

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This The 20th Day Of May 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No. 1561 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

Aftab Mohd. Khan, S/o Late Navi Mohd. R/o T-7/A, Railway colony, N.E. Railway Station, Mandhana, Kanpur.

..... Applicant

By Advocate: Shri K.K. Mishra

Versus

1. Union of India through General Manager, North East Railway, Gorakhpur.
2. Divisional Railway Manager, North East Railway, Izatnagar, Bareilly.
3. Senior Divisional Personnel Officer, North East Railway, Izatnagar, Bareilly.

..... Respondents

By Advocate: Shri K.P. Singh



ORDER

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J))

1. The applicant was initially transferred on 04.06.1999 vide impugned transfer order dated 16.04.1999 whereby, the applicant stood transferred from Mandhna Junction to Kuraiya Station. When he moved O.A. No.644 of 1999, it was disposed of on 28.11.2000 with a direction to the D.R.M. Izzat Nagar to consider the representation of the applicant and till such decision is taken or for a period of six weeks whichever is earlier the transfer order was not to be given effect to. The applicant filed a representation 07.12.2000 and ultimately, the transfer order was cancelled vide office order dated 31.05.2001. Now, arose the question of payment of salary for the intervening period. When the applicant filed O.A. No.1247 of 2003, it was disposed of with a direction to the respondents to decide the representation. The applicant claims salary for the period from 04.06.1999 to 09.06.2001. According to the applicant, on the basis of Court's order there is stay and though the Applicant was ready, he was not permitted to join duty in the hold place posting. The applicant has relied upon the C.A.T. Patna Bench decision in **Kamla Prasad v. Union of India** ATC 1990 (12) 87 and 1987 (3) AIC (**Ganesh Singh & Ors. V. Union of India & Ors.**).

2. Respondents have contested the O.A.. According to them, the Applicant was relieved from Mandhna Junction to Kuraiya Station on transfer vide separate memo dated 16.04.1999. As the applicant had refused to take the same, substituted service was resorted to. According to the Respondents, after getting the

interim order dated 04.06.1999, the Applicant never reported to Station Master, Kuraiya.

3. The Applicant has filed Rejoinder Affidavit in which he has reiterated the contention as contained in the O.A..

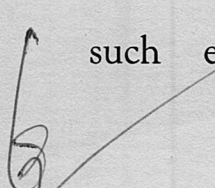
4. At the time of hearing, parties were permitted to file written argument which was promptly filed by the Applicant's counsel. The Applicant's contentions as raised in the O.A. have all been referred to in the written arguments.

5. Arguments were heard in addition to perusing the written arguments. The only question is regularization of the period of absence from 04.06.99 to 09.06.2001. Notwithstanding the fact that the transfer order was served by substituted service, ultimately, what valued is the tenor of the orders of this Tribunal dated 04.06.1999. The last Paragraph vide Annexure A-1 states as under:-

".. the interim prayer may also come up for hearing on 08.07.1999. The respondents may file Counter/short Counter. Meanwhile, if the Applicant has not been relieved the order of transfer dated 16.04.1999 be stayed. "

6. This is the case of the Applicant that he was available for service in the old place of duty while the contention of the Respondents is that he was not available.


7. The Applicant was only Group 'D' employee and normally such employees are not transferred except on specific




administrative reasons or at request. In the instant case, refusal to reliving order is understandable because the Applicant did not want to move from old station but an order was passed by the Tribunal it is responsibility to report for duty and in case of refusal, he should have approached the Tribunal again.

8. According to the respondents, the Applicant never reported to Station Master Kuraiya for duty. There is no concrete proof to show that the Applicant did present himself for duty. Thus, the Applicant has to apply for leave and the Respondents shall debit that much amount of leave under any category of leave including leave not due and on regularization of the period of absence by grant of leave, the Applicant would be entitled to pay and allowances and half pay leave as per the nature of the leave sanctioned. He shall be afforded the said benefit.

9. With the above direction, the O.A. is disposed of. Time calendared for passing suitable order for grant of leave and for payment of dues arising out of the same, is six months. No costs.


Member - A


Member -J

Sushil