

(Reserved on 15.01.2014)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 12th day of March, 2014.

Original Application Number. 473 OF 2008.

HON'BLE MR. SHASHI PRAKASH, MEMBER (A)
HON'BLE MS. JASMINE AHMED, MEMBER (J).

Abhimanyu Tiwari, son of Sri Lalita Tiwari, Resident of village -
Kaithi, Post - Gurera, District - Chandauli.

.....Applicant.

VER S U S

1. Union of India through its Secretary, Ministry of Human Resources, Shastri Bhawan, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18, Industrial Area, Shaheed Jeet Singh Marg, New Dehi.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, K.V.S , Patna (Bihar).
4. Education Officer, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
5. Principal, Kendriya Vidyalaya Sangathan, B.H.U Campus, Varanasi.
6. Principal, Kendriya Vidyalaya, Air Force Station, Bihta.

.....Respondents

Advocate for the applicant : Shri R.P. Upadhyay
Advocate for the Respondents: Shri N.P. Singh

ORDER

(Delivered by Hon'ble Mr. Shashi Prakash, A.M.)

Shri N.P. Singh, learned counsel for respondents at the out set submitted that the Respondent No. 1 i.e Secretary, Ministry of Human Resource may be deleted from the array of respondents on account of the fact that the K.V.S is an autonomous body

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registered under Society Registration Act and is headed by Commissioner, K.V.S. The Secretary, Ministry of Human Resource Development has no role to play in the day to day running of the Institute. In view of the submission made by the counsel for respondents we feel that there are sufficient reason to delete the Secretary, H.R.D as respondent No. 1 as he has no direct relation with the relief claimed in the O.A. Therefore, Secretary, H.R.D is treated as deleted as respondent No. 1.

2. By way of the instant Original Application filed under Section 19 of Administrative Tribunals Act 1985, the applicant seeks for quashing the order dated 11.04.2008 passed by respondent no. 3 (Annexure -1). He has also prayed for a direction to the respondents to pay him salary for the period 01.05.2007 to 09.12.2007 including 50 days summer vacation leave as well as increment due in January 2008.

2. The facts of the case, in brief, are that the applicant while posted as Trained Graduate Teacher in Kendriya Vidyalaya (hereinafter referred to as "K.V"), B.H.U Campus, Varanasi was transferred to K.V., Rajgarh (Chhattisgarh) vide order dated 20.04.2007 against which he filed O.A No. 456/2007, in which this Tribunal stayed the effect of the order in respect of the applicant on 01.05.2007 (Annexure A-3). The respondents passed the relieving order on 01.05.2007. According to the applicant, although he was available in the institution on 01.05.2007 but the relieving order

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was not served upon him. The O.A No. 456/2007 was finally disposed of on 18.10.2007 with direction to the respondents to consider representation of the applicant dated 26.04.2007. Consequently the representation of the applicant was decided and he joined at K.V., Air Force Station, Bihta on 10.12.2007. It is the contention of the applicant that salary for the period 01.05.2007 to 09.12.2007 has been withheld by the respondents including 50 days summer vacation leave. The applicant preferred a representation dated 22.12.2007 to the respondent No. 3 (Annexure -5). Having received no response from respondents the applicant filed another O.A No. 120/2008, which was dismissed by the Tribunal on 05.02.2008 being premature. However, the Assistant Commissioner, Kendriya Vidyalaya Sangathan / respondent no. 3 vide order dated 11.04.2008 considered and rejected the representation of the applicant dated 22.12.2007. Aggrieved the applicant has filed the instant Original Application on the ground that intentionally the respondents have not paid salary to the applicant for the period 01.05.2007 to 09.12.2007 and pressurizing him to move leave application for the aforesaid period. Therefore, the order dated 11.04.2008 is unjust, illegal and against the law.

3. The respondents have contested the claim of the applicant and filed Counter Affidavit. It is contended that in compliance of the direction of the Tribunal contained in order dated 18.10.2007 in O.A No. 456/2007, the representation of the applicant was

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considered and considering his request in representation dated 26.04.2007, the respondent No. 3 issued the order for posting the applicant at K.V, Air Force Station , Bihta on 03.12.2007 (Annexure CA-6) where the applicant has already joined. It is also contended that the applicant had been relieved from K.V, B.H.U Campus on 01.05.2007 and he assumed the duties at K.V., Air Force Station, Behta on 10.12.2007. Therefore, as per the provisions of Fundamental Rule 17(1) of the F.Rs, the applicant is not entitled for the salary for the period 01.05.2007 to 09.12.2007 as neither he has discharged the duties either at K.V., B.H.U Campus, Varanasi or to the transferred place i.e. K.V., Rajgarh, Chhattishgarh not has moved any leave application. It is also contended that the applicant has already been given opportunities to submit leave application but he failed to avail the same. Hence there is no illegality or infirmity in order dated 11.04.2008.

