railway Board according to the revised distribution and it was on account of wrong calculation of vacancy position that the applicant was posted there. The orders were revised subsequently, but the applicant remained on sick leave from 11.11.1986 to 16.1.1987 and thereafter he was absconding from duty without reporting either at the office of the Senior Electrical Foreman (P) or at the office of the Senior Electrical Foreman (Special) and as such he is not entitled to the pay and allowances claimed. It is stated that when a vacancy became available at Rail Bhawan due to the death of Shri Vishamber Nath, Highly Skilled Grade-I Wireman, the applicant was posted there. The allegation of mala fide is denied.

5. The preliminary objection raised by the respondents with respect to bar of limitation has force. ~~is a bar to the application.~~ The relief claimed in the application is in respect of the salary and

allowances for the period commencing from 17.1.1987 to 9.8.1987. The Original Application has been filed only on 19.1.1989. The claim being in respect of the period prior to one year before the filing of the application, it is barred by limitation.

6. The relief cannot be allowed even on the merits. Admittedly during the ^{relevant} period the applicant was not discharging duties either under the Senior Electrical Foreman (P) or Senior Electrical Foreman (Special). It is clear from the records that the applicant was transferred under the Senior Electrical Foreman (Special), but he refused to join duty there. In the present application the applicant has taken up the stand that pursuant to the upgradation such a transfer could not have been made and as such it is mala fide and illegal. However, there is no case for the applicant that he had challenged the order of transfer. Even in the present application there is no prayer for quashing the order of transfer or declaring the same to be illegal. Evidently such a relief could not have been made in this application as the transfer was made in the year 1986. It is on record that subsequently the applicant was posted under the Senior Electrical Foreman (P) at Rail Bhawan. But the respondents have explained that the said posting was as a result of the arising of a vacancy there.

7. The applicant was on sick list for the period from 11.1.1986 to 16.1.1987. Thereafter he never reported for duty till 9.8.1987 and as such for the period from 17.1.1987 to 9.8.1987 he has not been paid the salary and allowances.

12 12

In view of what has been stated above, the respondents cannot be faulted in doing so.

8. It follows that there is no merit in the application and the same is accordingly dismissed.

S. Gurusankaran
6/8/99
(S. Gurusankaran)
Member (A)

G. Sreedharan Nair
6/8/99
(G. Sreedharan Nair)
Vice Chairman (J)