

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 918/90

DATE OF DECISION: 05.06.1992.

S.C. VERMA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

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

FOR THE APPLICANT

SHRI B.B. RAVAL, COUNSEL.

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI, SENIOR
COUNSEL.

1. Whether Reporters of the Local Papers may be allowed
to see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

I.K. RASGOTRA
(I.K. RASGOTRA)
MEMBER (A)

June 5, 1992.

P.K. KARTHA
(P.K. KARTHA)
VICE-CHAIRMAN (J)

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COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 by Shri S.C. Verma, Assistant Engineer (AE), All India Radio (AIR), Najibabad, he has challenged the order of the respondents No.NAJ-2/9/89-C dated 15.12.1989, which conveys the decision of the Director General, AIR in regard to his request for the release of his salary for the period June, 1987 to October, 1988 to the following effect:-

"The Director General after reviewing and examining his case has come to the conclusion

that he has no case and no further reference from him on this subject will be entertained."

2. The applicant joined All India Radio as Engineering Assistant in Delhi in January, 1976. He was promoted as Senior Engineering Assistant in December, 1983 and later in 1985 as Assistant Engineer, the post which he is holding presently. He was posted at Aizawal on his first promotion as Assistant Engineer vide srl. No.63 of order dated 28.5.1985. The said order dated 28.5.1985 was partially modified vide order dated 16.10.85 by transferring him temporarily to the office of Chief Engineer (North Zone) AIR and Doordarshan for one year upto 31.11.1986 and thereafter he was to move to AIR, Aizawal on transfer as ordered originally. On 15.12.1986 the applicant made a representation to respondent No.2, Director General (AIR) through proper channel, praying that he be allowed to be continued at Delhi, principally on the ground that his transfer at that juncture would disrupt the education of his daughter in the midst of academic session. In pursuance of order dated 16.10.1985 the Chief Engineer (North Zone) issued order dated 8.1.1987 stating that "consequent upon his promotion as Assistant Engineer Shri S.C. Verma formerly Senior Engineering Assistant who was temporarily transferred to this office vide Directorate's order dated 16.10.1985, referred to above is being relieved of his duties here on 9.1.87 (AN) with instruction to report himself for duty to

the Station Director, All India Radio, Aizawl. He should submit his CTC report on 9.1.87 afternoon." A copy of the said order was marked among others to the Director General, AIR, New Delhi, Station Director, AIR, Aizawl and the applicant. This order gave rise to the representation dated 24.4.87 from the applicant for reconsideration of his case with a view to retain him at any of the Stations near Delhi, e.g., Agra, Mathura, Delhi, Gwalior in view of his family circumstances, particularly the death of his father and sickness of his mother. This was followed by another representation dated 2.7.87. Although he did not receive any reply from Respondent No.2 to his representations, the order transferring the applicant was further modified vide order dated 1/5.10.87, posting him under C(EZ)AIR&TV, Calcutta. The applicant filed another representation against his transfer to Calcutta on 5.1.1988. He further stated that his salary and allowances, for the period June, 1987 onwards have not been paid and the same be ordered to be released, as he was continuing to work in the office of CE(NZ), AIR Doordarshan, Delhi. This was followed by a representation dated 1.2.88 in which he admitted that he had received the relieving order dated 8.1.1987, on 12.1.1987, asking him to submit CTC report on 9.1.1987. In the next representation dated 5.2.88 he contested his transfer to Calcutta on the ground that he was not

the person with longest stay in Delhi and his transfer was unwarranted, as according to the policy of the Directorate, an employee with longer years of service in Delhi should be considered for transfer to Calcutta. The applicant relies on the Transfer Policy issued vide circular letter dated 14.7.1981 (p.54 of the paperbook) which lays down that "when the question of transfer is considered, as a normal rule, a person with the longest continuous stay at the station" should ordinarily be transferred first. He maintains that there was a large number of officers as listed at pages 58-60 of the paperbook who had been longer in service than the applicant at Delhi or other nearby stations. The next contention of the applicant is that he was never paid TA/DA advance to enable him to proceed to the place of posting in accordance with the order of the respondents and yet they withheld his pay and allowances from June 1987 onwards in an arbitrary manner. His representations appear to have received due consideration, as is apparent from the order dated 1.3.88 (p.61 of the paperbook) which, in supersession of the previous order dated 1/5.10.87, modified his transfer from Calcutta to AIR, Najibabad. A copy of this letter among others was, however, not endorsed to Chief Engineer, AIR, Najibabad. In his next representation dated 29.3.88, the applicant contended that since a copy of the order dated 1.3.1988 was marked

