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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO.1646/91

DATE OF DECISION : 13.04.92

Shri B.S. Sarin

...Applicant

Vs.

Union of India & Ors.

...Respondents

Coram

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri A.K. Bhardwaj

For the Respondents

...Shri R.L. Dhanan

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, PWI Grade-I was transferred from Sarai Rohilla, New Delhi to Bikaner by the order dt. 25.7.1990 and was also directed to transfer the office of PWI (SC) from Sarai Rohilla to Gurgaon and to hand over the materials and official charge to Shri R.S. Gupta. Shri R.S. Gupta was posted at Bikaner and was ordered to be transferred to Gurgaon. The applicant handed over the working charge of the post of PWI to Shri R.S. Gupta on 6.8.1990.

2. Respondent No.3 issued an order dt.10.10.1990 (Annexure A1) that since the applicant is delaying the

handing over of the charge to Shri R.S.Gupta, P.W.I (SG), so his pay be stopped forthwith. As a consequence to this order, the applicant was not paid his salary. However, after the applicant had joined at Bikaner on 10.6.1990, the payment of salary has been allowed.

3. The applicant in this application has claimed the relief of quashing the order dt.10.10.1990 and directing the respondents to release the pay of the applicant w.e.f. 1.10.1990 with interest.

4. The facts of the case, as stated by the applicant, are that after transfer from Sarai Rohilla, the applicant had to hand over charge of Sarai Rohilla and PTMR yard and also had to get the office shifted to Gurgaon.

Shri R.S. Gupta, who has been posted vice the applicant at Gurgaon was reluctant to take the material charge though the applicant has handed over the personnel charge on 6.8.1990. The applicant also made a complaint regarding this fact on 27.8.1990 (Annexure A17). The applicant also wrote a D.O. (Annexure A18) to Shri R.S.Gupta. Again by the letter dt.3.10.1990 (Annexure A20), the applicant made a request to Shri R.S.Gupta to take over charge. It was, therefore, not the applicant, but Shri R.S.Gupta who has delayed in the handing over of charge of materials in proper time. It is stated that

the applicant has been wrongly pulled up at the instance of Shri R.S. Gupta and his pay was stopped without any enquiry against him regarding the truth of the matter w.e.f. 1.10.1990.

5. The respondents contested the application and stated that the applicant had not made over complete charge to his relief, Shri R.S. Gupta in terms of Item 16.26 of Schedule 'C' of powers on the establishment matters. PWI belongs to engineering Class-III staff and can be allowed a maximum of 7 days for transfer of charge. Since the applicant defaulted in handing over of charge and in spite of repeated reminders and orders, the applicant delayed the process of handing over of charge, so DAC rightly stopped the payment of salary to the applicant by the order dt.10.10.1990. It is further submitted that the applicant did not join the duty on transfer at Bikaner and his pay could not be drawn at Bikaner and also another person had joined in his place, so unless the applicant had joined at Bikaner, he could not claim his salary on the principle of 'No Work No Pay'. Thus the order of withholding of pay of the applicant is in accordance with the extant instructions and perfectly legal.

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6. I have heard the learned counsel of the parties at length and perused the record. The learned counsel for the applicant has relied on the case of Arakhita Dalapati Vs. Chief Instructor, Mechanical Training Centre Berapali & Anr., 1938 (7) SLR 442, where a similar question of withholding of pay was involved as the petitioner was not attending to any work. It was held by the Division Bench that the disciplinary proceedings have to be drawn for disobedience of the order or for any other alleged misconduct. The principle of No Work No Pay is not applicable to regular government servant, who has a right under the service rule unless it is legally withheld by appropriate authority. In the present case also, the impugned order dt.10.10.1990 has been passed without giving any show cause notice to the applicant nor any disciplinary departmental proceedings were drawn against the applicant under Disciplinary and Appeal Rules, 1963. If the applicant was not having over the charge of materials, he could have been proceeded with in violation of Item b.26 Schedule 'C' of powers in establishment matters.. The principles of natural justice and fair play also demand the same. However, in the present case, the applicant made a number of representations to the respondents alleging that it was

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Shri R.S.Gupta, his relief who has delayed and avoided the taking over of the charge of the materials and stocks. He also has requested for being provided with gangman and a storekeeper to make checking for handing over of charge. These representations were made by the applicant, but the respondents did not attend to them nor replied. The documents filed as annexures to the Original Applications and the D.Os. sent to Shri R.S.Gupta to some extent support the contentions raised by the learned counsel for the applicant and it was for the authority to scrutinise the same and without going into the truth of the matter, shouldnot have passed orders withholding the pay of the applicant. It is to be seen as out of the two, i.e., between the applicant and Shri R.S.Gupta who has erred in not cooperating in the transfer of charge of materials from the one to the other. Condemning the applicant without giving any opportunity will amount to unnecessary favour to the other incumbent, Shri R.S.Gupta as the record on the file goes to show that the applicant has made requests on a number of occasions to Shri R.S. Gupta to take over the charge.

7. In view of these facts and circumstances, the impugned order of withholding of pay cannot be sustained and

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13

is quashed. The respondents are at liberty to proceed against the applicant, if so advised, according to the law for the misconduct committed, if any, by him in not handing over the charge of materials till today to his relief-Shri R.S.Gupta and pass necessary orders in those proceedings according to the law. The payment of the salary for the period from 1.10.1990 to the period when the applicant joined at Bikaner, i.e., 10.6.1991 shall be subject to the outcome of the result of any enquiry, if any, resorted to by the respondents. The respondents to pay the withheld amount of salary within a period of three months from the date of receipt of a copy of this order. In the circumstances, the parties shall bear their own costs.

AKS

Jomare
(J.P. SHARMA) 13.4.92
MEMBER (J)