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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

Original Application No.300 of 1996

Cuttack, this the 3rd March, 1997

Dr.Kirti Chandra Sahu

....

Applicant

Vrs.

The Secretary, Ministry of Labour, ...
Government of India,
and others

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Somnath Som

(S.SOM)

VICE-CHAIRMAN

3.3.97



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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH; CUTTACK.**

Original Application No.300 of 1996
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CORAM:

HONOURABLE SHRI S.SOM, VICE-CHAIRMAN

Dr.Kirti Chandra Sahu,
aged about 49 years,
son of Durgamadhab Sahu,
Vill.Narla, Dist.Kalahandi,
at present working as Chief Medical Officer,
Mobile Medical Unit,
Office of the Labour Welfare Commissioner,
Ministry of Labour,
33, Ashok Nagar,
Bhubaneswar

.... Applicant

Advocates for applicant -

Dr.D.B.Mishra,
N.C.Mishra,
P.K.Mohapatra &
S.Pattajoshi.

-versus-

1. **The Secretary,**
Ministry of Labour,
Government of India,
Shramashakti Bhawan,
Main Secretariat,
Rafi Marg, New Delhi.
2. **Union of India, represented**
through the Secretary to Government of India,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110 001
3. **The Welfare Commissioner,**
Labour Welfare Organisation,
Ministry of Labour,
At-Karma, P.O.-Jhumritaliaya
Dist. Hazaribag, Karma,
Bihar.
4. **The Welfare Commissioner,**
Labour Welfare Organisation,
Ministry of Labour,
33, Ashoknagar, Bhubaneswar

..... Respondents

Advocate for Respondents -

Shri Ashok Mohanty,
Sr.Central Govt.
Standing Counsel.

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O R D E R

S.SOM, VICE-CHAIRMAN

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Dr. Kirti Chandra Sahu, Chief Medical Officer, Mobile Medical Unit, office of the Labour Welfare Commissioner, Bhubaneswar, for getting transfer T.A. and D.A. and for extension of joining time from 10.8.1993 to 25.11.1993. He has also asked for crediting the unavailed ten days of joining time to his earned leave account. Facts of the case fall within a small compass and can be stated for appreciating the points raised in course of hearing of the matter.

2. The applicant joined as a Medical Officer of Central Health Services under the Ministry of Health and Family Welfare in 1977. After working at different places in Nagaland and West Bengal, he was working as Senior Medical Officer in Labour Welfare Organisation, Karma in Bihar. He represented for a transfer to Bhubaneswar or Berhampur in Orissa in that order of priority in order to look after his school going children and old and ailing parents. In consideration of his representation, in order dated 3.6.1992 he was transferred from Labour Welfare Organisation, Karma to P & T Dispensary at Berhampur in place of Dr. R.N. Pradhan, Chief Medical Officer there, and Dr. R.N. Pradhan was transferred from Berhampur to Labour Welfare Organisation, Karma. In the order of transfer, it was mentioned that the transfer had been made in public interest. Dr. Pradhan filed a case before the Central Administrative Tribunal in O.A.No.290/92 and was not relieved. That case was dismissed in judgment

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dated 14.9.1992 and on 4.11.1992 the Under Secretary, Ministry of Health & Family Welfare instructed the Deputy Director General (M), Department of Posts to relieve Dr.Pradhan for reporting at Karma, Bihar. The Department of Posts issued orders on 3.12.1992 posting the applicant as Senior Medical Officer, P & T Dispensary, Berhampur and in the same order it was also indicated that Dr.Pradhan, who was apparently on leave, would join the Labour Welfare Organisation, Karma, on expiry of his leave. Subsequently the Ministry of Health & Family Welfare issued another order dated 4.2.1993 in which in partial modification of order dated 3.6.1992 the applicant was posted to Labour Welfare Organisation, Bhubaneswar instead of P & T Dispensary, Berhampur and Dr.R.N.Pradhan was allowed to continue at P & T Dispensary, Berhampur. In this order also it was mentioned that the transfer had been made in public interest. Welfare Commissioner, Ministry of Labour in his order No.980 dated 22.7.1993 relieved the applicant from Central Hospital, Karma on 9.8.1993 in the afternoon. In this order it was specifically mentioned that he was allowed transfer T.A./D.A. and usual transit time. After getting relieved from Karma, the applicant reported in the office of Welfare Commissioner, Bhubaneswar on 13.8.1993 and submitted his joining report. Welfare Commissioner, Bhubaneswar, in his letter of the same day, which is at Annexure-8, indicated to the applicant that his joining report at Bhubaneswar was not accepted and he was instructed to report for duty at Central Hospital, Joda, in accordance with the order dated 18.3.1993 already communicated to him. The applicant filed a representation on 14.8.1993 and apparently went back to Karma and took up the matter with higher authorities.