to CE(NZ), AIR, New Delhi, it confirms the ground position that he was continuing to work in that office till 1.3.88. He further stated that since a copy of the said order has not been marked to Head of the AIR, Najibabad, obviously he cannot report for duty to the said office. He further refers to the endorsement in the order, requesting the Pay and Accounts Officer, Ministry of Information and Broadcasting to release his pay only on his joining AIR, Najibabad. It is apparent that the applicant was not satisfied with the amendment/modification made in his orders of transfer from time to time and eventually seems to have taken the stand that he should be retained in Delhi on the ground that persons with longer service were available for transfer outside Delhi. The said representation was disposed of by the D.G., AIR vide his memorandum dated 29.4.88 advising him that it was not possible to accommodate him in Delhi and directing him to join his duty at AIR, Najibabad within 10 days, failing which it has been decided to proceed against him for dismissal from service for flagrant disobedience of orders and unauthorised stay from duty and that the question of payment of salary will only arise when he joins duty.

3. The vicissitudes in the transfer orders in consequence of the applicant's representations have been succinctly put in memorandum dated 20.5.1988 by

the Director General which is annexed at Annexure A-16 to the Application (p.68 of the paperbook) is reproduced below:-

"2. The case has been re-examined in the light of his representation to Director General and it is observed that ever since Shri Verma'a appointment in January, 1976 in AIR, he is in Delhi. He was promoted as Assistant Engineer in 1985 and transferred to All India Radio, Aizawl for the first time in his entire career. However, keeping in view this representation that he has to look after his aged ailing mother, due to sudden death of his father, he was allowed to join as Assistant Engineer in CE(NZ)'s office with the clear understanding that he will be relieved on 1.12.86 for AIR, Aizawl. He however, continued in CE(NZ)'s office till 9.8.87 when he was relieved by that office for AIR, Aizawl. His request for cancellation of transfer was not agreed to by Information & Broadcasting Minister when examined the case on receiving a reference an M.P. His case was, however, once again reviewed alongwith other candidates and his posting revised to CE(EZ), AIR & TV, Calcutta instead of Aizawl. Even then

he did not comply with the order. On subsequent reconsideration and keeping in view his domestic circumstances relating to the illness of his mother it was decided to keep him at a station near to Delhi and Agra so that he could attend to his family problems. His transfer to CE(EZ) was thus cancelled and he was instead transfer to All India Radio, Najibabad.

3. He has, however, not joined so far even at AIR, Najibabad and has been insisting for posting in Delhi/Agra. This has not been agreed to and he was advised vide this Directorate Memo. dated 29.4.99 to join at AIR, Najibabad within 10 days. He has still not complied with the order.

4. In view of the above circumstances it has been decided to give Shri Verma further time of 10 days to join at All India Radio, Najibabad. In this connection he is cautioned that his unauthorised absence from duty and refusal to obey transfer order amounts to a breach of discipline and behaviour unbecoming of a gazetted officer and for that he renders himself liable for disciplinary proceedings under CCA (Rules), 1965. It may further be noted that the salary cannot be paid for unauthorised absence from duty. The question

of release of pay would be considered as and when he joins duty at Najibabad.

5. This issues under directions from Director General, All India Radio."

4. At this stage, the applicant approached the Tribunal vide OA No.1177/88 which was dismissed as withdrawn on 8.7.1988 vide orders reproduced below:-

"Shri Jain appearing on behalf of the respondents assures that the applicant will be given the Transfer T.A. to join at the place of his posting viz., Najibabad. He has also assured that written instructions will be issued to him to report at Najibabad and an intimation thereof will be sent to the office at Najibabad.

In view of the above assurance given by the representative of the respondents, the learned counsel for the applicant withdraws the application. The application is accordingly dismissed as withdrawn."

