

Open Court.

Central Administrative Tribunal,
Allahabad Bench, Allahabad

Dated: Allahabad, This The 16th Day of August, 2000.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi V.C.
Hon'ble Mr. S. Dayal, A.M.

Original Application No. 646 of 1996.

Abhilash Chandra Sinha,
J.E. (Civil) aged about 42 years,
son of Sri S.N. Sinha, working in the O/O The
Assistant Engineer, B.H.U. Central Sub Division No.11
C.P.W.D. Varanasi.

. . . Applicant.

Counsel for the applicant: Sri N.L. Srivastava, Adv.

Versus

1. Union of India, Department of Urban Development,
New Delhi, through its Secretary.
2. The Director General Works, C.P.W.D. Nirman Bhawan
New Delhi.
3. The Superintendent Engineer, Co-ordination (Civil)
C.P.W.D., New Delhi.
4. The Executive Engineer, Central Division, C.P.W.D.
Allahabad.
5. The Assistant Engineer, B.H.U. Central Sub Division
No. II, C.P.W.D. Varanasi.

. . . Respondents.

Counsel for the respondents: Sri Satish Chaturvedi, Adv.

Order (Open Court)

(By Hon'ble Mr. S. Dayal, Member (A.))

h This application has been filed with a prayer

to set aside the order of respondent No.3 dated 18.3.96. A further prayer has been made that the entire salary from 1.1.95 to 30.6.95 be paid. Travelling expenses for performing journey several times from Allahabad to New Delhi and back in the office of respondent No.3 as well as medical expenses amounting^{to} Rs. 5000/- have also been claimed as relief. The applicant has prayed that this period be treated as on duty. He has also sought the relief of annual increments from the period commencing from June 1994 till date.

2. The case of the applicant is that he was posted as J.E.(Civil) at Lucknow in the office of Valuation Officer, Income Tax Department and by order dated 28.10.94 issued by respondent No.3 he was transferred and posted at Allahabad in the office of respondent No.4. In pursuance of this order of transfer he was relieved from the office of Valuation Officer Income Tax Department Lucknow in the Afternoon of 28.12.94. The applicant claims to have reported at Allahabad on 3.1.95. The respondent No.4 however did not take him on work and asked him to wait for necessary direction. The applicant has also mentioned that earlier order dated 11.3.94 was issued by respondent No.2 transferring the applicant to Allahabad Central Division in place of one Sri Hare Ram but on the representation of Sri Hare Ram, the transfer order was cancelled and the applicant was transferred in place of one Sri C.P. Kushwaha. In place of Sri Kushwaha one Sri K.P. Yadav was allowed to join and the applicant was not given the joining on the ground that there was no vacancy.

Since the applicant was given no other posting he was held up at Allahabad for further instructions. He made representations dated 6/8.3.95 and 27/29.3.95 to respondent No.3. He claims that he was not even given medical facilities at Allahabad because he was not taken on duty at Allahabad. He had also rented a house for which he had to pay rent every month at the rate of Rs.1300/-. The applicant ultimately gave a legal notice dated 1.6.95 as a result of which he was given office order No. 59/95 dated 9.6.95 by which he was adjusted at Central Division Allahabad in place of Sri Om Prakash Pandey, Junior Engineer (Civil). The applicant also claims that he had made expenses on the illness of his wife during the period he was not taken on duty. In the backdrop of these facts he has claimed the relief.

3. The arguments of Sri N.L. Srivastava for the applicant and Sri Pankaj Srivastava, brief holder for Sri Satish Chaturvedi for the respondents have been heard and perused the record.

