

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: NEW DELHI.

ORIGINAL APPLICATION NUMBER 2216 OF 1990

DATE OF DECISION: 18.7.1991

Shri M.R.Dewan

.. Applicant.

Applicant in person.

Versus

Union of India and another.

.. Respondents.

Shri M.L.Verma

.. Advocate for the Respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair,

.. Vice-Chairman (J).

Hon'ble Mr.P.S.Habeeb Mohamed,

.. Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgment? X
2. To be referred to the Reporter or not? X
3. Whether their Lordships wish to see the fair copy of the Judgment? X
4. Whether to be circulated to other Benches? X

JUDGMENT

(delivered by Hon'ble Mr. G.Sreedharan Nair, VC)

This application is by a member of the Indian Forest Service belonging to the Union territory cadre.

2. Though in paragraph 1 of the application it is stated that the application is against the order dated 6-9-1988 under which he has been transferred from Arunachal Pradesh to Andaman and Nicobar Islands in paragraph 8 where the reliefs are set forth, as many as 6 reliefs have been claimed. The first relief relates to the order of transfer, while the other reliefs are quite independent of the same and not consequential to it. However, it is seen that the Division Bench has admitted the application in respect of the reliefs

(i), (iii), (iv) and (v).

3. The facts relevant for appreciation of the reliefs are the following:- By the order dated 20-10-1984 the applicant was posted as Attached Officer to the establishment of the Conservator of Forests Western Circle with headquarters at Bunderdowa. The applicant filed Writ Petition (C.R.)No.670 of 1984 in the High Court of Guwahati challenging the said order. On 20-12-1984 the High Court passed an order to the effect that if the applicant had not handed over charge, the same condition shall prevail until further orders. On the establishment of this Tribunal the writ petition was transferred to the Guwahati Bench of this Tribunal and it was registered as Case No.5/86. By the order dated 3-4-1986, the Tribunal quashed the order of 20-10-1984 posting the applicant as Attached Officer.

4. On 3-6-1986 an order was issued transferring the applicant to Miao as Deputy Conservator of Forests. Though the applicant challenged the order by filing the original application before the Guwahati Bench it was dismissed on the ground that the applicant had not exhausted the alternative remedies available to him. On 26-9-1986 an order was issued by the Lt.Governor, Arunachal Pradesh placing the services of the applicant at the disposal of the cadre controlling authority for the Indian Forest Service Officers of the Union territories cadre, namely the Secretary, Government of India Ministry of Environment and Forests. The applicant filed O.A.No. 724 of 1987 before this Bench of the Tribunal to quash the order transferring him to Miao as well as the order placing his services at the disposal of the cadre controlling authority and for the payment of salary and allowances. On 16-1-1987 the applicant was placed under suspension in contemplation of disciplinary proceedings and

8

his headquarters was fixed as Miao. He filed O.A.No.1145 of 1987 before this Bench challenging the order of suspension; the order was quashed by the decision delivered on 29-7-1987. Thereafter by the order dated 26-8-1988 the order of suspension was revoked and on 2-9-1988 the impugned order was passed transferring the applicant from Arunachal Pradesh to Andaman and Nicobar Islands.

5. It is urged that when the order of suspension was revoked, the impugned order should not have been passed without reinstating the applicant in service. It is stated that there has been violation of the statutory provision to that effect contained in the All India Services (Discipline and Appeal) Rules, 1969. It is further stated that the order is without jurisdiction since it has been issued by the desk officer, and is also unconstitutional as violative of Article 77(2) of the Constitution of India. There is also the plea that the order is mala fide, issued with collateral purposes, is in violation of the principles of natural justice, and is arbitrary, discriminatory as well as punitive.

6. The third relief prayed for in the application is to direct the respondents to pay all the dues including pay and allowances with interest as detailed in the annexures where the dues from January 1985 are enumerated. The fourth relief is to direct the respondents to reinstate the applicant in the post last held by him and provide accommodation.

7. The fifth relief is to declare the entire period from 20-10-84 to 5-9-1988 and from 6-9-1988 till date of final decision as period spent on duty with full pay and allowances.

Q

the

8. The first respondent, /Union of India and the second respondent the State of Arunachal Pradesh have filed separate replies. Both the respondents have raised a preliminary objection that this application is barred under the principle of res judicata as the matter that is sought to be agitated is directly and substantially the same as that was in issue in O.A.No.724 of 1987 and O.A.No.219 of 1989 filed by the applicant ~~and~~ which have been decided against him. It is also pointed out that as the application has been filed more than an year after the impugned order of transfer, it is barred by limitation.

9. It is contended that the applicant did not comply with the order of transfer dated 3-6-1986 and the order dated 26-9-1986 under which he was relieved with a direction to report to the first respondent, but chose to absent himself from duty continuously and reported for duty to the office of the Principal Chief Conservator of Forests Andaman and Nicobar Islands only on 21-10-1988, and even thereafter without reporting at the assigned duty point and without permission has chosen to be away from Andaman and Nicobar Islands and thus he has unauthorisedly absented from duty for over more than 2 years. It is further contended that the applicant is not entitled to any amount as claimed as all amounts due to him have already been paid and disbursed.

