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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

(1) O.A.No. 511

Sanjay Kumar Malik

Applicant.

versus

Union of India & others

Respondents.

(2) O.A.No. 512/88

V.N. Tewari

Applicant.

versus

Union of India & others

Respondents.

Hon. Mr. D.L. Agrawal, J.R.  
Hon. Mr. K. Obayya, A.M.

(Hon. Mr. K. Obayya, A.M.)

These applications under section 19 of the Administrative Tribunals Act, 1985 have been filed for quashing the orders of removal dated 8.4.88 (Annexure XII) and payment of salary and allowances with effect from 31.3.84. As the facts in these cases are similar and cause is same, we propose to dispose them of by a common judgment.

2. The applicants who were working as U.D.Cs in the office of Joint Controller of Imports and Exports (J.C.I.E), Kanpur, were transferred by order dated 31.5.84 to New Delhi as L.D.Cs. They were relieved of their duties at Kanpur but they did not join at Delhi. They challenged the transfer order in the High Court of Allahabad (W.P. No. 7564/84) on the ground that their juniors were retained as UDCs at Kanpur, as such their transfer on reversion was arbitrary. The writ petition stood transferred to this Tribunal under section 29 of the A.T. Act, 1985 and registered as T.A.No. 1473/87 and 1480/87.

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The petitions were decided by a common order. The orders were in the following terms:

i) The petitioners will get protection in matter of officiation on the post of UDC vis-a-vis their juniors. The orders of revision issued on 22.5.1984 in case of V.M.Tewari and on 13.12.83 in case of S.I. Malik will stand modified accordingly.

ii) The transfer vide orders dated 31.5.84 will be subject to protection to which they are entitled in matter of officiation as UDC on even/ad hoc basis

iii) They will get protection for officiation in the CCIE's organisation on the basis of their seniority in the Kanpur office and to consequential benefits as may become due.

iv) The period ~~in~~ the petitioners have stayed away from duty from the date of relief to the date they join duty will be treated as leave due. They will be given suitable posting in terms of the above observations within 10 days of receipt of the e orders.

3. It would appear that the department initiated disciplinary proceedings against the applicants for non compliance with the transfer order which resulted in their removal by order dated 8.4.88 which is under challenge before us, we have heard the counsel for the parties. The counsel for the respondents Shri Ashok Mohiley brought to our notice that the orders of removal have been already set aside by order dated 9.10.90 passed by the Chief Controller of Imports and Exports and the applicants have been reinstated in ~~service~~ service w.e.f. 8.4.88. He urged that the applications may

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have become infructuous, in as much as the relief prayed for has already been granted. We have perused a photo-stat copy of the order; the learned counsel for the applicant did not deny this. In the circumstances, we hold that the cause of action so far as quashing removal order dated 8.4.88 no more subsists. The other relief sought is for payment of salary from 31.3.84.

In T.A.No. 1473/87 and 1480/87 decided by the Tribunal, the period from the date of relief to the date of rejoining has to be treated as leave due. The order of reinstatement clearly states that the applicant is reinstated from 8.4.88 and that separate orders are being issued regarding the manner in which the period between removal and reinstatement has to be treated.

4. Taking the facts and circumstances into consideration, we are of the view that the applicant's absence from duty from the date of relief on transfer to Delhi to their rejoining should be treated as leave due, as already decided in T.A. No. 1473/87 and 1480/87 and the second phase from the date of removal 8.4.88 to reinstatement should be treated as on duty and the pay regularised as such. We direct the respondent to settle the leave and pay claims of the applicants within 60 days from the date of receipt of this order.

The ~~affixes~~ <sup>affixes</sup> applications ~~is~~ <sup>are</sup> disposed of as above, with no order as to costs.

J.M.

J.M. 10.12.70

Allahabad Dec. 10<sup>th</sup> 1990.