

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLD. BENCH
ALLAHABAD

Dated the 4/h Day of December, 1997.

ORIGINAL APPLICATION NO. 1188 OF 1996

HON'BLE MR. D.S. BAWEJA, MEMBER (A).

Dr. D.S. Singh S/o Late Shri K.C. Singh,
Sr. Scientist (Plant Pathology),
Project Directorate of Vegetable
Research, 1, Gandhi Nagar (Naria),
Varanasi - 221 005.

.... Applicant

C / A : - In person

Versus

(1) The President, I.C.A.R.,
Krishi Bhawan, New Delhi
(Union of India)

Through

The Secretary, I.C.A.R.,
Krishi Bhawan, New Delhi-1.

(2) Project Director,
Project Directorate of Vegetable
Research, 1, Gandhi Nagar (Naria),
Varanasi-221 005.

.... Respondents

C / R : - Shri N.P. Singh

O R D E R

(Order by Hon'ble Mr.D.S.Baweja, Member(A)

The applicant was transferred as per the Order dated 20.10.95 while working as Sr. Scientist (Plant Pathology), Project Directorate of Vegetable Research, Varanasi to Central Agricultural Research Institute, Port Blair. The applicant filed O.A. No. 1141 of 95 challenging the transfer order dated 20.10.95 as well as the order dtd. 21.10.95 relieving the applicant on transfer. As per order dtd. 13.11.95

in O.A. No.1141 of 95, it was provided that status quo with regard to these impugned orders shall be maintained till the next date and this was continued till the pronouncement of the order. The final order in O.A.No.1141 of 95 was passed on 28.02.96 quashing the impugned order. The applicant then filed a Contempt Application No.39 of 96 alleging the Contempt of Court committed by the respondents in not making the payment of salary for the period from 21.10.95 till the cancellation of the transfer order. The applicant submits that prior to issue of notice under the Contempt Application, the respondents paid the salary for the entire period from 21.10.95 till 31.03.96. In view of this, the applicant made a prayer for withdrawing the Contempt Application no.39 of 96 and the same was allowed. However, subsequent to withdrawal of his Contempt Application, the respondents have issued an order dated 19.08.96 stating that the entire intervening period from 22.10.95 to 10.03.96 will be regularised by the grant of leave of the kind due to the applicant. The applicant has also stated that he has not been provided with any facility for carrying out his duties of research work after cancellation of his transfer order. He is also being denied travelling allowance to go to the Experimental Farm for his research work. Feeling aggrieved, the present application has been filed on 30.10.96 with the following reliefs:-

- (a) To quash the impugned order dtd.19.08.96 and to treat the entire period mentioned therein as on duty by the applicant.
- (b) To direct the respondents not to interfere in the working of the applicant as Senior Scientist at the Project.
- (c) To direct the respondents to provide office facilities at the Headquarter of the Project as well as Research facilities at the Experimental Farm as and when required. The applicant also be provided with travelling allowance as per the extant rules for visiting the Experimental Farm.

2. The respondents have filed counter reply through Shri C.P.Singh,Supdt.,Project Directorate of Vegetables Research, varanasi. The respondents contend that the applicant was not on duty during the entire period as the applicant stood relieved from the post and he spent the entire intervening period at his own sweet will without any work and in view of this the competent authority has decided to regularise the entire period by granting of leave of the kind due to the applicant. Keeping this in view, the full pay and allowances have been paid to the applicant of the entire intervening period. Since the applicant had not worked during the period, he is not entitled to be treated on duty as claimed. The respondents contend that the present application is wholly misconceived and deserves to be dismissed.

3. The applicant has filed rejoinder reply. The applicant has contested that the counter reply has been filed by an officer, who is not competent to file the Counter Affidavit on behalf of the respondents in terms of the Notification dtd.30.07.90 issued by the Department of Personnel & Training, Govt.of India. The applicant, therefore, pleads that the C.A. filed should be ignored. The applicant has controverted the contention of the respondents stating that the applicant was served with the order dtd.21.10.95,only on 31.10.95 and he was allowed 15 days time for joining at Port Blair. The Interim Stay order of status quo was passed on 13.^{11/10} 95 and the applicant was on duty for the entire period at Varanasi.