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On 28.5.1993 the Welfare Commissioner, Bhubaneswar intimated to the Ministry of Labour that he had no objection if the applicant was transferred to Bhubaneswar in place of Dr.P.C.Misra. It was also suggested that Dr.P.C.Misra, Chief Medical Officer working in Mobile Medical Unit, Bhubaneswar be transferred to Central Hospital, Joda in place of Dr.K.C.Nayak, Chief Medical Officer, who was under orders of transfer to P & T Dispensary, Ranchi. On receipt of this proposal, the Ministry of Labour issued order dated 23.11.1993 in which the applicant was posted to Mobile Medical Unit, Bhubaneswar from Central Hospital, Karma, in place of Dr.P.C.Misra, and Dr.P.C.Misra, Chief Medical Officer, Mobile Medical Unit, Bhubaneswar was transferred to Central Hospital, Joda. In paragraph three of this order it was indicated by the Under Secretary, Ministry of Labour that the transfer of Dr.Misra was in public interest and he would be entitled for usual transfer T.A./D.A. and joining time, and the transfer of the applicant was at his own request for which no T.A./D.A. and joining time would be admissible. In pursuance of this order, the Welfare Commissioner, Karma in his order dated 1.12.1993 once again relieved the applicant from Labour Welfare Organisation, Central Hospital, Karma with effect from 10.12.1993 afternoon and directed him to report for duty to Welfare Commissioner, Labour Welfare Organisation, Bhubaneswar. Following the Ministry's order, in this order it was mentioned that no T.A./D.A. and joining time would be admissible. The applicant apparently had drawn his transfer T.A./D.A. advance at the time he first came to Bhubaneswar and because of this order he is now being asked to return the amount. Hence he has come up with this application.

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3. In the context of the above facts, the prayers of the applicant can be taken up. The applicant has prayed that his joining time should be extended from 10.8.1993 to 25.11.1993 by treating the said period as duty and unavailed 10 days joining time should be credited to the earned leave account of the applicant. I find from paragraph 10 of the counter that the period from 10.8.1993 to 25.11.1993 has already been regularised by granting leave to the applicant which was at his credit. Obviously the applicant had applied for leave in his anxiety to regularise this period and therefore, he cannot now claim to treat this period as duty. As such this prayer is rejected. As a corollary his next prayer for crediting a portion of the unutilised joining time to his leave account also fails and is rejected. In any case when the above period has been regularised by granting leave to him, then he must have shown the full joining time and thereafter the balance period has been converted into earned leave. So there cannot be any question of crediting any period to his leave account.

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4. The last prayer of the applicant is regarding getting his transfer T.A. and D.A. Even though in the concluding portion of paragraph 4.21 of his application the applicant has claimed that he is entitled to get transfer T.A. and D.A. twice for coming to Bhubaneswar from Karma twice, in course of hearing, learned lawyer for the applicant fairly conceded that his claim should be limited to one transfer T.A. and D.A. and to that extent he has filed a petition dated 18.2.1997 which is kept on record. On the basis of orders referred to earlier,

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it is seen that the Ministry of Health who is the cadre controlling authority for the applicant had initially ordered on 3.6.1992 that the transfer of the applicant to Berhampur was in public interest even though the transfer was asked for by the applicant. The Department of Posts in their order dated 3.12.1992 also followed the order of the Ministry of Health and did not mention that no T.A/D.A. would be allowed to the applicant. In the next order of the Ministry of Health on 4.2.1993 transferring the applicant to the Labour Welfare Organisation, Bhubaneswar, it was also mentioned that the transfer was in public interest. The Ministry of Labour in their first order dated 22.7.1993 by Welfare Commissioner, Bihar in transferring the applicant to the Labour Welfare Organisation, Bhubaneswar, has specifically mentioned that he is allowed transfer T.A/D.A. and usual transit time. In the face of all this, it was unreasonable on the part of the same Ministry of Labour to order on 23.11.1993 that no T.A/D.A. and joining time would be allowed to the applicant for the said transfer from Karma to Bhubaneswar. Even at the risk of repetition I would like to note that in the Welfare Commissioner's order dated 22.7.1993 relieving the applicant to enable him to report for duty to the Welfare Commissioner, Labour Welfare Organisation, Bhubaneswar, he was specifically allowed transfer T.A/D.A. and usual transit time, and on that basis he had drawn these amounts. Thereafter when Dr.Misra was transferred from Bhubaneswar to Joda, in the order it was mentioned that no transfer T.A./D.A. and joining time would be admissible to the applicant. There was no additional material before the

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Ministry of Labour for making this change because that he wanted a posting at Bhubaneswar and had applied for it it was known to both the Ministries of Health and Labour long before and notwithstanding that the Ministry of Health had allowed the transfer in public interest and Welfare Commissioner had ordered for giving him transfer T.A/D.A. and transit time.

5. In view of the above, I hold that the applicant, Dr.Kirti Chandra Sahu is entitled to get his transfer T.A/D.A. and usual joining time for his transfer from Karma to Bhubaneswar and it is so ordered. The application is, therefore, allowed in part. Recovery of transfer T.A. and D.A. advance, if already made from Dr.Sahu, will have to be returned to him. There shall be no order on costs.

Sourabh Das
(S.SOM) 3.3.97
VICE-CHAIRMAN

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