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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.2368/93

New Delhi, this the 5th day of October, 1994

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

Hon'ble Shri B.K. Singh, Member (A)

Shri Hemant Juyal
s/o Shri C.P. Juyal,
P.T.I., Oak Grove Boys School,
Jharipani, Distt. Dehradun (U.P.)

... Applicant

By advocate: Shri P.L. Mimroth

Vs.

1. Union of India
through
General Manager, Northern Railway,
Baroda House, New Delhi.

2. Chief Personnel Officer/Executive Governor,
Oak Grove Boys School,
Northern Railway,
Baroda House, New Delhi.

3. The Principal,
Oak Grove School,
P.O. Jharipani,
Dehradun, U.P.

... Respondents

By advocate: Shri H.K. Gangwani,

ORDER

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

The applicant while working in Oak Grove School, Jharipani was transferred to Northern Railway Inter College, Bareilly. In his place one Shri C.M. Nautiyal joined his duties as P.T.I. in the same school at Jharipani on 13.3.92. Against this order of transfer dated 7.2.92, the applicant filed O.A. 733/92 praying that the aforesaid order of transfer be quashed. By the judgement dated 27.5.92, the order of transfer dated 7.2.92 was quashed. The respondents

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were granted one month's time to comply with the direction of this judgement. In the aforesaid O.A.733/92 by the order dated 24.3.92 it was directed that in the meantime status quo be maintained. Since there was no vacancy, the applicant was kept on compulsory waiting from 6.6.92 to 24.9.92. In compliance with the order of the Tribunal, the applicant resumed the duty of P.T.I. in the said school at Jharipani on 25.9.92. The Respondents by the order dated 31.3.93 on the representation made by the applicant in October, 1992 passed the following order:-

"14.3.92 to 5.6.92 - unauthorised absence from duty

6.6.92 to 24.9.92 - waiting for orders

The steps are being taken to make payment of wages for the above waiting period."

2. In the present application filed in October, 1993 the applicant has prayed for the grant of the following reliefs.

- a) A direction to the respondents to treat the period of the applicant from 14.3.92 to 5.6.92 as period spent on duty keeping in view of the interim stay order passed by the Tribunal on 24.3.92.
- b) A further direction to arrange the pay and other allowances for the period from 14.4.92 to 5.6.92 to the applicant together with interest @ 18% per annum.

c) Another direction to the respondents to make payment of Rs.12061.20 on account of as 164 days perks/entitlements/are being paid to other staff members as per details i.e. Rs.40/- per day for the meals, coal (11 kg. per day) for 164 days @ Rs.2.80 per kg., washing allowance for six months @ Rs.75/-p.m.

3. On notice the respondents have contested this application stating that the applicant was on unauthorised absence from duty from 14.4.92 to 5.6.92 and from 6.6.92 to 24.9.92 he was on waiting and he was not legally entitled to any facilities of free board and lodging. The competent authority i.e. C.P.O. decided the period of absence of the applicant from 14.3.92 to 5.6.92 as unauthorised absence from duty. The applicant was also issued a minor penalty chargesheet as per provisions of the Railway Service Conduct Rules, 1966. The applicant, therefore, is not entitled to facilities of free food and dhabhi wash as he did not perform any duty during the period 14.4.92 to 24.9.92. It is also stated that he could have taken meal from the school mess after depositing the cost which he did not do. The applicant was spared from the duty of P.T.I. from Jharipani School on resumption of duty by ¹³ Shri C.M. Nautiyal on 24.3.92 and no post of P.T.I. was vacant on that date.

4. The applicant has also filed the rejoinder reiterating the facts ⁱⁿ averred by the O.A. stating that the applicant was not formally relieved by the respondents and on 24.3.92 the orders were passed to maintain status quo by the Tribunal.

5. We heard the learned counsel for the parties at length and perused the records. In the judgement in O.A.733/92 dated 27.5.92 it is clearly observed whether the applicant has been relieved on his transfer to Bareilly has not been considered and that issue was left open.

6. It was open to the applicant to comply with the transfer order dated 7/14.2.92. The order of status quo was granted on 24.3.92. It goes to show that the applicant was already relieved from the post of P.T.I. Jharipani School when Shri Nautiyal joined on 13.3.92. There was no post left for the applicant. If the applicant was awaiting the result of his O.A. 733/92 then he was doing so at his own risk. It was only when the order of transfer was quashed by the order dated 27.5.92 the respondents have to comply with the direction within one month and issue order of posting of the applicant at the Jharipani School. The respondents could not get a vacancy for the applicant obviously because Shri Nautiyal has to be shifted to make vacancy in the Jharipani School for the post of P.T.I. The respondents, therefore, have rightly considered the period from 6.6.92 to 24.9.92 on compulsory waiting. For this period the applicant has been considered for grant of wages. The respondents have also stated that the applicant could have joined the mess and in that case on payment basis he could get the meals