4. I have heard the applicant in person and Shri N.P.Singh, learned counsel for the respondents.

5. The applicant has raised an objection that the C.A. has been not filed by the authority competent to file the same on behalf of the respondents on the basis of the Notification dtd.30.07.90, a copy of which has been brought at Annexure-8. I have gone through the notification & notice and ^{and}

find that it does not cover the Organisation of Indian Council of Agricultural Research. This notification is an amendment to the notification issued earlier. The applicant has not brought out specific notification issued for the Indian Council for Agricultural Research. In the absence of the same, the objection raised by the applicant cannot be gone into on merits. In view of this, I have proceeded to consider the C.A. filed by the respondents.

6. From the rival contentions as brought out above, it is seen that the controversy raised in the present application is arising out of the Interim Stay Order passed in the earlier O.A.No.1141 of 1995 filed by the applicant challenging his transfer order out of Varanasi. Applicant pleads that he was given the relieving letter dtd.21.10.95 only on 31.10.95 and 15 days time was allowed to him to join the duty at Port Blair. The Interim Order of granting status quo was passed on 13.11.95 before the due date he was required to report for duty at Port Blair and, therefore, he was on duty at Varanasi and continued so till the pronouncement of the order dtd.28.02.96. The respondents, on the other hand, have contested that the applicant stood relieved from 21.10.95 before passing of the Interim Stay Order dtd.13.11.95 and the applicant was never on duty for the entire period till the pronouncement of the order dtd.28.02.96. Since he was not on duty, the respondents have regularised the period by sanctioning leave of the kind due to the applicant and made payment of the salary accordingly.

7. The applicant had filed a Contempt Application no.39 of 1996. The applicant has submitted that he withdrew the contempt application as per the application dtd.16.08.96 making a prayer for withdrawing of the contempt application with a liberty to file a fresh petition, if any cause of action arises. The applicant has not filed the final order passed on his application to withdraw the contempt application. I have, however, gone through the concerned file of contempt application no.39 of 1996 and it is noted that the application to withdraw the contempt application on the ground that the

grievances no more remains was filed on 23.08.96. The final order on the contempt application has been passed on 29.08.96 as per which the contempt proceedings were dropped. There is no mention in the order with regard to any liberty to file any fresh application for any cause of action arising afterwards. The applicant has alleged that the impugned order dtd.16.08.96 has been passed by the respondents only after he had withdrawn the contempt application on account of the fact that the payment of salary for the period under reference had been made to the applicant. From the facts stated above, this contention of the applicant is not tenable. Impugned order dtd.16.08.96 had been issued earlier to the filing of application filed on 23.08.96 and also the final order passed on dtd.28.09.96. If the applicant felt aggrieved by issue of the order dtd.16.08.96, he should not have taken any action to withdraw the Contempt Application as the same very issue had been raised alleging non-compliance of the order by the respondents. Keeping this fact-situation in view, it is concluded that the whole issue raised in this application is arising out of the interpretation of the Interim Stay Order dtd.13.11.95 and as such the applicant cannot agitate the matter through a fresh application. If the ~~application~~ ^{nt} was not allowed duty after passing of the Interim Stay Order dtd.13.11.95 and no payment was being made for several months thereafter, the applicant could have challenged the matter by filing the contempt application for non-implementation of the Interim Stay Order. The applicant just kept quiet. Even after pronouncement of the order, the contempt application filed for non-payment of the salary for the intervening period was also withdrawn by him. In the light of these observations, I am of the view that the relief prayed for in the present O.A. with regard to the treatment of the intervening period as on duty is arising out of Interim Stay Order dtd.13.11.95 and the same cannot be agitated through filing fresh application. No fresh cause of action arises, I therefore conclude that the present application is not sustainable.

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8. As regards the reliefs (b) and (c) referred to in para 1 above, I am unable to find any merit in the same keeping in view the vague pleadings made by the applicant. The respondents have denied the averments of the applicants and have submitted that the applicant has been provided ^{with} all the facilities required for a Scientist for research work. The applicant while controverting the averments of the respondents ~~has~~ again in the rejoinder reply simply stated that no research facility has been provided without giving any specific details. The applicant has ~~contented~~ that he should be allowed travelling allowance for visiting the Experimental Farm. The travelling allowance can be paid only after the journeys have been made and the applicant has not brought out the details of journeys made for which claims of travelling allowance made by him have been disallowed. In view of the vague averments made, no merit can be found in the reliefs prayed for.

9. Keeping in view the facts and circumstances of the case as detailed above, the application is dismissed as being not maintainable for relief no.(a) and having no merits for reliefs (b) and (C). No order as to costs.

D. B. Singh
MEMBER (A)

/rsd/