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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA No. 930/89

DATE OF DECISION: 5/7/1991

SHRI M.C. AGGARWAL

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

THE HON'BLE MR. A.V. HARIDASAN, MEMBER (J)

THE HON'BLE MR. I. K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

APPLICANT IN PERSON

FOR THE RESPONDENTS

SHRI M.L. VERMA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

Shri M.C. Aggarwal, who is working as Assistant Surveyor of Works in Delhi Central Circle No.3, Central Public Works Department (CPWD) has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order No. 32/2375/87-EC.III dated 27.1.1989 rejecting his representation dated 28.10.1988 requesting for payment of salary and allowances for the period 1.6.1988 to 22.8.1988.

2. The case of the applicant is that in November, 1987 when he was posted as Assistant Engineer in the office of the Executive Engineer Construction Division No.XIII (Respondent No.3) he was not entrusted with any work nor given any staff nor provided with independent chair to sit despite his requests. He brought this situation to the notice of the Director General of Works (Respondent No.1) vide his paragraph 6 of his letter dated 2.3.1988 by stating that:

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"For the last four months in Construction Div. XIII, I have neither been given any staff nor any furniture nor any work nor any accommodation. Even an independent chair was not supplied to sit on. I have been, for all practical purposes under suspension with 100% subsistence allowances."

In the absence of these basic facilities he passed his time sitting here and there in the office of the Respondent No.3. He was paid his salary and allowances from November, 1987 to May, 1988. However, from June, 1988 to August, 1988 his salary and allowances were withheld. He protested against the withholding of his salary and allowances vide his letter dated 30.6.1988 (Annexure-4). On 12.7.1988 (Annexure-5), Respondent No.3 issued a memorandum to the applicant calling his explanation for his absence from duty from June, 1988 without any intimation. He was given one week to submit his explanation failing which he would render himself liable to disciplinary action being taken against him. The applicant submitted his explanation on 19.7.1988 (Annexure-6) explaining that:

".....I have not been provided even an independent chair to sit on INSPITE OF REPEATED REQUESTS and for that reason, I have to pass my time partly by sitting in Divisional office for as long as a chair becomes available here or there, partly by sitting with my colleagues, partly by sitting in canteen & coffee house and partly by wandering in I.P. Bhawan and around."

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He again requested that he should be provided the basic amenities so that he could discharge his duties. Consequent to his various representation for seeking redressal of his grievance the Superintending Engineer, Respondent No.2 vide his letter dated 1.2.1989 (Annexure No.8) directed the Executive Engineer as under:

"Kindly refer to letter dated 31.1.1989 from Shri M.C. Aggarwal ASW addressed to DGW and copy to you on the above subject. The salary of Shri M.C. Agarwal, A.E. for the above period was not paid to him when he was attached to your Division. This may be paid now."

Despite his clear advice from the superior authority, the salary etc. was not released. On the other hand on 27.1.1989 the Deputy Director of Administration in the office of DG (W) with reference to representation dated 28.10.1988 of the applicant advised the Chief Engineer Construction that the applicant's said representation has been "considered carefully by the competent authority and it has been decided tht since Shri M.C. Aggarwal, AE(C) has not proof with regard to his attending office from 1.6.1988 to 20.2.1988, he may, as a compassion be asked to take leave of the kind due and admissible for the period and may be warned after due observnce of the rules. It is, therefore, requested that necessary action may please be taken accordingly under intimation to this office."

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The applicant further submits that no charge sheet has been issued to him for absence from duty. His salary, however continues to remain unpaid for the period 1.6.1988 to 22.8.1988. There is, obviously a conflict between the orders of the two superior authorities. while the Superintending Engineer on 1.2.1989 directed the payment of salary to the applicant, the Director General (Works) had taken a different view vide his letter dated 27.1.1989.

The applicant contends that he has been attending the office of the Executive Engineer, Construction Division XIII, as is apparent from the respondent No.3's letter dated 5.8.1988 at Annexure No.16. He also submits that he personally received several letters on different dates while in office. He has listed these letters in paragraph 12 of his representation dt. 28.10.1988 (Annexure-9).

By way of relief, the applicant has prayed that:

- (i) The Respondents be directed to release the salary of the applicant from 1.6.1988 to 31.8.1988 with interest at the rate of 24 per cent.
- ii) the respondent be directed to pay a compensation @ Rs. 15,000/- per month from 6/88 till the date of actual payment.