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prepared in the mess. It would have been another matter if the applicant had not been allowed to join the mess. Though the contention of the applicant is that he was not allowed to take meals at the mess is not substantiated by any representation by the applicant to the Principal of the Institution during this compulsory waiting period. The contention of the applicant therefore that he was denied food in the mess remains unsubstantiated. Even if the applicant has been denied the meals in the mess then he is entitled to the cost which the Institution would have asked him to deposit for the meals. He cannot claim at the flat rate of Rs.40/- per day as daily allowance. During the course of the arguments, the learned counsel for the applicant did not press for the grant of pay and allowances for the period when the applicant himself did not join at Bareilly. The learned counsel has therefore pressed only for the period from 6.6.92 to 24.9.92. The applicant has also been issued a minor penalty chargesheet for unauthorised absence. It shall not be proper to go in further details regarding that issue, that will purely be subject of that inquiry under the rules applicable to the applicant. The orders of statusquo dated 24.3.92 were passed more than a month after the order of transfer. The applicant therefore was himself late in coming to the Tribunal against the order of transfer dated 7/14.2.92. In fact the order of

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maintenance of status quo has lost its significance in view of the fact that Shri Nautiyal had already joined as P.T.I. Jharipani School on 13.3.92. Thus, the applicant cannot be considered for grant of any benefit for the period before the order passed in O.A.733/92 was conveyed to the respondents. For the first time the applicant had made representation in April, 1992 where he stated that he will claim the benefits after the decision of O.A.733/92. Thereafter, the applicant made the representation on 1.10.92. His contention in that representation that on 24.3.92 he was on the roll of the School at Jharipani cannot be accepted. He has not mentioned any date when he conveyed the judgement of the Tribunal of O.A.733/92 to the Respondents. He was allowed to join duty as P.T.I. in Jharipani on 25.9.92. It appears that the respondents complied with the direction on 6.6.92. Since there was no vacancy so he was kept on compulsory waiting. In view of this fact the claim of the applicant can only be considered of extra allowance with effect from 6.6.92 to 24.9.92.

7. The claim of the applicant is that he should be given Rs.40/- per day as he was not provided food in the mess. That has not come on record, what were the charges prevalent at that time for the diet of adult person. The applicant at the most if he was not allowed to join mess free of cost, entitle him to the cost of the food for which he would have paid in the mess. He cannot claim at the flat rate of Rs.40/- per day. If

the cost of the food in the mess comes to Rs.40/- per day only in that event he will be entitled to that amount and not otherwise.

8. Regarding washing allowance, the applicant was not on active duty during this waiting period. Though this waiting period is for all purposes is a period spent on duty but since the applicant was not required to be in uniform of P.T.I. he cannot claim the washing allowance for that period also. The claim of Rs.75/- per month of washing allowance is therefore highly exaggerated and not tenable.

9. Regarding the provision of coal i.e. 11 kg. per day there is nothing on record to show that during the active service the applicant is entitled to the same. But since the place where the applicant is posted in Jharipani is extremely cold and though the period from 6.6.92 to September, 1992 was not the winter season of extreme cold, even then the applicant is entitled to that benefit which is normally given to a person on duty as ^{awaiting orders of posting} he remained ~~as per allegation~~ at Jharipani. The respondents have not denied this fact. The applicant is therefore entitled to this coal allowance as per extent rules at that time of season i.e. from the months of June to September and if that is allowed to a person on active duty then the applicant will also be entitled to the same.

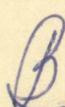
10. The application is therefore partly allowed with the following directions.

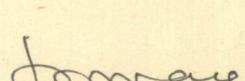
a) The applicant shall be paid the cost of the meal which he would have paid in the mess of Jharipani School for the period from 6.6.92 to 24.9.92 and ^{that} _{then} amount be calculated and be paid to the applicant within a period of 3 months

from the date of this order. It is needless to say that the applicant will be entitled to the salary of this period also if not already paid.

b) The applicant is also entitled as per extant rules the amount which the applicant had to ^{spend} on purchasing coal in the season from 6.6.92 to 14.9.92 and be paid the price of coal at the prescribed rates subject to his submission of vouchers to that effect that he actually purchased the coal to keep warmth in that period i.e. from 6.6.92 to 24.9.92. The other claims of the applicant of washing allowance or for the period anterior to 6.6.92 is disallowed.

The application is disposed of ^{as above} with no order as to costs.


(B.K. SINGH)
Member(A)


(J.P. SHARMA)
Member(J)