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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

DATED: 25.11.93

D.A.No.525 of 1991.

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

Hon'ble Mr.S.R.Adige, Member(A)

K.L.Gulati

s/o Late Shri Gulab Ram Gulati,
R/o 1327 Sector IV, R.K.Puram,

New Delhi, employed at Chief Engineer
Delhi Zone, Delhi Cantt/Army Head

Quarter, E-in-C Branch, New DelhiApplicant.

Versus

1. Union of India
through Secretary, Ministry of
Defence, South Block,
New Delhi.
2. Army Head Quarters,
Engineer-in-Chief(Branch)
Kashmir House, New Delhi-110011.
3. Chief Engineer,
Delhi Zone, Delhi Cantt-110010.
4. Chief Engineer,
Western Command,
Chandimandir,
Chandigarh.

Applicant is in person.

For the respondents: Shri P.P.Khurana, Counsel.

JUDGMENT

(By Hon'ble Mr.S.R.Adige, Member(A)..

In this application bearing D.A.No.525 of 1991 under Section 19 of A.T.Act, Shri K.L.Gulati, r/o 1327, Sector IV, R.K.Puram, New Delhi has impugned his order of transfer from Delhi to Suratgarh dated 20.9.85.

2. Shortly stated, the applicant was working as Supervisor, Barrack and Stores Grade I, in the Office of the Chief Engineer, Delhi Zone, Delhi Contonment. On 12.9.85, an order transferring him to Suratgarh was made by the Chief Engineer, Western Command at Chandimandir and pursuance to that order of transfer, a movement order dated 20.9.85(Annexure-A1) was issued stating that the applicant was transferred

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from Delhi to the Office of the Garrison Engineer, Engineer Park, Suratgarh. At the bottom of this movement order, under the 'Distribution', it was indicated to whom the order was to be communicated. Apart from the applicant, it was required to be communicated to various officers and departments named. There is no indication on this movement order that it was required to be displayed on the Notice-board. From the copy of the Delhi High Court's orders dated 2.4.87 in Criminal Misc. No. 597 of 1986 arising out of Civil Writ No. 2525 of 1985, it would appear that this movement order was tendered to the applicant on 21.9.85 but he refused to receive the same in the presence of three officers who prepared a memorandum to that effect and signed it. On 23.9.85, a copy of the said movement order was sent to the applicant by registered post, but was returned undelivered with the remarks that 'addressee was not available despite repeated calls and the information having been left at his residence'. On 24.9.85, the applicant wrote a letter to the Chief Engineer, Delhi Zone seeking an immediate interview which was granted on that very day. During the interview, the Chief Engineer handed over the copy of movement order to the applicant and recorded a note to that effect on the document. On the back of the copy of movement order, the applicant wrote that he has submitted a representation dated 21.9.85 requesting for cancellation of his posting and a decision should be obtained before he was relieved; TA/DA should also be paid; and he having admitted to receive the copy of movement order. Thereafter, he wrote another letter dated 24.9.85 to the Chief Engineer asking for advance to enable him to move to Suratgarh.

3. On 9.10.85, the applicant filed a petition in the Delhi High Court under Article 226 of the Constitution bearing Civil Writ No.2525/85 which was supported by an affidavit sworn by him to which he annexed a photostat copy of the movement order. By that petition, the applicant sought to have said movement order ~~xxx~~ quashed. In paragraph 10 of the petition, the applicant asserted that the order had not been served upon him and he found the order on the notice-board. He also averred that no TA/DA has been paid to him. On 16.10.85, the Delhi High Court heard the petition and stayed the operation of the order dated 20.9.85 transferring the applicant till the next date. That petition was heard on a number of days thereafter and ultimately it was dismissed on 3.12.85. Later on, the applicant asked for review of the order of dismissal as he contended that the Delhi High Court had already lost jurisdiction to try the petition because a notification had been issued vesting jurisdiction in the CAT. That application was allowed and the case was then transferred to the Tribunal.

4. Upon transfer of that case to the Tribunal, it was renumbered as T.A.No.378/86. On 12.5.86, the Tribunal stayed the impugned order pending further orders on the petition. However, the stay orders were vacated on 29.7.86. Thereafter, the rival contentions of both the parties were carefully considered by the Tribunal who, vide its order dated 9.6.89 in T.A.No.378/86 held that the impugned order of transfer of the applicant from Delhi to Suratgarh dated 20.9.85 could not be faulted on the ground alleged by the applicant and, therefore, he was not entitled to the reliefs sought by him.

5. In this D.A., the grounds for relief taken by the applicant are that Rule 3A of Order XXXIX of CPC contemplates that the stay order must be either confirmed or vacated within 30 days. He contends that as this Tribunal on 12.5.86 reconfirmed the stay order dated 16.10.85 passed by the Delhi High Court, the order dated 29.7.86 by which the stay order was vacated, is time barred and is, therefore, invalid. He has, therefore, prayed that he should be treated as not relieved from his duties pursuant to the order of transfer dated 20.9.85 and therefore to direct the respondents at this stage to relieve him pursuant to the order of transfer dated 20.9.85 and to issue him the movement order, along with release of his salary w.e.f. 1.10.85 till date, with 36% interest thereon.

6. During hearing the applicant has sought to draw a fine distinction between the order of transfer dated 12.9.85 and the movement order dated 20.9.85.

7- We are unable to accept the applicant's contention. A Bench of co-ordinate jurisdiction after hearing both the parties and carefully considering the matter has passed judgment in T.A.No. 378/86 on 9.6.89 holding that the order transferring the applicant from Delhi to Suratgarh on 20.9.85 cannot be faulted and we are bound by that decision. It was open to the applicant to urge the points now urged in this D.A. before that Bench in T.A.No.378/86 but he has not explained why he did not do so. The Tribunal in its judgment dated 9.6.89 ^{legally} held that the applicant stood transferred from Delhi to Suratgarh consequent to the order of transfer dated 20.9.85 and the question of issuing a fresh movement order at this stage along with release of salary together

Mr. Justice
with 36% interest, does not arise. The application
is dismissed. No costs.

Arifolige
(S.R.ADIGE)
MEMBER(A)

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(D.P.SHARMA)
MEMBER(J)