5. A copy of the transfer order of the applicant to Nijababad was sent to Superintending Engineer, AIR, Najibabad vide DO letter dated 14/18.7.88 from the Desk Officer, endorsing a copy to the applicant & CE (NZ). A warning was administered to the applicant vide memo

dated 8/9.8.1988 by the office of the Director General, pointing out that "all the requirements of the orders of the C.A.T. (in OA 1177/88) have since been met", yet the applicant has not reported for duty and that unless he joins duty at Najibabad on "16.8.1988" he will render himself liable for disciplinary action. Thereafter the applicant wrote to Chief Engineer North Zone on 14.9.1988, requesting for being relieved from office and to pay him TA/DA, giving his family details. In his letter dated 21.9.88, addressed to CE(NZ), he asked for being supplied CTC forms to enable him to hand over the charge and requested for TA/DA advance, amounting to Rs.2695 and transportation charges for 30 quintal of baggage. The transfer advance was sanctioned on 6.10.1988 and received by the applicant on 11.10.1988. The applicant again sought to support his case of being borne on the establishment of CE(NZ), AIR, as the sanction dated 6.10.1988 for transfer advance was marked to the applicant in the office of CE(NZ) vide letter dated 14.10.88. The applicant joined as Assistant Engineer, AIR, Najibabad allegedly without being relieved from CE(NZ)'s office w.e.f. 21.10.88 and requested the Director General, respondent No.2 to have his pay and allowances released from June 1987. He followed up his request by reminders dated 16.1.89, 15.3.89, 11.4.89. The applicant was served a memorandum under Rule 16 of Central Civil Services (Classification Control and Appeal) Rules, 1965 on 13.4.1989, enclosing a statement of imputation of misconduct and giving him 10 days' time to make a

representation. The main article of charge framed against him was that he was transferred to Najibabad after considering his representation dated 5.2.1988 when he was directed to report for duty within 10 days vide Director General, AIR memo of 29.4.88 at that station. The applicant however, did not report for duty and disobeyed the instructions of the Directorate. He was given another 10 days' time to report for duty vide memo dated 20.5.88 "making it very clear that unauthorised absence from duty and refusal to obey Government instructions will make him liable to disciplinary proceedings." This was followed by another memorandum dated 3/9.9.1988, directing him to report for duty at Najibabad by 16.9.88. Despite the issue of these memoranda, Shri Verma did not report for duty at Najibabad by the final stipulated time on 16.9.88 and remained on unauthorised absence from 16.9.88 to 20.10.88." The statement of imputations of misconduct concluded by stating:-

"2. The above mentioned facts show that Shri Verma displayed utter lack of devotion to duty by his unauthorised absence from 16.9.88 to 20.10.88 and has exhibited conduct unbecoming of a Government Servant by flouting the Government Instructions issued to him from time to time by the aforesaid Memoranda.

3. By his aforesaid acts he has violated rule 3(1)(ii) and (iii) of the Central Civil Services Conduct Rules, 1964."

The applicant filed his explanation on 20.4.89 and ultimately the penalty of censure was imposed for the alleged misconduct as articulated in memorandum dated 13.4.89.

He further represented for release of his salary vide representations dated 11.7.89 and 11.10.89. These were disposed of by Respondent No.2 vide order conveyed on 15.12.1989 to the effect that "Director General after reviewing and examining his case have come to the conclusion that he has no case and no further reference from him on this subject will be entertained."

6. In summary the broad facts of the case are that the applicant was initially transferred to Aizawl on his first promotion as Assistant Engineer. He was temporarily retained in the Chief Engineer (NZ)'s office for one year and released therefrom to proceed to Aizawl on 9.1.1987. He made representations and kept on waiting in Delhi. He was paid his salary and allowances till June, 1987. The transfer order was later modified, posting him to Calcutta. This provoked further representations from the applicant and on further consideration, the respondents accommodated him at Najibabad. He filed OA 1177/88 in the Tribunal which was dismissed as withdrawn consequent to the respondents agreeing to meet his requirement by making payment of TA/DA advance. He was later on chargesheeted under Rule 16 of CCS (CCA) Rules as despite considerations shown to him, administration of warnings, informing him that non-joining of duty at that station of posting would render him liable for

disciplinary action, he continued to remain in Delhi. All these developments culminated in imposing the penalty of censure vide order dated 8.6.1989 for remaining absent from duty unauthorisedly from 16.9.88 to 20.10.88. He was also not paid his salary and allowances from June, 1987 to October, 1988.

