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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1797
T.A. No.

1989

DATE OF DECISION 2.1.1990

Prem Chand Applicant (s)

Shri P.L. Mimroth Advocate for the Applicant (s)

Versus

Union of India & Others Respondent (s)

Shri K.L. Bhandula Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(of the bench delivered by Shri I.K. Rasgotra, Member (A))

The applicant filed an application under Section 19 of the Central Administrative Tribunals Act on 5th September, 1989 aggrieved by the denial of issue of an entry pass in the office of Central Electricity Authority and delay in issuing posting order on being reverted from deputation on foreign service with Chukha Hydel Project, Bhutan. He filed MP No.2172 virtually amending the original application. Consequently, MP No.2835 of 1989 was filed by the Ld. Counsel for the applicant, seeking permission to amend the original application. The prayer was allowed and the amended application was filed on 13.12.1989.

2.1 The applicant was appointed as a Supervisor in the office of Central Water and Power Commission (Power Wing), Government of India, New Delhi (later known as Central Electricity Authority) on 22.11.1974. He worked at Baira Suil Hydro Electric Project, Surangani (HP) from 22.11.1974 to 31.7.1985

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and in the Directorate of Central Electricity Authority, New Delhi, from 31.7.1985 to 8.4.1987, where he was transferred on compassionate ground. He went on deputation on foreign service to Chukha Hydel Project, Bhutan from 8.4.1987. He was relieved from Chukha Hydel Project, Bhutan vide order No.CHP/O&MC/4(9)/87/4986-93 dated 3rd April, 1989 (page 11) and was granted due terminal leave and joining time as under:-

- (i) Bhutan earned leave for 60 days w.e.f. 9.4.89 to 7.6.1989
- (ii) Half-pay leave for 38 days w.e.f. 8.6.89 to 15.7.1989
- (iii) Joining time for 12 days w.e.f. 16.7.89 to 27.7.1989.

The Chukha Hydel Project also directed the applicant to report for duty to Central Electricity Authority, New Delhi - his parent department - on expiry of leave etc.

He reported for duty on 28.7.1989 (FN), in the office of Director (Admn), Central Electricity Authority, Sewa Bhawan, R.K. Puram, New Delhi, and is said to have continued to report for duty except for 15 days from 11.8.1989 to 25.8.1989, when he availed of leave. The respondents, however, did not give him any posting order nor have they paid his salary etc. since he reported for duty on repatriation from Chukha Hydel Project, Bhutan. The applicant was also prohibited entry in the CEA office building on 29.8.1989.

2.2 According to him, despite the availability of clear vacancies in the office of Central Electricity Authority, New Delhi, he was not given a posting in Delhi, in accordance with the guidelines issued by the Government of India, relating to Government employees, belonging to the Scheduled Caste and Scheduled Tribes, (Annexure A-7 to the application). The respondents, however, issued the impugned order No.11/9/88-Adm.II(CEA) dated 1st September, 1989 directing that:

"On repatriation from Chukha Hydel Project, Bhutan, the following junior engineers are posted as under:-

<u>SNO.</u>	<u>Names/</u>	<u>Posted to</u>
1	Bhartendu Gupta	RPSO, Calcutta
2	S.M. Puri	WREB, Bombay
3	M.S. Rawat	SREB, Bangalore
4	A.K. Sharma-II	SREB, Bangalore
5	Rashpal Singh	NEREB, Shillong
6	Prem Chand	EREB, Calcutta

The above Junior Engineers are advised to report to their place of posting on the expiry of their Terminal Leave/joining time."

The applicant is placed at S.No.6 of the order.

2.3 The applicant has sought the following reliefs against the impugned order of September 1, 1989:

(i) The Tribunal may examine the record with a view to determining the number of vacancies available in the Office of CEA, New Delhi and direct the respondents to allow him to join at New Delhi:

(ii) The respondents may be directed to release all the salary and allowances etc. due to him.

3. During the hearing on 22.11.1989 for admission the Counsel for the respondents stated that he would not like to file any reply to the application but would like to argue the case. The Counsel for the applicant also agreed to this proposition.

4.1 We have heard the Ld. Counsel of both the parties, and gone through the record very carefully. The applicant was on deputation on foreign service terms with Chukha Hydel Project, Bhutan. He was released by Chukha Hydel Project authorities on 3rd April, 1989 and directed to report for duty to his parent department i.e. Central Electricity Authority, New Delhi on expiry of his terminal leave etc. A copy of the office order issued by Chukha Hydel Project dated 3.4.1989 was among others, endorsed to Director (Admn), C.E.A., Sewa Bhawan, R.K. Puram, New Delhi. The Central Electricity Authority, therefore, had adequate time to finalise the posting of the applicant between 3rd April, 1989 and 28th July, 1989 when the applicant reported for duty after availing of earned leave and joining time. The Central Electricity Authority however issued the posting order only on 1.9.1989. The delay of about six months in finalising the posting of the applicant reflects poorly on the administration and is unreasonable. Accordingly, we hold that the period between

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28.7.89 and the date on which the posting order was communicated to the applicant should be treated as compulsory waiting, pending posting, and consequently duty for all purposes.

4.2 The contention of the applicant that the order posting him at Calcutta is punitive and malafide is not apparent from the facts of the case. The Government has a wide discretion in the matter of transfer/posting as and when required by the exigencies of the administration. In this case the applicant was returning from deputation on foreign service and thus there was a bonafide occasion to find a slot for him in one of the offices of the Central Electricity Authority. The occasion for his posting/^{been} transfer has not ^{been} conjured up by the Administration, with a view to harass the applicant. An act of transfer itself cannot be considered as a penal action in such circumstances. The instructions of the Government relied upon by the applicant regarding 'harassment and discrimination' of the Scheduled Caste/Scheduled Tribe officers, on the ground of social origin, are not relevant as no such case emerges from the facts of the case. It is noted that the Central Electricity Authority had earlier considered his request favourably by transferring to Delhi from Baira Siul Project (HP), before he went to the assignment in Bhutan. We, therefore, do not find any merit in the arguments advanced regarding 'harassment, discrimination' etc.

5. In the facts and circumstances of the case, we order and direct that the period from 28.7.1989 to the date on which the transfer order was communicated to the applicant should be treated as 'Compulsory Waiting' pending issue of posting order by the competent authority. The applicant should therefore be paid full pay and allowances as applicable to him treating this period as duty, within a period of 30 days from the date of communication of this order. We, however, are not included ^{not} to interfere with

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the order posting the applicant to Calcutta. This, however, will not preclude the Central Electricity Authority from considering his case for posting in Delhi as and when an occasion arises, in accordance with the normal practice followed in similar situations.

Parties will bear their cost.

I.K. Rasgotra
(I.K. Rasgotra)
Member (A) 2/1/90

T.S. Oberoi 2.1.90
(T.S. Oberoi)
Member (J)