10. We have heard the applicant who appeared in person and Advocate Sri M.L.Verma on behalf of the respondents.

11. The main relief relates to the sustainability of the order of transfer issued on 6-9-1988. Though the applicant attempted to assail the order on the grounds urged in the application, we have no hesitation to hold that the preliminary objection raised by the

(79)

counsel of respondents with respect to the bar of res judicata has to prevail.

12. Admittedly, the applicant has filed O.A.No.219 of 1989 where he had prayed for quashing the order transferring him from Arunachal Pradesh to Andaman and Nicobar Islands. No doubt, in that application all the grounds urged in the present application are not seen to have been put forward. However, it was contended that the order is illegal, mala fide and detrimental to the interest of the applicant. That application was disposed of on merits by a Division Bench of this Tribunal by the judgment dated 29-5-1989 where it was held that there is no legal infirmity in respect of the order and that it has been issued in the exigencies of administration and in public interest.

13. R.A.No.115 of 1990 was filed by the applicant for review of the aforesaid judgment where various grounds were put forward. Another Division Bench of the Tribunal presided over by the Hon'ble Chairman has disposed of the review petition on merits by dismissing the same as per the order dated 24-4-1991.

14. In view of the above, it is not open to the applicant to assail the order transferring him from Arunachal Pradesh to Andaman and Nicobar Islands by the order dated 2-9-1988. A civil servant may be aggrieved by an order of transfer. But, when once the order has been specifically made the subject of attack in an original application filed before this Tribunal and the attack has been found to be without substance, it is not open to him to file a second application praying for the identical relief. The principle of conclusiveness of prior judgments inter partes has to be given prime consideration; otherwise it will tend to frivolous and vexation actions.

e

15. Adverting to the other reliefs claimed in the application, we would like to refer to Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 which lays down that an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.

The reliefs (iii), (iv) and (v) prayed for in the application are based on different causes of action, they ~~are~~ ^{have} nothing to do with the main cause of action, nor are they consequential to one another. However as the application is seen to have been admitted by a Division Bench of this Tribunal, we are constrained to consider those reliefs as well.

16. The preliminary objection with respect to the bar of the application raised by the respondents extends to these reliefs as well. The pay and allowances claimed by the applicant was the subject matter in O.A.No.219 of 1989 as well and by the relief allowed under clause (6) of paragraph 19 of the judgment appropriate directions have been given. The prayer for reinstatement at Delhi which is subject matter of the fourth relief in the present application was considered and negatived by the judgment in O.A.No.219 of 1989 where it was held that there is no reason or justification to issue such a direction (vide clause (3) of paragraph 19 of the judgment).

17. The fifth relief in the present application relates to the declaration of the period from 20-10-1984 onwards as spent on duty. The entire period consists of four different spells. The first is from 20-10-1984 to 3-4-1986. Since by the order of the Guwahati Bench of the Tribunal in Case No.5 of 1986 delivered on 3-4-1986 the order dated 20-10-1984 posting the applicant as Attached Officer to the establishment of the Conservator of Forests, Western Circle was quashed, the respondents were bound to pass an order in respect of the said period as to how it is to be treated. There is nothing

on record to indicate that any substantive order has been passed in that regard. If the orders in that respect have not been issued hitherto the respondents shall do so without any further delay.

18. Admittedly orders have been passed as regards the period from 4-4-1986 to 2-6-1986 (vide clause (xv) of paragraph 4 of the application).

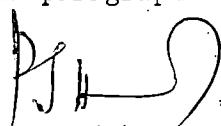
18. In respect of the period from 3-6-1986 to 2-9-1989 the claim is put forward on the ground that by the judgment in O.A.No.219 of 1989 the previous transfer orders have been declared as having become infructuous. There is no foundation for this plea. What has been held by the judgment in O.A.No.219 of 1989 is that there is no legal infirmity in the impugned orders dated 3-6-1986, 22-7-1986 and 26-9-1986. Ofcourse it was held that with the passing of the order dated 2-9-1988 transferring the applicant from Arunachal Pradesh to Andaman and Nicobar Islands, the earlier orders have become infructuous. By the said statement it does not follow that all the earlier orders are ineffective or void. Hence, the relief claimed on this account cannot be allowed.

19. The last spell relates to the period from 6-9-1988 onwards. By the judgment in O.A.No.219 of 1989 a direction has already been issued to the respondents to regulate the period of absence of the applicant from duty from 26-9-1986 to the date he reports for duty at Andaman and Nicobar Islands. It is stated in the reply of the first respondent that the applicant reported for duty only on 21-10-1988 and even thereafter did not report at the assigned duty point. At any rate, in view of the aforesaid direction in the judgment in O.A.No.219 of 1989 (clause (2) of paragraph 19 of the judgment)

I

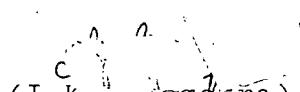
no further direction is called for.

20. In the result, the application is dismissed subject to the direction contained in paragraph 17 supra.


MEMBER(A)


VICE-CHAIRMAN.

Pronounced by me on behalf of the bench comprising of
Hon'ble Mr. G. Sreedharan Nair, Vice Chairman and
Hon'ble Mr. P.S. Habeeb Mohamed, Member (A)
in the open court today, the 18.7.1991.


(I.K. Nasgocra)
Member (A) 18/7/91
18.7.1991