7. By way of relief the applicant has prayed for quashing of the impugned order of transfer of the applicant from Delhi to Najibabad (AIR) and impugned memo dated 15.12.1989, rejecting his claim for salary from June, 1987 to October, 1988 and further to direct the respondents to make payment of his pay and allowances from June 1987 to October, 1988 with interest at 18% per annum till the date of regularisation.

8. The facts of the case as narrated above at some length and summarised in paragraph-6 are not disputed by the respondents in their counter-affidavit.

9. The learned counsel for the applicant Shri B.B. Raval vehemently argued that the applicant continued to remain on the establishment of CE(NZ) by implication till 1.10.1987 when his orders for transfer were modified posting him to Calcutta instead of Aizawal. Secondly he was paid TA/DA advance only on 11.10.1989 in pursuance of the decision of the Tribunal in OA 1177/88 and he joined duty at Najibabad on 29.10.1988. The learned counsel argued that since he was paid TA/DA advance only on 6.10.1988/11.10.1988, the order of the Director

General dated 8/9.9.1988, directing him to join on 16.8.88 retrospectively has no meaning. It, however, appears that 16.8.88 is a typographical error and the said date should have been 16.9.1988. The learned counsel stressed that it is incumbent on the respondents to pay TA/DA advance to enable a Government servant to proceed to the place of duty to which he is transferred. Unless this pre-requisite is met, the Government servant cannot be expected to proceed to the place to which he is transferred. The learned counsel further submitted that the chargesheet served on the applicant is not for a minor penalty inspite of invocation of Rule 16 of CCS(CCA) Rules. In fact it is tantamount to a major penalty, as the alleged unauthorised absence will result in break in service and would thus deprive the applicant of the benefit of his past service. Regarding transfer of the applicant the learned counsel submitted that there are persons with much longer service irrespective of the grades in which they have worked, who have been retained in Delhi, when the applicant has been picked up for transfer outside Delhi. In these circumstances, the transfer of the applicant is illegal, as it is not in consonance with the declared policy guidelines regulating transfer of employees.

10. Shri P.H. Ramchandani, Senior Counsel for the respondents submitted that TA/DA advance has to be applied in advance. Unless the same is applied, it

cannot be sanctioned. In this connection he referred us to Annexure A-20 annexed to the Application (p.74 of the paperbook). The learned counsel traversed the history of the case and the consideration shown to the applicant by accommodating him from first Aizawl to Calcutta and secondly from Calcutta to Najibabad. The applicant ----- showed his intransigence by indulging in protracted correspondence. In this connection the learned counsel drew our attention to the well established law regarding transfers of the Government servants by the Hon'ble Supreme Court in **Gujarat Electricity Board & Anr. Vs. Atmaram Sungomal Poshani JT 1989 (3) SC 20** and **Union of India & Ors. Vs. Sh. H.N. Kirtania JT 1989 (3) SC 131.**

11. We have heard the learned counsel for both parties and given our anxious consideration to the issues brought out in the above discussion of the case. As far as grant of TA/DA advance is concerned, Rule 222 of General Financial Rules deals with this aspect and provides that "a Head of Office may sanction an advance to a permanent or temporary Government servant who while on duty or on leave is required to proceed on transfer." In our opinion it is implicit in the rule that the Government servant under transfer must apply for such advance as required by him to enable him to proceed to the new station of posting to the Head of the Office or competent authority. There is no obligation that the respondents

to sanction/pay travel etc. advance without the Government servant applying for the same. No rule or other provision has been brought to our notice by the learned counsel for the applicant which may obligate the respondents to make payment of TA/DA advance before an officer proceeds on transfer without applying for the same. It is obvious from the facts of the case that the applicant never applied for the TA/DA advance either when he was transferred to Calcutta or when he was transferred to Najibabad. He approached the Tribunal instead of applying for the advance to the competent authority. We are, therefore, not persuaded to accept the argument that the non-payment of TA/DA advance to the applicant was responsible or contributed to his not reporting for duty at the new place of posting.

As far as the salary for the period June 1987 to October, 1988 is concerned, it is observed that the applicant was relieved from CE(NZ)'s office on 9.1.1987. This has been reiterated by the respondents in their counter-affidavit and by the learned counsel for the respondents. Nevertheless, the applicant is claiming the salary from June, 1987 on the ground that he was borne on the establishment of CE(NZ). This view is buttressed by the argument that various letters/orders were sent to the applicant in the office of CE(NZ).

