

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 645/86

DATE OF DECISION: 20.11.1990.

SHRI MOHAN SINGH

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENTS

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

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

FOR THE APPLICANT

SHRI R.L. SETHI, COUNSEL

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI, SR.-
COUNSEL.

(Judgement of the Bench delivered by Hon'ble Mr. I.K.
Rasgotra, Member (A)

Shri Mohan Singh has filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the action of the respondents in not paying him salary and other dues from April 1, 1985 to date.

2. The applicant was recruited through the Union Public Service Commission as Assistant Architect in 1976 and was promoted as Architect in the Central Public Works Department vide order dated 28.1.1982. The promotion was to take effect from the date of his taking over charge of his post. He, however, claims to have been keeping in-different health since April 1, 1985. His difficulties were further aggravated by the ill-health of his wife. He has been applying for leave from time to time under the advice of the C.G.H.S.

2

medical authorities, but this was not sanctioned. The respondents, arbitrarily stopped payment of salary and allowances to him from 1.4.1985. Frustrated by the arbitrary action of the respondents, the applicant gave notice of premature retirement with immediate effect from 9.9.1985, in view of the pressing family circumstances, simultaneously through the said notice he requested that he be allowed to join duty at Delhi during the currency of notice period to enable him to get his pension case etc. processed. As the applicant had addressed the said notice to the Director General (Works), CPWD, Nirman Bhavan, the same was returned to him advising him to address the notice to the President of India. He was further told that a conditional notice will not be acceptable. In the meantime, he was served a charge sheet on 10.10.85 which he replied on 19.10.1985. According to the applicant no final decision has been communicated to him.

By way of relief the applicant has prayed that:

- a) his salary be released from 1.4.1985;
- b) leave be sanctioned as due under the rules;
- c) be allowed to join duty as Architect at New Delhi; and
- d) be deemed to have been promoted with benefits from 28.1.1982.

3. The respondents in their preliminary objections in the written statement have submitted that the applicant has not come to the court with clean hands and that he has tried to cloud the real issue, viz. his refusal to go to Madras on transfer. On the other hand he has attempted to make out a case that the Government was unreasonably denying him his monthly salary to reduce him to deprivation. It has been further

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(C)

submitted that the applicant was promoted from the post of Deputy Architect to that of Architect on 28.1.1982 and was posted at Madras. Right from that time, he has been dodging his transfer to Madras on one pretext or the other. The respondents have also brought out that the applicant was aware that he had been relieved from his place of duty in Delhi w.e.f. 3.2.1985 to proceed to Madras, yet he is making a claim for payment of salary in Delhi without joining duty in Madras. Further he had filed an application No. 266/86 before this Tribunal praying for quashing the order of transfer to Madras, which was dismissed as withdrawn by the Tribunal vide order dated 7.8.1986, at his own request. Earlier, he had also filed a Civil Writ Petition no. 297/85 in the High Court of Delhi asking for the same relief. This matter was disposed of by a Division Bench of the High Court vide order dated 31.1.1985 which reads as under:

"At his own request, he was allowed to continue in Delhi upto 31.12.1984. Now the Government has transferred him to Madras. He refused to go there. We see no reason for his refusal. The petition is dismissed in limine."

In the present petition the applicant has not agitated his main grievance but has made out a case as if the respondents were deliberately denying him the payment of salary due to him. The respondents contend that the applicant is guilty of *supreso veri* and *suggestio falcii*. In view of the above it has been submitted that the applicant is not entitled to any relief.

4. Shri R.L. Sethi, learned counsel for the applicant submitted that the applicant had fallen sick on

2

28.1.1985 and had asked for medical leave. Instead the respondents stopped payment of his salary and after making several representations his salary for January, February and March, 1985 was released. In fact salary for February and March, 1985 was paid only in October, 1985. The learned counsel further submitted that in the departmental proceedings initiated against the applicant the charges have not been proved and therefore the applicant was entitled to payment of salary from 1.4.1985 to 20.6.1988, the date on which he was retired. The applicant could not proceed to Madras, as initially he was detained at Delhi in public interest, as is apparent from the letter written by his superior to the Deputy Director (Admn) on 21.7.1982, (annexure P-IX) and later due to personal difficulties. He, therefore, continued to remain in Delhi on duty till 28.1.1985 when he proceeded on medical leave. The learned counsel submitted that there was no law which allowed stoppage of payment of salary to an employee who was on medical leave.

