

/M

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI  
.....

O.A. No. 1102/1991

DATE OF DECISION: 6.5.92

SHRI N.P. BERI ..

APPLICANT

VERSUS

UNION OF INDIA AND OTHERS ..

RESPONDENTS

CORAM:-

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN (J)

THE HON'BLE MR. K.J. RAMAN, MEMBER (A)

FOR THE APPLICANTS

SHRI GYAN PRAKASH, COUNSEL

FOR THE RESPONDENTS

SHRI K.L. BANDULA, COUNSEL

1. Whether Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporter xxxxxx?

Yes

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

JUDGEMENT

The applicant is a Head Draftsman working the Central Water Commission (CWC). He has filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking payment of his salary for the period 8-1-1990 to 4-4-1990. The respondents, however, have refused to pay him the said salary, but advised him to apply for leave for the said period so that leave salary could be paid for the said period.

2. The salient facts of this case are as follows. The applicant was working as a Head Draftsman, which is a Group 'B'

non-gazetted post, in the Office of the BCD(NH&E) Directorate, of the CWC, New Delhi. By an order dated 2-1-1990, the respondents transferred him to Hyderabad and posted one Shri P.L. Arora in his place at New Delhi. The applicant submitted a number representations, starting from one dated 5-1-1990 onwards, against the said transfer, and seeking retention at New Delhi, on various personal grounds. His Head of Office and Controlling Officer was the Director, BCD(NH&E) Directorate. The latter authority, by a note dated 12-3-1990, requested the Director (Administration) of the said Directorate, that a final decision be taken about the representations of the applicant against his transfer. He further stated therein that, pending reply from the Administration, the applicant was being allowed to continue in the said Directorate. According to the applicant, he continued to attend to his duties in the said Directorate including submission of returns, etc. It appears that on 8-1-1990 Shri P.L. Arora was also allowed to join duty while the applicant was still attending to the same Office as aforesaid. The respondents paid the salary of the applicant for the month of January 1990, despite the transfer order dated 2-1-1990. They, however, did not pay his salary for February and onwards. The applicant submitted a representation dated 19-3-1990 seeking payment of the salary for the said period. On 27-3-1990, the respondents issued an Office Order stating that the applicant was relieved of his duties with effect from the forenoon of 3-1-1990. This order was issued by the Under Secretary (TS) of the CWC. However, by another order dated 11-4-1990, the applicant was informed that he was relieved of his duties with effect from

the forenoon of 8-1-1990. This order was issued by the Directorate of BCD(HE&P). By this order, the applicant was instructed to report for duty at Hyderabad. The applicant did not join at Hyderabad and pursued his object of retention at Delhi. His persistence seems to have borne fruit ultimately, since an order dated 21-6-1990, was issued posting him to Faridabad, not far away from Delhi. The applicant has stated to have worked in the New Delhi Office upto 4-4-1990. He applied for leave for the period from 5-4-1990 to 25-6-1990 when he is stated not to have attended office. He also applied for payment of salary for the period from 8-1-1990 to 4-4-1990. By an order dated 30-10-1990, the applicant was advised to remit the salary paid to him amounting to Rs. 3613/- for the period 8-1-1990 to 31-1-1990. In reply <sup>to</sup> the representation of the applicant, the respondents informed the applicant, by endorsement in the letter dated 1-10-1990, that since in the applicant's place one Shri P.L. Arora Head Draftsman had already joined duty, on 8-1-1990, there was no question of the applicant continuing in the Head Draftsman's post from 8-1-1990 onwards. It was <sup>further</sup> ~~pointed out~~ <sup>therein</sup> that formal orders relieving the applicant with effect from 8-1-1990 had been issued by an order dated 27-3-1990. It was further stated that the period from 8-1-1990 onwards till his joining duty at Faridabad had to be treated as leave. He was accordingly asked to apply for leave for the period from 8-1-1990 to 24-6-1990. By another letter dated 19-3-1991, the same direction was repeated that the applicant should apply for leave for the said period. The applicant has, therefore, filed this application seeking the following reliefs:-

- " i) The respondents may be directed to quash the impugned orders contained in their letter dated 1-10-1990 (Annexure A-1) and letter dated 19-3-1991 (Annexure A-2). These orders are arbitrary, against rules illegal, against principles of natural justice and service jurisprudence and need to be quashed immediately.
- ii) The respondents may be directed to quash their order of 27-3-190 and 11-4-90 under which the applicant was alleged to have been relieved of his post in New Delyi with effect from 3-1-1990/8-1-1990 in view of the fact that the applicant has work-ed in his New Delhi office of CWC upto 4-4-1990 under the orders/permission of his Controlling Officer and signed the attendance register regularly.
- iii) The respondents may be directed to quash the order/letter dated 30-10-1990 (Annexure A-10) under which the applicant had been advised to remit Rs 3613/- as excess amount paid to him for the period 8-1-90 to 31-1-1990 and certain other pending arrears. The applicant has worked in New Delhi office of CWC for the above stated period and is fully entitled for the salary for the period worked in New Delhi Office.
- (iv) The respondents may be directed to pay interest at ~~marked~~ rate on the arrears of his salary, leave salary, etc. admissible to him from 8-1-1990 to 24-6-1990, since his salary has been denied by the respondents illegally and arbitrarily.