3. The respondents in their written statement have disputed the submissions of the applicant that he was attending the office of the Executive Engineer Construction Division. They maintain that the applicant was directed to attend the Division Office and look after the arbitration cases. He was provided with available table and chair in the correspondence branch, but he declined to deal with arbitration

cases. The respondents admit that a representation to the DG(W) regarding non-provision of basic facilities to him, required to discharge his duties was submitted by the applicant but deny that no work was assigned to him. They also reiterate that he was provided with a table and chair that was available in the office. They further submit that he was directed by the Superintending Engineer through the Executive Engineer to work on site as Assistant Engineer at Arambag but he did not obey those orders. They also maintain that his salary was stopped as he did not attend the office.

4. The applicant has filed a rejoinder, wherein he has refuted the submissions of the respondents and has cited the following judicial pronouncements in support of his claim for interest and for granting costs for the harassment caused to him:

- i) (1990) 12 ATC 608 - Madhusudan Das Vs. UOI & Others
- ii) 2 S.C.R 1983 921 Devaki Nandan Prasad V. State of Bihar & Ors.

In the case of **Madhusudan Das Vs. UOI (supra)** 12 per cent interest was allowed as the Tribunal's order was ignored by the respondents and payment was made to the applicant only after the order on the contempt petition was passed. The facts and circumstances of **Madhusudan Das (supra)** are not applicable in the present case.

The facts and circumstances of the **Devki Nandan Prasad Vs. State of Bihar (supra)** are also distinguishable from the case before us. In **Devki Nandan Das (supra)** the writ of mandamus issued by the Hon'ble Supreme Court was not implemented. The

applicant brought the matter to the notice of the Chief Minister of Bihar and even after the Chief Minister had passed the orders in 1974 (the writ of mandamus was issued on May 4, 1971), the pension of the applicant was calculated as if he was in Class-III service though the order was to deem him to belong to Class-I post of the selection grade from January, 1952. His further representations to the State Government did not produce any respondents^{se}. He was, therefore, compelled to approach the Hon'ble Supreme Court once again. It was in these circumstances that the Hon'ble Supreme Court directed the State Government not only to pay the appropriate pension with interest of 6 per cent but also to pay exemplary costs quantified at Rs. 25,000 to the petitioner for 'intentional, deliberate and motivated harassment.'

5. Shri M.L. Verma, Counsel for the respondents has cited 1982 (2) SLJ Madhya Pradesh High Court V- **Vikram Tamaskar and others Vs. Steel Authority of India Ltd. & others.** for withholding the salary of the employee without resorting to any disciplinary action. The facts and circumstances of the case however, are distinguishable as in the case the petitioners had signed the Attendance Register but remained present at the work site but refused to do any work. In such a case the principle of no work, no pay cannot be disputed.

We have heard the applicant in person and the learned counsel for the respondents. We have also perused the record very carefully. After considering the matter carefully we are of the view that in case the applicant was on unauthorised


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absence, and disobeyed the orders regarding allocation of work, the respondents should have persued the matter to its logical conclusion. The very fact that this was not done cause to indicate that the applicant must have been attending the office. There is also no positive averment in the counter of the respondents that the applicant was provided with the basic facilities to discharge his duties. A guarded statement has been made in the written statement that available chair and table was provided to him. The same sentence was repeated by the learned counsel for the respondents in the oral argument. On the other hand, the applicant's contention was that he was sitting on any chair or table which may become available from time to time during the day in the office depending upon the occupancy, absentism, visitors etc. We, therefore find merit in the argument of the applicant that no specific chair and table was given to him in the office and he had therefore to pass his time by moving around in the office and spending his time in the canteen or coffee house. He has on the other hand specified the dates on which he has received the letters of the respondents when he was present in the office. We, therefore, are not inclined to believe that the applicant was absent from duty. We are on the other hand left with a feeling that the officer was not given the treatment due to him at his level. We also observe that the order of the Superintending Engineer that salary etc. of the applicant should be paid to him deliberately was not carried out and reliance placed to deny him his salary on an earlier order passed by the office of the DG(W) on 27.1.1989. In a case which

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has been the subject matter of discussion between the DG(W) and the lower authorities, we cannot assume that the Superintending Engineer must have been issued order for making payment of the salary to the applicant for the period in question after taking into confidence his superior authority.

In the facts of the case we order and direct that the applicant shall be deemed to be on duty from 1.6.1988 to ²¹22.8.1988 with the further direction that he shall be paid his salary and allowance with interest at 10 per cent from the date due to the actual date of payment. We further direct that the salary and wages as per the above order shall be disbursed to the applicant within 4 weeks from the date of communication of this order. As this is a case of undue harassment, we further order that the applicant shall be paid costs amounting to Rs. 250/-. The application is disposed of as above.


(I.K. Rasgotra)
Member (A) 5/7/1991


(A.V. Haridasan)
Member(J)