5. The applicant has also filed Rejoinder Affidavit in which nothing new has been added.

6. Heard Shri R.P. Upadhyay, learned counsel for the applicant and Shri N.P. Singh for respondents. We have also perused the pleadings.

7. It is observed from the pleadings that the applicant was transferred by order dated 20.04.2007 and stood relieved from K.V, B.H.U Campus, Varanasi on 01.05.2007 by order of the Principal

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on the same day. Simultaneously the applicant filed Original Application No. 456/2007 before this Tribunal challenging the transfer order dated 20.04.2007 and had obtained stay order on his transfer on the ground that he had not been relieved of his duty. Having regard to the fact that the applicant had already been relieved on 01.05.2007, grant of stay of his transfer order lost its relevance. Subsequently O.A No. 456/2007 was disposed off on 18.10.2007 with direction to the respondents to consider pending representation of the applicant submitted on 26.04.2007 against his transfer order. Consequently considering the representation of the applicant dated 26.04.2007 the respondents have modified the order of transfer vide order dated 03.12.2007 and posted the applicant at K.V, A.F.S, Bihta where he has joined on 10.12.2007.

8. The main relief sought by the applicant in the present O.A is that he be paid salary for the period 01.05.2007 to 09.12.2007 i.e. the period between his being relieved from Varanasi and joining at Bihta. The main contention of the applicant is that since he had obtained stay order before his being relieved from K.V., B.H.U Campus, Varanasi, therefore, he should be deemed that he was in duty till the date of modification of his transfer and his joining at Bihta. This contention of the applicant cannot be accepted because he had been relieved by a specific order on 01.05.2007 and the stay order apparently seems to have been obtained based upon misrepresentation of the applicant relating to the fact his being relieved. The stay of his transfer order was passed on the

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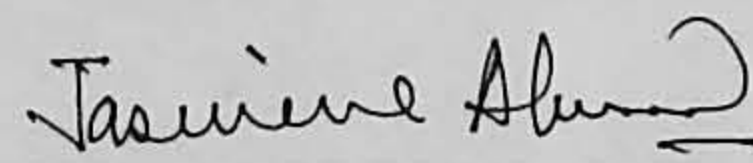
understanding by the court that the applicant has not been relieved of his duty. This being not so, the stay order obtained by the applicant should not have stood in the way of his joining at his transferred place of posting. In such a situation it would have been appropriate that the applicant ought to have joined at his transferred place of posting and submitted his representation for modification for his transfer order in accordance with the ratio laid down by Hon'ble Supreme Court in the case of **S.C. Saxena Vs. U.O.I and Ors reported in 2006 (9) SCC page 583** . Moreover, the modification of transfer order is itself is an indication that the respondents were prepared to consider his case sympathetically. Under these circumstances we do not find any substance in the contention of the applicant. Besides the applicant having not worked from 01.05.2007 to 09.12.2007 is not entitled to salary on the principle of "no work no pay", as has been held by the Apex Court in the case of **T.S. Kelawala Vs. Bank of India - 1990 SCC (4) 744**. In the above judgment, it has been clearly laid down that deliberate absence from work place resulting in no work for whole day or days or part of the day/days will entitle the management to deduct prorata or otherwise the salary / wages of the employee. Further F.R 17(1) is fully applicable in this case wherein it has been stated that an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties. Such an office shall not be entitled to any pay and allowances during the

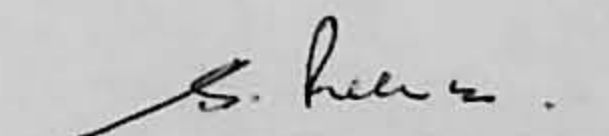
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period of such absence. Taking into above position into account the claim of the applicant for payment of salary for the period 01.05.2007 to 09.12.2007 is not tenable.

9. However, keeping in view the entire facts and circumstances of the case and mindful of the view taken by the respondents in their order dated 22/25.02.2008 (Annexure CA-7) asking the applicant to submit leave application, as admissible to him for regularization of intervening period, the applicant is required to comply with the same. Accordingly the respondents are directed to consider any such leave application if submitted by the applicant within 15 days from receipt of certified copy of this order, same should be duly considered subject to admissibility of such leave.

10. With the above direction, original application is disposed of.
No costs.


(MS. JASMINE AHMED)
MEMBER- J.


(SHASHI PRAKASH)
MEMBER- A.

Anand....