1802

- v) The relevant records may kindly be produced by the respondents at the time of final hearing of the petition.
- vi) Since the main question involved payment of salary for nearly 3 months, it is prayed the petition may kindly be decided on the admission stage.
- vii) The cost of the petition may kindly be granted to the applicant.
- viii) Any other relief which the Hon'ble Tribunal may grant to the applicant in the interest of justice and fair play."

3. It may be stated here that the applicant <sup>possibly</sup> due to inadvertence has omitted specifically to seek payment of the salary for the period 8-1-1990 to 4-4-1990 in the relief column as reproduced above. This is indeed his main prayer.

4. The applicant <sup>and consume</sup> is obviously not willing to avail of <sup>of</sup> his leave for the said period. His claim for payment/duty pay and allowances for the period 8-1-1990 to 4-4-1990 rests on the following grounds:-

- (i) The Note dated 12-3-1990 of his Head of Office and Controlling Officer, Director, BCD(NH&E).
- (ii) His actual performance of duty in the New Delhi Office during the said period, evidenced by his signing the Attendance Register as well as submission of Monthly Returns, etc.
- (iii) The respondents had paid salary for the month of January, 1990; and, the

- (iv) The respondents have no authority to issue retrospective relief orders dated 27-3-1990 and 11-4-1990. .

5. The respondents have resisted the claim of the applicant in the reply filed by them. It is contended in the reply that the representation of the applicant was rejected by an order dated 31-1-1990 and, therefore, the applicant was to be treated as having been relieved immediately after the issue of the transfer order. The main contention, however, is that, since Shri Arora had joined the New Delhi Office on 8-1-1990 vice not the applicant, and there could be two incumbents in the same post at the same time, there was no alternative but to ask the applicant to apply for leave for the said period, particularly because the applicant had been obstinately refusing to move to Hyderabad and had been attending to the office 'on his own'.

6. The case has been heard when the learned counsel for the applicant and the learned counsel for the respondents submitted their arguments on the lines briefly indicated above. The application is admitted.

7. After carefully going through the pleadings and records, we find that there is nothing to contradict the averment of the applicant that he had performed his duties in the New Delhi Office from 8-1-1990 to 4-4-1990. Even the respondents in their reply do not deny this fact. The applicant has contended that he continued to perform his duties at the New Delhi Office, even after the issue of the transfer order, since his Head of Office and Controlling Officer has specifically allowed the applicant to do so. The applicant in this respect relies on the note dated 12-3-1990 recorded by the Director, BCD(NH&E). The note is reproduced

....?

200

below:-

"Central Water Commission  
B&CD(NH&E) Dte.

...

Sub: Representation of Shri N.P. Beri, Head Draftsman  
for cancellation of transfer to Hyderabad

Shri N.P. Beri Head Draftsman of BCD(NH&E) Directorate had been transferred to Hyderabad vide this Office No. 9/5/89-Estt.X dated 3-1-90. Shri Beri had submitted a representation for cancellation of the above transfer on 5-1-90, due to medical problem and personal problems.

The above representation was forwarded to the Administration vide this Office No. 18/BCD(NH&E)/90 dated 5-1-90. It is learnt from Shri N.P. Beri that his representation has been turned down vide CWC No. 1/30/88/Estt. dated 31-1-90. Though, no official intimation from the Administration has been received, in this Directorate so far, Shri N.P. Beri has again submitted other representation along with the latest medical report from the Medical Specialist C.G.H.S. requesting for reconsideration of his request for cancellation of the transfer order. The above representation has been forwarded with my recommendation through Chief Engineer (HP) Designs Organisation during last month.

It is requested that the final decision of the Administration regarding the transfer of Shri N.P. Beri, Head Draftsman, at least be communicated to this office for further necessary action from this end. Pending reply from the Administration, Shri N.P. Beri is being allowed to continue in this Directorate.

Sd/-  
G. SETHURAMAN  
Director  
B&CD(NH&E) Dte.

Director(Administration)  
CWC No. 1/1/89-BCD(NH&E)/219 dated 12th March, 1990

DIRECTOR(A)

Immediats.

