

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 15TH DAY OF MAY, 2002

Original Application No. 549 of 1995

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.C.S.CHADHA, MEMBER(A)

She~~h~~ Om Jauhari, Son of Sri R.S.
Jauhari, aged about 41 years
R/o A/47, Chunniganj, district
Kanpur, Nagar.

.. Applicant

(By Adv: Shri O.P.Gupta)

Versus

1. Superintending Engineer, Rupa Circle, P.W.D.Arunachal Pradesh, Rupa.
2. The Commissioner/Secretary Public Works Department, Govt. of Arunachal pradesh.
3. Union of India through Secretary C.P.W.D, Govt. of India, Nirman Bhawan, new Delhi.

.. Respondents

(By Adv: Shri Namvar Singh)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has prayed that the order dated 1.12.1994 passed by superintending Engineer, Rupa Circle ^{be quashed} and the respondents be directed to pay special duty allowance for the unpaid period i.e. w.e.f. 28.1.1980 to 31.10.1983 and for July 1987 to 29.7.1992. The applicant has also prayed for payment of deputation allowance from 28.1.1980 to 29.7.1992 and for D.H.R.A and children education allowance for the same period. He has also claimed 18% interest on the aforesaid payments.

The facts giving rise to this application are that applicant was serving as Junior Engineer attached to President's State Division C.P.W.D at New Delhi. By order dated 27.9.1979 he was transferred and posted in Arunachal Pradesh in public interest with immediate effect. The copy of the order has been filed as (Annexure 1) to the application No.4626/01. Under the aforesaid order applicant joined as Junior Engineer under the Superintending Engineer Arunachal Pradesh Circle No.II New Eta Nagar. The applicant after completing the normal tenure at hard area ~~P.W.D~~ Arunachal pradesh, however joined P.W.D Arunachal Pradesh initially as Junior Engineer. It appears that by order dated 1.11.1988 applicant by order of Governor of Arunachal Pradesh was promoted on ad-hoc basis as Asstt. Engineer(Civil) in the scale of Rs 2000-60-2300-75-3200-100-3500. This promotion was though for a period of six months from the date of actual taking of the charge, ^{to} Applicant continued ~~work~~ in Arunachal Pradesh upto April 1992. By order dated 25.4.1992, the Governor of Arunachal Pradesh ordered repatriation of the applicant from Arunachal Pradeshs to his parent department of CPWD. After repatriation applicant claimed the aforesaid allowances and filed a representation which has been decided by the impugned order dated 1.12.1994, aggrieved by which this OA has been filed. After 1992 applicant claimed the payment of aforesaid allowances which were not paid to him, then he filed OA No.1/94 which was disposed of finally by order dated 10.1.1994 directing State of Govt. of Arunachal Pradesh to decide the representation of the applicant within three months. A copy of the order of this Tribunal has been filed as (Annexure 1) . In pursuance of the direction of this Tribunal representation has been decided by the impugned order dated 1.12.1994, aggrieved by which

this OA has been filed.

Counter affidavit has been filed denying the claim of the applicant. After hearing the counsel for the parties at length, in our opinion, the question for determination in this case is as to whether the applicant was serving Arunachal Pradesh Government under deputation or he had joined the service of Arunachal Pradesh government ^{crucial} ~~on his own~~. The question of payment of allowances claimed by the applicant arise only when it is proved that applicant was serving Arunachal Pradesh government ~~and was~~ on deputation.

The counsel for the applicant has placed reliance mainly on the documents(Annexures 6,7,8 & 9). By order dated 24.7.1991(Annexure A6) the Governor of Arunachal Pradesh directed repatriation of the applicant stating that he was on deputation in Arunachal Pradesh. The applicant was directed to report to the Director General of Works, CPWD Nirman Bhawan, New Delhi. By order dated 5.2.1992(Annexure A2) applicant was retained at Arunachal Pradesh until further orders in the interest of public service. By (Annexure 8) dated 25.4.1992 he was again repatriated from Arunachal Pradesh to his Parent department. (Annexure A9) speaks out the claim of applicant regarding a special duty allowance and deputation allowance for having rendered service in Arunachal Pradesh for which a suggestion was given to advise him to make a representation. The submission of the learned counsel for the applicant is that actually he was under deputation and i.e. why the Governor ordered his repatriation.

