

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 3rd day of June 1997.

Original Application no. 1001 of 1996.

Hon'ble Mr. S. Dayal, Administrative Member.

V.K. Pandey, S/o R.D. Pandey, R/o 33 M.G. Marg,
Allahabad.

... Applicant

C/A Shri S. Chandra, Shri R.R. Singh
Shri A.V. Srivastava.

Versus

1. Union of India through the Secretary, Central Board of Excise and Customs, North Block, New Delhi.
2. Commissioner, Central Excise, Allahabad.
3. Deputy Commissioner (P&V) Central Excise, Allahabad.

... Respondents.

C/R Km. Sadhana Srivastava.

O R D E R (Oral)

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant has sought relief of payment of his salary from April 1996 till date of filing of the application which was 18.05.96 and by implication he is

seeking the payment of his salary after 12.04.96 because learned counsel for the applicant admits that the applicant has still not joined.

3. The facts as stated in the application are that the applicant was transferred from Gorakhpur to Chunar Cement Factory in June 1995. His transfer was stayed on his representation for a period of three months and was again stayed for another month up to 29.11.95. He again sought extension of his stay at Gorakhpur and the transfer was stayed upto March 1996. He claims to have ^{made} another representation in March 1996 and his transfer was stayed upto June 1996. However, the order extending his stay at Gorakhpur up to June 1996 was cancelled by order dated 08.04.96 and the applicant was asked to be relieved with immediate effect. The applicant filed OA no. 455 of 1996 before the Central Administrative Tribunal at Allahabad and the Tribunal by its order dated 02.05.96 in OA 455/96 directed that in case the applicant submitted a representation by next date i.e. 03.05.96, ~~it~~ ^{it} would be open to the respondents to consider ^{and} dispose of his representation within a week, thereafter. The respondents were also given an option to consider postponement of the order till disposal of the aforesaid representation. The applicant claims to have joined the post on 06.05.96 and claims to have given joining report to the Assistant Commissioner. He was not paid salary as per his averment for the month of April 1996 and he made representation dated 17.06.96 for the payment of his dues and again on 10.07.96 which was replied to by order dated 10.08.96 to the effect that he had already been relieved. He claims to have made representation dated 26.08.96 requesting respondent no. 3

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to relieve the applicant to enable him to join at new place.

4. Arguments of Shri A.V. Srivastava learned counsel for the applicant and Km. Sadhana Srivastava learned counsel for the respondents were heard. The pleadings as contained in the record of this case have been taken in the account.

5. The contention of the learned counsel for the applicant is that the order dated 08.04.96 was foisted upon the applicant after he had been granted stay on his transfer till 30.06.96. This ^{is a further} contention of the learned counsel for the applicant that the applicant was prepared to join at Roberstgang, Mirzapur, but he was never relieved nor was he paid salary from April to June 1996, pay advance for the month and transfer TA. Learned counsel for the respondents is in reply mentions that the applicant had already been relieved on 12.04.96 and was not taken back on duty and, thereafter, the question of re-releaving him did not arise. Learned counsel for the respondents has also mentioned that the question of non payment of transfer TA etc had not been raised in the main body of the O.A. and, therefore, no reply was necessary to the contention that the applicant could not join at the place of posting because of non payment of arrears ^{and} dues.

6. The perusal of order dated 10.05.96 (annexure 6 to the OA) shows that the Deputy Commissioner, Central Excise, at Allahabad had directed the Assistant Commissioner Central Excise, Gorakhpur to relieve Shri V.K. Pandey immediately. The application filed in September 1996 is

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unclear as to the day till which the applicant worked in the office of Assistant Commissioner Central Excise Gorakhpur. The applicant by claiming salary for the month of April onwards would have us believe that he is still working in Gorakhpur for want of relieving order. From the facts on record of this case in the form of written pleadings, the applicant did not have any right to stay at Gorakhpur beyond the month of May, 1996. His seeking extension of three months up to the end of June did not confer ^{on} him the right, not to be asked to ^{curtail} ~~curtail~~ the stay at Gorakhpur and joined at Roberstgang as per the orders of Deputy Commissioner dated 10.05.96 which was in response to the representation dated 03.05.96 submitted by the applicant on the basis of the direction given to the respondents in OA 455 of 1996 dated 2.5.96 by the Central Administrative Tribunal, Allahabad. The authority which had granted him extension right from June 1995 till March 1996, had already shown enough consideration for the difficulties of the applicant and asking him to ^{be relieved} ~~relieve~~ in the month of April 1996 was not an unreasonable order. The applicant in his application has chosen to reply upon procedural formalities in support of his case.

7. Since claim in this application is for salary from April 1996 onwards, I confine my order to this issue. Annexure 2 shows that the applicant had sought Earned Leave from 12.04.96 to 5.5.96 and had joined on 06.05.96 ie. after the order was passed by the Central Administrative Tribunal in OA 455 of 1996. The respondents have contested the joining of the applicant on 06.05.96 on the ground

that there ~~was~~ no direction from the Central Administrative Tribunal in OA 455 of 1996 to accept the joining report of the applicant. The respondents have also mentioned that his salary could not be paid from Gorakhpur because he had already been relieved. In annexure CA-2, the respondents have mentioned that the Inspector Headquarter Shri A.J. Ramson who was deputed to serve letter of relieving of the applicant on the applicant on 19.04.96, had given a copy of the letter to Shri Pandey at 7 pm on the same date but Shri Pandey refuse to take the copy. He has also mentioned in the same annexure that the joining report of Shri Pandey was returned to him as he had already been relieved by the office.

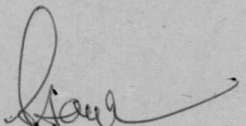
8. Thus the controversy boised on the question as to whether the applicant needed to be relieved after 12.04.96, even if contention of the learned counsel for the applicant that letter dated 10.05.96 contain the admission that Shri Pandey had joined on 06.05.96 and had not been relieved till then, letter does not take him very far. The applicant himself did not seek any time for his posting in Gorakhpur beyond 30.06.90. From the averments of the respondents made in the case it is clear that the applicant was not allowed to do any work in the office beyond a few days after 06.05.96.

9. Under the circumstances I feel justification only for ordering that the applicant be paid salary from 01.04.96 to 11.04.96 and from 06.05.96 to 30.05.96 as duty pay and he may be paid, if any leave is due to him,

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from the period from 12.04.96 to 05.05.96. The period beyond 31.05.96 can not be treated as period spent for on duty and no direction for payment of salary can be given. The period beyond 31.05.96 till the date of receipt of this judgment may be treated by the respondents as per extant rules on the issue.

10. There shall be no order as to costs.


Member-A

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