

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1564/2004

New Delhi, this the 6th day of January, 2005

Hon'ble Shri V.K.Majotra, Vice-Chairman (A)
Hon'ble Smt. Meera Chhibber, Member (J)

Dr. A.K.Belwal
137, Sukhdev Vihar
P.O.Jamia Nagar
New Delhi – 110 025.

...Applicant

(Applicant in person)

V E R S U S

1. Secretary
Tariff Commission
7th floor, Lok Nayak Bhawan
Khan Market, New Delhi – 110003.
2. The IES Cadre Section
Dept. Of Economic Affairs
North Block, New Delhi.
3. The Secretary
Dept. Of Personnel
North Block, New Delhi.
4. Secretary
UPSC
Dholpur House
Shahjahan Road
New Delhi.

-Respondents

(By Advocate: Shri R.N. Singh, proxy for
Shri R.V. Sinha)

ORDER (Oral)

Hon'ble Shri V.K. Majotra, Vice Chairman (A)

At the outset the applicant, who appeared in person, to submit arguments restricted his relief described in paragraph-8(i) only, which reads as follows:-

"(i) The applicant's salary w.e.f. 1.10.2003 to the present day may please be released by treating it as Duty, compulsory Wait, special leave, leave not debitable to any leave account because the applicant was willing for work but the respondents did not allow him to work".

2. Applicant referred to Tribunal's orders dated 6.5.2004 in OA-1114/2004. Through that OA, he had sought cancellation of his transfer order dated 4.8.2003 from the post of Director, Tariff Commission to the post of Director, Labour Bureau, Shimla. He had been relieved of his duties by OM dated 30.9.2003. He particularly drew our attention to the following observations in Tribunal's orders:-

"6.However, there appears to be some merits in the contention that applicant should not be posted at a place where he is placed under a person against whom he is claiming seniority. The applicant has fairly stated that he is willing to work anywhere in India if he was not posted under a person who is junior to him as per his claim. Since no final decision on the merits of the claim is expressed, the respondents are directed to consider this aspect of the claim of the applicant and decide the same, if the applicant is still willing to be posted to any place outside Delhi. For this purpose, the applicant is directed to move a representation to Secretary, Department of Economic Affairs, Ministry of Finance, IES Cadre Section, North Block, New Delhi within two weeks from today. In case the applicant makes such a representation, the same may be disposed of by a reasoned and speaking order under intimation to the applicant.

7. During the pendency of disposal of such a representation, the applicant may not be compelled to join the place of posting as per impugned order dated 4.8.2003. However, it is clarified that the payment of pay and allowances and regularization of his leave from the date he was relieved will be decided in accordance with rules on the subject and nothing is expressed in this regard so far as this OA is concerned".

3. He admitted that his representation dated 30.5.2004 submitted in pursuance of Tribunal's orders dated 6.5.2004 has been rejected vide respondents' orders No.11024/7/2004-IES dated September 20, 2004. He further admitted that he has yet not joined the new post despite rejection of his representation on 20.9.2004 as if he joins, he would be working under a junior. He further stated that Tribunal had set aside his transfer orders vide order dated 6.5.2004 in OA-1114/2004, as such he was not required to join at the new place in terms of transfer order dated 4.8.2003

W
2

which was set aside. In this background, the applicant contended that he was entitled to salary w.e.f. 1.10.2003 onwards.

4. Learned counsel of the respondents has filed a copy of order dated 17.12.2004 whereby MA-1287/2004 in OA-1114/2004 was disposed of. He has also filed a copy of respondents' order dated September 20, 2004, whereby applicant's representation dated 30.5.2004, has been rejected in terms of Tribunal's directions contained in Order, dated 6.5.2004 in OA-1114/2004. Both these documents have been taken on record.

5. Learned counsel of respondents pointed out that respondents had fully complied with Tribunal's directions contained in order dated 6.5.2004 in OA-1114/2004. Learned counsel stated that applicant had filed MA-1287/2004 in OA-1114/2004 in which he had sought direction to the respondents to "issue suitable posting orders". Learned counsel filed order dated 17.12.2004 in MA-1287/2004 in OA-1114/2004 in which respondents' orders dated September 20, 2004 were taken note of by the Tribunal and it was observed that respondents had taken a decision in pursuance of Tribunal's directions and that nothing survived for implementing Tribunal's orders. MA-1287/2004 was dismissed on merit. Learned counsel further stated that applicant's transfer orders were never set aside. As such, when his representation in terms of Tribunal's orders has been rejected, he has no alternative except to join the Labour Bureau. He would be paid his salary only after he joins the Labour Bureau. Learned counsel further submitted that the officer, i.e., Shri Balram to whom the applicant has to report at Labour Bureau is not junior to the applicant. Although the applicant entered service before Shri Balram, the applicant had consecutively lost seniority due to his performance and he is now junior to Shri Balram. Learned counsel pointed out that this has been noted and confirmed by Tribunal's order dated 13.5.2004 in OA-1603/2001. He further submitted that the question of paying the applicant

salary from 1.10.2003 onwards after his relief from 30.9.2003 does not arise.

6. We have considered the rival contentions and also perused the material on record.

7. Applicant's OA-1114/2004 was disposed of vide order dated 06.05.2004 (Annexure-I). His contention is that his transfer orders were quashed and set aside by Tribunal's order dated 6.5.2004 is not borne out from perusal of the said orders. Applicant's representation was to be disposed of by the respondents by a reasoned and speaking order under intimation to the applicant. He was not to be compelled to join the place of posting till the disposal of his representation. His pay and allowances and regularization of his leave from the date of relief was to be decided in accordance with rules. Respondents passed orders dated September 20, 2004 on applicant's representation dated May 30, 2004 in terms of Tribunal's order dated 6.5.2004 in OA-1114/2004. Vide order dated 17.12.2004 in MA-1287/2004 in OA-1114/2004, it was observed that respondents had passed orders dated 20.9.2004 in terms of Tribunal's orders dated 6.5.2004 whereby OA-1114/2004 was disposed of. It was further observed that since the decision had been made and communicated to the applicant, nothing survived for implementing the orders of the Tribunal. According to the respondents, after rejection of applicant's representation vide order dated 20.9.2004, applicant has to join the place of duty, i.e., Labour Bureau. According to them, applicant has to report to one Shri Balram. Although the applicant was initially senior to Shri Balram, later on he had lost seniority and become junior to Shri Balram which had been found in Tribunal's orders dated 13.5.2004 in OA-1603/2001. Applicant has not established that Tribunal's orders relating to his seniority have been set aside through any court proceedings. In any case, on rejection of applicant's representation dated May 30, 2004 in

pursuance of Tribunal's order dated May 6, 2004 in OA-1114/2004, applicant has no excuse for not joining the Labour Bureau. His contention that he would be working under a junior in case he joins Labour Bureau, would not cut any ice when his representation has been rejected by the respondents by a detailed and reasoned order dated September 20, 2004 in terms of Tribunal's orders of May 6, 2004.

8. In the above backdrop, the applicant is directed to join the Labour Bureau within a week's time from now. It is undisputed that applicant has been paid salary and other allowances up to 30.9.2003. Now that applicant's representation has been rejected vide order dated September 20, 2004, his pay and allowances and regularization of his leave from 1.10.2003 onwards till the date of his joining as above be decided in accordance with rules on the subject within a period of four weeks from applicant's joining in the Labour Bureau.

9. OA is accordingly disposed of as above. No costs.


(Mrs. Meera Chhibber)
Member (J)

cc.


(V.K. Majotra)
Vice Chairman (A)

b.l.o.s