Shri Namvar Singh, learned counsel for the respondents, on the other hand, submitted that applicant was serving in Arunachal Pradesh on transfer as Junior Engineer C.P.W.D after completing the normal tenure of staying in hard area,



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He expressed his desire to continue to serve in Arunachal Pradesh. Thus on his own request he was accommodated as Junior Engineer and later on promoted as Asstt. Engineer on 1.11.1988. He continued to serve upto 1992 and thereafter he was asked to join his parent department.

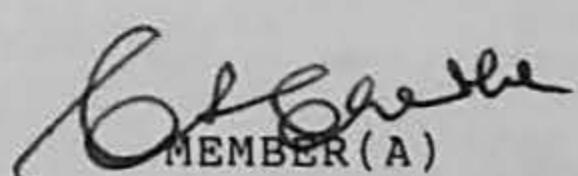
Shri Gupta in the rejoinder affidavit has submitted that applicant was assured that he will be permanently absorbed in State PWD service of Arunachal pradesh. On this assurance he joined CPWD and he worked till 1992. Reliance has been placed on Annexure 4 which is a letter addressed to Director General of Works,CPWD indicating that the government of Arunachal pradesh intends to absorb the applicant as Junior Engineer(Civil) permanently who exercised his option ^{to} remained in Arunachal Pradesh CPWD. Considering his performance, No objection certificate was required from the CPWD through the aforesaid letter dated 9.5.1989. From (Annexure 5) it is clear that no objection certificate was given on 30.1.1990. However, after that it appears that the Arunachal Pradesh government did not consider it ^{to} absorb applicant in state service of PWD. The learned counsel has submitted that applicant had continued his stay in Arunachal Pradesh on the basis of the aforesaid assurance and it could be treated as on deputation.

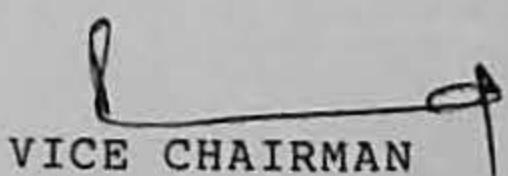
Shri Gupta also invited our attention to the orders dated 23.4.01 and 25.7.01 by which documents were required from counsel for State of Arunachal Pradesh showing the retention of the applicant in State service.

We have carefully considered the submissions made by the counsel for the applicant. The word 'deputation' ^{connotes} ~~defines~~ that an employee of one department has been sent to serve in another department. If this test is applied in the facts of the present case it cannot be said that CPWD had

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ever asked applicant to serve the State of Arunachal Pradesh as Junior Engineer. As against it ⁱⁿ ~~from~~ the letter dated 9.5.1989 it appears that applicant had exercised option to remain in Arunachal Pradesh PWD. The applicant's wishes were respected by Arunachal Pradesh government considering his performance but from this fact it cannot be said that applicant was serving on deputation. If Arunachal Pradesh government had backed from its promise or assurance given to the applicant the action could be taken or the dispute may be raised for compelling the Arunachal Pradesh government to absorb applicant in its service as promised earlier, which in the present case has not been done. After 1992, when applicant was asked to join his parent department applicant claimed the various allowances through this OA. ^{In} our opinion as applicant was not serving on deputation he is not entitled for the same, ^{and} on account of delay also. Rest of the claims which were admissible to applicant have already been paid to the applicant. With regard to payment of special duty allowance, it appears that the investigation was still continuing and in the order dated 1.12.1994 it has been said that necessary action will be taken by the government. In the circumstances, this OA is dismissed for rest of the claims. For payment of special duty allowances the government of Arunachal Pradesh is directed to decide the claim of the applicant within a period of three months from the date a copy of this order is filed and pay the amount to applicant within the same period for which he is found entitled. There will be no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: May 15th, 2002

Uv/