5. Shri P.H. Ramchandani, Senior Counsel for the respondents explained the background of the case to place the matter in the right perspective. He submitted that the applicant was transferred on promotion to Madras on 28.1.1982. He represented against his transfer. Thereafter, he filed a writ petition in the High Court of Delhi challenging his transfer. This was dismissed by the High Court on 30.1.1985. He filed a OA No. 266/86 in the Principal Bench of the Central Administrative Tribunal, which he chose to withdraw, after seeing the counter reply filed

(ii)

by ~~of~~ the respondents. The learned counsel stated that the respondents had considered his difficulties like educational session for the children etc. and had allowed him to continue in Delhi upto 31.12.1984 which can be construed as deferment of transfer to Madras till that date. When even after that date he did not join, his case was dealt with in accordance with the provisions contained in FR 17(1). Since the applicant did not proceed to Madras and assume the duties attached to the post he was not entitled to the salary claimed by him. In the meantime, the Chief Engineer, vide his order dated 29.5.1985 had sanctioned him leave for 75 days from 28.1.1985 to 12.4.1985. The respondents therefore decided to release the salary and allowances due to the applicant for the period 1.1.1985 to 31.3.1985. The only payment now due to him for the period 1.4.1985 to 12.4.1985. On 8.4.1985 the applicant advised the DG (W), CPWD that he had purchased railway tickets for proceeding to Madras but at the same time requested that he be allowed to join at Madras on 1.5.1985. In the meantime, the applicant kept on making representation and two of them were disposed of vide letter dated 28th March, 1985, (Annexure R-7 of the Counter). Nevertheless, the rejection of his representations did not deter him from pursuing his objective through MPs etc. to the various higher authorities. His undertaking given on 8th April, 1985 to join Madras on 1.5.1985 also never materialised.

Shri P.H. Ramchandani, learned senior counsel further submitted that on expiry of his leave on 12.4.1985, which was sanctioned by the Chief Engineer,

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the applicant neither returned to duty in Delhi nor did he proceed to Madras. Therefore, he is not entitled to any payment of salary in term of proviso to FR 17(1):

"Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

Summarising his submissions the learned senior counsel submitted that keeping in view the dismissal of his Civil Writ Petition by Delhi High Court, challenging his transfer to Madras and withdrawal of OA No. 266/86, claiming the same relief and by claiming only salary from 1.4.1988 onwards exposes his intention to seek the main relief of cancellation of transfer order by adopting a devious route. The learned senior counsel further averred that the applicant has already been dismissed from service and his sole claim of salary relates to the period 1.4.1985 to 12.4.1985 alone.

6. The learned counsel for the applicant submitted that the applicant is although said to have been relieved on 3.2.1985, which happened to be a Sunday and when he was on sanctioned leave. The learned counsel also stated that vide Office order No. 214 of 1983 issued on 28.3.1983 (R-3) the order transferring the officer was partially modified implying that perhaps a fresh order transferring the applicant to Madras should have been issued.

7. We have heard the learned counsel for both the parties. The facts of the case broadly are undisputed. The applicant had been allowed to remain in Delhi at his request upto 31.12.1984. He was further sanctioned

2

leave from 28.1.1985 to 12.4.1985 ostensibly in view of his undertaking that he would join at Madras on 1.5.1985 vide his letter dated 8th April, 1985 (Annexure R-8). The CWP filed by him in the High Court of Delhi praying for cancellation or order of his transfer to Madras was dismissed on 31.1.1985, while OA No. 266/86 was dismissed as withdrawn by the Principal Bench of the Tribunal on 7.8.1986. After all the consideration shown to the applicant by the respondents in deferring his order of transfer for a specified period, he refused to proceed to the station of his duty, nor did he report for duty at Delhi after 12.4.1985. In this view of the matter we do not see any merit in his claim for salary for non performance of any duty at any place. The payment of salary in such cases is regulated by the statutory rule FR 17(1) reproduced below:

"Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall be entitled to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

....."



(14)

In the facts and circumstances discussed above, we direct the respondents to release the salary & allowances due to the applicant for the period 1.4.1985 to 12.4.1985 within four weeks from the date of communication of this order.

The application is allowed only to this extent, with no orders as to costs.

Salve
(I.K. Rasgotra)
Member (A) 29/4/1990

Ab
(Amitav Banerji)
Chairman