

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1638/88

New Delhi this the 17th day of January, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

D. S. Arora S/O Late Shri Hans Raj,
Executive Engineer, Office of Chief
Engineer, N.D.Z., C.P.W.D.,
Nirman Bhawan, New Delhi.
R/O D-5/15, Vasant Vihar,
New Delhi - 110057.

... Applicant

By Advocate Shri Dalip Singh

Versus

Director General of Works,
C.P.W.D., Nirman Bhawan,
New Delhi-11.

... Respondent

By Advocate Shri M. L. Verma

O R D E R (ORAL)

Hon'ble Mr. Justice V. S. Malimath —

The applicant, Shri D. S. Arora, has prayed for a direction to grant him the benefit of leave encashment for a period of 35 days amounting to Rs.5,198/- on the ground that that period represented the compulsory waiting. The petitioner was transferred by an order dated 28.5.1985 from Valuation Cell, Ahmedabad to Delhi vice Shri C. L. Sharma promoted. The applicant got himself relieved at Ahmedabad on 21.6.1985 and reported at Delhi on 28.6.1985. He was told that there was no post available for him it having been filled up by making appropriate order by the Chief Engineer who had the power to do so within his Zone. The petitioner was, therefore, asked to seek a fresh order of posting. Accordingly, the petitioner on 28.6.1985 itself made a request to

give him a fresh order of posting. Ultimately, the petitioner was given a fresh order of posting on 14.8.1985 in response to which he joined duty on 16.8.1985.

2. The petitioner has claimed that there was a compulsory waiting of 35 days. The respondents have rightly pointed out that the period of waiting, if any, comes to 28 days and not 35 days. They have, however, taken the stand that the said period does not represent the compulsory waiting by the petitioner. They have taken the stand that the authorities at Delhi had informed the Head Office as also the petitioner by their letter dated 7.6.1985 that there was no post available where the petitioner could be accommodated. The respondents have also taken the stand that the petitioner having got a copy of the same, was not justified in getting himself relieved on 21.6.1985. The petitioner has taken the stand that he had not received any such communication and that he was not aware of the same. No satisfactory material has been placed by the respondents to prove that the petitioner was apprised of the said communication that there was no post available to him at Delhi and that, therefore, he should get the posting orders duly modified. Thus, it becomes clear that the petitioner getting himself relieved on 21.6.1985 and reporting at Delhi on 28.6.1985 cannot be regarded as a conduct of the petitioner after he was made aware that his posting had become infructuous and he was informed about it.

3. Be that as it may, the petitioner immediately apprised the authorities of the situation and sought fresh orders of posting by his letter dated 1.7.1985. He was able to get an order in this behalf only on 14.8.1985. The petitioner applied for leave to enable him to get immediately the salary due to him as otherwise the authorities were not willing to release his salary. He, therefore, made a request for leave explicitly stating that if the period in question is duly approved, he would be making a request for cancelling the leave applied for.

4. The material on record is sufficient to prove that the petitioner was not aware of the communication that the posting of the petitioner to Delhi had become infructuous the said vacancy having in the meantime been filled up by posting another person. Besides that, there was some delay in responding to the request made by the petitioner on 1.7.1985 in giving a fresh order of posting which came to be made only on 14.8.1985. In this background, we are satisfied that there was a compulsory waiting by the petitioner for a period of 28 days for no fault of his.

5. Hence, to the extent of the said period of 28 days, the leave sanctioned to him should be cancelled and the said period should be credited to his earned leave account to render him eligible for encashment of the said period on the date of his retirement. This application is entitled to succeed to that extent.

6. For the reasons stated above, the respondents are directed to grant the benefit of encashment of earned leave to the petitioner to the extent of 28 days in the light of our finding as recorded above with utmost expedition and preferably within a period of four months from the date of receipt of a copy of this order.

7. Prayer for allowing interest is rejected.

8. With these directions, this application is disposed of. No costs.

Adige
(S. R. Adige)
Member (A)

Malimath
(V. S. Malimath)
Chairman

/as/