Sd/-  
13/3

US (TS) "

(Emphasis supplied)

lon

8. One of the major contentions of the learned counsel for the respondent was that the Director, BCD(NH&E) Directorate had no authority to allow the applicant to continue to work in that office after the transfer. The learned counsel also further submitted that such power was with the Director (Administration) in that organisation. The learned counsel did not dispute the contention of the applicant that the Director, BCD(NH&E) was the Head of Office and Controlling Officer of the applicant. He appears to be <sup>the</sup> supervisory officer in the performance of the functions of the applicant. If such an authority had permitted the applicant to continue to work in his office, we do not see how the applicant should be allowed to suffer, even if the said authority was not competent to allow the applicant to continue in his office. If the Director had exceeded his power, that is a matter between that Director and the competent authorities among the respondents. It does not affect or nullify the fact that the applicant had indeed performed his normal duties during the said period. This contention of the learned counsel for the respondents is, therefore, of no relevance in the present context. Further, even assuming that such authority was vested only in the Director (Administration), it is seen from the photo copy of the said note as reproduced above, that it was addressed to the said Director (Administration). Not only but further, that, the Director (A) had seen the note and endorsed it 'Immediate' on 13-3-1990, and it is clear that the Director (Administration) impliedly had concurred in the decision of the Director, BCD(NH&E) to allow the applicant to continue in the office pending final decision on the applicant's representation. If this had not been so, the Director (Administration) would not have marked it for 'immediate' action, but would have stated there that the applicant ought not to be retained further and he should be relieved forthwith. On this ground also, there is no substance in the contention of the respondents



22

that the applicant was not permitted to function in his old office for the said period. In our opinion, it is clear that the respondents had permitted the applicant to continue in his old post for the said period pending consideration of his representation.

9. The learned counsel for the applicant specifically <sup>to</sup> pointed out the evidence in the shape of signatures of the applicant in the attendance register, monthly returns, etc. submitted by the applicant, as further <sup>proof</sup> of his having performed his normal duties in the old post during the said period. An M.P. had been filed for production of these documents. It was submitted on the side of the respondents that these documents were brought to the Court. Neither the respondents nor their learned counsel had disputed the fact of the applicant attending office and performing his work. They have not challenged the evidentiary value of the attendance register and the monthly returns submitted by the applicant. Consequently it was not necessary for us to peruse personally these documents. Admitted existence of these documents also supports the contention of the applicant that he performed his duties in the old office during the said period.

10. It is further clear from the letter dated 30-10-1990 of the respondents, in which the applicant was asked to refund a sum of Rs. 3613/- as salary paid to him for the period 8-1-1990 to 31-1-1990, and also para 5.3 of the reply, that the applicant was paid duty pay and allowances for the period 8-1-1990 to 31-1-1990. This payment clearly shows that the applicant had indeed worked in the old office in January 1990, even after 8-1-1990.

L9m

11. The order dated 27-3-1990 issued by the Under Secretary is to the effect that the applicant was relieved of his duties from 3-1-1990. When the applicant has been admittedly working in the office, such <sup>order of</sup> retrospective relief is entirely illegal and cannot be sustained, just as it is illegal to issue suspension and dismissal orders retrospectively when the employee had been working in his post. The second order of similar retrospective relief issued on 11-4-1990, is also equally vitiated.

12. The learned counsellor <sup>the</sup> respondents vehemently contended, as in the reply, that the applicant's replacement, Shri Arora had joined on 8-1-1990 vice the applicant, and, therefore, it was impossible to pay salary for both the applicant and Shri Arora for the same period. It is argued that there cannot be two incumbents for the same post at the same time. If there was a problem of this kind, the respondents must thank themselves for the same. It was for the respondents to have avoided such a situation and they should have thought about it before allowing Shri Arora to join the post when the applicant was still working on the same. Having allowed both the persons to work in the office, it is for the respondents to find out ways and means for regularising the position. This cannot in any way affect the right of the applicant to receive his duty pay and allowances for the said period for which he actually and admittedly worked in the old post. The respondents could think of such method as temporary diversion of <sup>a</sup> vacant post in order to regularise the peculiar situation.

13. In the result the application is allowed and the following orders are passed:-

24

(i) The following impugned orders are quashed:-

- (a) Order dated 1-10-1990.
- (b) Order dated 19-3-1991
- (c) Order dated 27-3-1990
- (d) Order dated 11-4-1990 and
- (e) Order dated 30-10-1990, in so far as recovery of Rs. 3613/- is concerned.

(ii) The respondents shall pay to the applicant duty pay and allowances due to him in his New Delhi Office for the period from 8-1-1990 to 4-4-1990. This payment shall be effected within a period of ~~one month~~ <sup>three months</sup> from the date of receipt of a copy of the order by the respondents.

(iii) The above period shall be treated as period spent on duty by the applicant for all purposes.

(iv) There shall be no order as to costs.

  
(K.J. RAMAN)  
MEMBER (A)

  
(RAM PAL SINGH)  
VICE CHAIRMAN