After carefully considering the matter we are of the opinion that CE(NZ)'s office was the last office in Delhi where the applicant worked before he was relieved therefrom vide order dated 9.1.1987. Merely because the letters are sent to him at the office of CE(NZ) which was the last office in Delhi where he was working before being relieved he cannot claim that he was borne on that establishment. The learned counsel for the applicant submitted that the applicant was not allowed to discharge his duties in the office of CE(NZ). We are not impressed by this argument. The applicant had been transferred and, therefore, he had no reason to be there. The drawal salary and allowances during the period of unauthorised absence is regulated by F.R. 17 which reads:-

"F.R.17.(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin 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.

(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed."

It will be observed from the above that if an officer is absent from duty without any authority he shall not be entitled to any pay and allowances during the period of such absence. Admittedly, the applicant never applied for any leave. He only represented from time to time for his retention at Delhi or at a station nearby first due to disruption of education of his daughter and later on account of family circumstance and continued to persevere with the contention that he is borne on the establishment of CE(NZ). The delivery of the copies of the orders to the office of CE(NZ) construed to cannot be mean that he was working in that office. He had been relieved from that office and apparently the respondents found it convenient to have the order delivered to him through the office where he was last working. Since he has not worked from June, 1987 to 15.10.1987 in the office of CE(NZ), we are not able to direct the respondents to release his salary for the period for which he has not worked. It is for him to explain his circumstances to the respondents and seek regularisation of the period of absence from June 1987 to September/October, 1988, as permissible under the Rules. We also

do not find any justification to interfere with the penalty of censure inflicted on the applicant under Rule 16 of CCS (CCA) Rules for the misconduct inasmuch as ignored the orders, directing him to report for duty at Najibabad and remained absent unauthorisedly from 16.9.1988 to 20.10.1988.

The law on the subject of transfers has been clearly laid down by the Supreme Court in **Shanti Kumari Vs. Regnl. Dy. Director, Health Services, Patna AIR 1981 SC 1577** when their Lordships observed that "transfer of a Government servant may be due to the exigencies of service or due to administrative reasons. The Courts cannot interfere in such matters. The said decision of the Hon'ble Supreme Court has been elaborated in **Gujarat Electricity Board** (supra) when their Lordships observed:-

"No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the

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competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case."

The respondents have already brought on record that the representations of the applicant had been dealt with and it was in fact the applicant who was avoiding to receive the memos sent to him in response to his representations. The Transfer Policy on which the applicant has placed heavy reliance at best lays down the guidelines for regulating transfers in general. In the present case the applicant was transferred on promotion. There are no charges of malafides against any one. In fact good deal of indulgence has been shown to the applicant with a view to accommodate him by changing orders of transfer from Aizawal to Calcutta and later to Najibabad

after considering his representations. He cannot, however, continue to remain in Delhi till his representations are decided to his satisfaction. This is not in conformity with the law. Transfer is a condition of service and guidelines cannot come in the way of exigencies of public service or in public interest.

In the above conspectus of the case our conclusions are:-

- i) The Application has no merit and the reliefs prayed for cannot be granted to the applicant.
- ii) The period of absence from June, 1987 to October, 1988 will have to be treated in accordance with the Rules, as referred to above. He is not entitled to be paid salary and allowances for the period for which he has not produced any evidence that he was actually working in the office of CE, North Zone. We are not persuaded to accept his contention that he was actually working or ~~borne out~~ on the establishment of CE(NZ) AIR/Doordarshan, Delhi on the ground that certain orders were sent to CE(NZ)'s office. This, however, does not preclude the applicant to seek regularisation of the period of absence, duly explaining his circumstances in the application to the Competent Authority in accordance with the Rules, as may be applicable.

In case such an application is filed by the

applicant, the respondents shall pass appropriate orders on the same with utmost expedition but preferably within 8 weeks from the date of such application.

iii) We are also not persuaded to interfere with the penalty of censure imposed on him for the misconduct after following the due process of law. Ordered accordingly.

The O.A. is disposed of on the above lines.

There will be no order as to costs.

Dalip Singh
(I.K. RASGOTRA)
MEMBER(A) *5/6/92*

every
STB/92
(P.K. KARTHA)
VICE-CHAIRMAN(J)

SKK
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June 5, 1992.