4. The applicant has challenged order dated 18.3.96 by which he has been asked to make an application for leave for the waiting period and explain as to why he kept on waiting after 3.1.95 at Allahabad. It is clear from the facts that the applicant was transferred by letter dated 28.10.94 and was relieved by Income Tax Department on 28.12.94 for joining at Allahabad. Thereafter he proceeded to Allahabad and reported to his Senior Officer on 3.1.95 after availing of joining time. The Executive Engineer Allahabad, Central Division (Respondent No.4) had written on 7.1.95 to respondent No.3 about his

-4-

inability to allow the applicant to join in his office at Allahabad because the retention order has been passed on 16.5.94 for Sri Hare Ram and Sri M. Ali till 31.3.95. In the meanwhile one Sri K.P. Yadav had joined on transfer against the vacancy to be created by transfer of Sri M. Ali. He was adjusted against the vacancy caused by transfer of Sri Kushwaha. From this letter which is at Annexure-4 in the O.A. it is clear that it was not the fault of the applicant that he could not join at Allahabad inspite of his transfer against the vacancy of Sri Kushwaha, some other official was adjusted in the vacancy caused by transfer of Sri Kushwaha and the applicant made to wait at Allahabad on account of there being no vacancy. The applicant could not have left Allahabad for another place without the order of the respondents because ^{such} shifting would have involved the movement of his family as well as personal ^{effects} ~~affairs~~ and could have been authorised only by another order of ^{transfer} ~~approval~~. He had made representation to the respondents and had visited Delhi in that connection but without any immediate effect. We therefore find that impugned letter dated 18.3.96 is arbitrary and deserves to be set aside.

5. The learned counsel for the respondents has drawn our attention to the counter reply in which it has been mentioned that the applicant wanted to adjusted at Allahabad or Lucknow instead of being adjusted at any other place. It is also mentioned that the order was issued to the applicant on 11.3.94 to join at Allahabad but he reported to

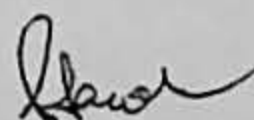
-5-


this place of posting after a gap of about nine months. It is true that in representations dated 6/8.3.95 and 27/29.3.95 the applicant had mentioned that he may be accommodated at Allahabad or may be posted at Lucknow for one year. However, it was upto the respondents to consider this request of the applicant and post him against the vacancy. The plea that there was no vacancy at Lucknow or Allahabad and therefore the applicant had to wait, carries no conviction because it was within the authority of the respondents to have posted the applicant to a vacant place and in case the applicant did not join there, take any appropriate action. This having not been done, the ground that the applicant wants posting at Allahabad or Lucknow and hence ^{been asked to} he has ~~take~~ leave, is not valid.

6. The respondents in their counter reply have relied upon the provisions of C.P.W.D. Manual Vol.I at page 81-82 and have again raised the same argument that if the incumbent prefers to wait rather than to avail of a vacancy and make request orally or by writing for a particular posting, he should be asked to take leave, ~~and leave~~ and leave application should be obtained from him. In the case before us no option was given to the applicant as to whether he would join at another place or would wait for posting at Allahabad. Therefore his case can only be taken to fall under Sub para (i) of the Departmental Instructions in C.P.W.D. Manual Volume I at page 81-82 in which if department is not able to give immediate posting on administrative reasons, the regularisation should be considered

against the existing vacancy available during the material period of waiting in any of the zones of C.P.W.D. all over India even by transferring ^{one} of the posts. The applicant in our view is clearly entitled to be considered under this paragraph and his period of waiting be regularised.

7. We, therefore, direct the respondents to regularise the period of waiting of the applicant as it was due to their inability to give immediate posting to him. The applicant should be allowed salary and other emoluments for the period from 1.1.95 to 30.6.95 as period spent on duty at Allahabad. The applicant shall also be allowed increments from June 1994 till date if they have been withheld only on account of non regularisation of this period of waiting. The applicant shall also be allowed the reimbursement of medical expenses made during this period on himself and his family at the rate admissible to Central Government Servants as special case. This shall be done within a period of four months from the date of receipt of a copy of this order through the applicant. If the respondents do not carry out this order within this period, ^{he} ~~they~~ shall be paid penal interest at the rate of Rs.18% on the claims made by the applicant for the above period. Costs shall be paid to the applicant.


Member (A.)


Vice Chairman