

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 2290/92

~~T.A. NO.~~

DATE OF DECISION 7-3-1996

Shri A.B. Rathod. Petitioner

Mr. D.M. Thakkar Advocate for the Petitioner (s)

Versus

Union of India and Others Respondent

Mr. Akil Kureshi Advocate for the Respondent (s)

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The Hon'ble Mr. V. Radhakrishnan Member (A)

The Hon'ble Mr.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri A.B.Rathod
Gulbai Tekra
Subhadrapura,
Ahmedabad.

Applicant.

Advocate Mr. D.M. Thakkar

Versus

1. Union of India
Notice to be served
through The Superintendent
Engineer, Central Water
Commission, Western Rivers
Circle, C.W.C. 4 A North
Bazar Road, Dharampath Ext.
Nagpur
2. Executive Engineer
C.W.C. Waghela Bldg.
Gurukul Road, Memnagar,
Ahmedabad.
3. Asst. Engineer
C.W.C. Sabarmati Divn.
Ahmedabad.

Respondents.

Advocate Mr. Akil Kureshi

ORAL JUDGMENT

In

Date: 7-3-1996

O.A. 290/1992

Per Hon'ble Shri V. Radhakrishnan

Member (A)

Heard Mr. Thakkar learned counsel for the applicant and Mr. Kureshi learned counsel for the respondents.

2. The applicant was serving as Khalasi at Ratanpur under respondent No.2 who issued order dated 4/7/-11-1989 transferring him to Kadana. The applicant

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challenged the transfer order by filing O.A. on 7-11-1989 in this Bench. The O.A. was listed for hearing on 22-11-1989. After hearing the learned counsel for both the parties the Tribunal issued the following ad interim directions :

" Heard Mr. D.M. Thakkar and Mr. Jagdish Yadav for Mr. J.D. Ajmera learned advocate for the applicant and the respondents. Pending admission, issue notice on interim relief and admission within 15 days and 30 days from the date of this order. The petitioner allowed ad interim relief in terms of impugned order not to be further implemented for a period of 15 days. Learned advocate for the petitioner states that no one has been taken in place of the petitioner and Mr. Vankar who was supposed to relieve him has not yet relieved him. The case be posted for admission and interim relief. Direct service allowed at the request of the learned advocate for the petitioner."

3. The ad interim stay granted by the above mentioned order was made absolute till the final disposal of the O.A. at the time of admission. The applicant contends that the interim order of the Tribunal dated 22-11-1989 was served on the respondents No.2 and 3 by way of direct service on 23-11-1989. However, as per the applicant's contention he was not taken back on duty. A legal notice was given by the applicant on 12-12-1989 by Registered post bringing out the fact that the Tribunal had stayed the transfer order and the applicant should be permitted to discharge his duties at Ratanpur. No reply was given and the applicant was not taken back on duty. The O.A. was finally heard on 4-7-1991. The tribunal quashed the transfer order. The applicant then approached the respondent No.2 with the copy of the judgment and he was allowed to resume duty on 8-8-1991. After resuming duties the applicant made an application dated 15-8-91 for

payment of arrears of salary for the period 16-11-1989 to 7-8-1991. He also sent the reminders subsequently on 1-10-1991. But no reply was received. He was also not paid salary for the said period. Hence the applicant prays for the following reliefs,

- A. Your Honour be pleased to declare that the applicant is entitled for the salary and all other allowances for the period between 16-11-1989 to 7-8-1991 and be pleased to direct the respondent authorities to pay the same to the applicant forthwith;

3. The respondents have contested the claims and have stated that the transfer order dated 4-11-1989 was served on the applicant on 6-11-1989. Their contention is that the applicant was relieved and stood transferred from 15-11-1989 onwards. The respondents contend that they had received the interim order of the Tribunal but it could not be implemented as the applicant was already relieved on 15-11-1989. The respondents also produced the attendance roll for the month of Nov. 1989 in which the applicant has signed upto 15-11-1989 as the applicant was relieved on 15-11-1989, the interim order of the Tribunal could not be implemented which was received by them on 23-11-1989. It is further contended by the respondents that the applicant refused to accept the relieving order given by the site incharge. Hence the relieving order

was sent by registered post to the applicant on 22-11-1989 which was returned unserved to the respondents. As the applicant has not worked for the period from 16-11-1989 to 7-8-1991 he is not eligible for payment of any salary. After the final judgment of the Tribunal dated 4-7-1991 the applicant was taken on duty on 8-8-1991.

5. After hearing both the learned counsel and going through the documents on record it is seen that in the interim order passed by the Tribunal dated 22-11-1989 it is clearly stated that :

"The petitioner is allowed ad interim relief in terms of impugned order not to be further implemented for a period of 15 days."

It is further stated that no substitute has taken over the post occupied by the applicant. The respondents have admitted of receiving the copy of the ad interim relief but they had not implemented the same. Even accepting that the applicant had been relieved on 15-11-89 the respondents should have taken action to implement the interim order issued by the Tribunal dated 22-11-1989 by which the impugned order was not to be further implemented for a period of 15 days. The proper course for the

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respondents was to take the applicant on duty keeping in view the fact that his substitute had not taken over from him and the vacancy was available. Furthermore inspite of representation being made and legal notice being given by the applicant to the respondents the applicant was not taken on duty. It is not the case of the respondents that the applicant was not ready to join duty nor he had absconded from duty.

6. Taking into account the long period which has elapsed since the O.A. was filed and keeping in view the fact that the transfer order was set aside by the Tribunal the ends of justice would be met by making the following order.

O R D E R

The applicant shall be paid 50% of the pay and allowances which he would have normally received as Khalasi for the period from 16-11-1989 to 7-8-1991. ~~with all allowances.~~ The said period shall be treated as service for all purposes including promotion and pension. The respondents shall make the payment of the amount due as worked out above within a period of eight weeks from the date of the receipt of a copy of this order. No order as to costs.



(V. Radhakrishnan)
Member (A)