

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 526 OF 1998
Cuttack this the 13th day of July, 1999

(PRONOUNCED IN THE OPEN COURT)

Prahallad Charan Samal

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No*

13-7-99
(G.NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.526 OF 1998
Cuttack this the 13th day of July, 1999

CORAM:

THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Dr.Prahallad Charan Samal,
aged about 50 years,
S/o. Harekrushna Samal,
at present working as
Chief Medical Officer,
At: Central Rice Research Institute,
Orissa, Bidyadharpur
Cuttack

...

Applicant

By the Advocates : M/s.K.P.Mishra
B.S.Misra
S.Rath
J.K.Khandayat Ray
Mr.Rajat Kumar Rath

-Versus-

1. Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi
2. Director,
Central Rice Research Institute,
Orissa, Bidyadharpur, Cuttack
3. K.C.Mathur,
Director,
Central Rice Research Institute,
Orissa, Bidyadharpur
Cuttack

...

Respondents

By the Advocates : Mr.Ashok Mishra

...

MR.G.NARASIMHAM, MEMBER(J): Heard Shri R.K.Rath, learned counsel for the applicant and Shri Ashok Mishra, learned senior counsel for the respondents(Department). Also perused the records.

2. The applicant, who was on duptation to C.R.R.I., Cuttack as Medical Officer, was transferred to I.B.R.I., Izatnagar(U.P.) on 18th May, 1997. In Original Application No.538/97, he challenged this order of transfer before this Bench. On 7.4.1998, the order of transfer was quashed on the ground that the same was not sustainable in the eye of law. Consequently the applicant who was on leave ^{all} ~~on~~ these days and could not attend duties from 18.2.1997 onwards, resumed duties on 13.4.1998 at C.R.R.I., Cuttack. O.J.C. No.14691/98 filed by the respondents challenging the judgment of this Tribunal has since been dismissed by the Hon'ble High Court, as submitted by the Bar.

3. In this application the applicant prays to treat the period from 18.2.1997 to 12.4.1998 as on duty and to direct the respondents to disburse/release arrear salaries of the applicant.

Though no counter has been filed, Shri Ashok Mishra, learned senior counsel for the respondents filed a letter/instruction received from the respondents, viz., C.R.R.I., Cuttack, that the applicant has since been relieved from the Institute on the After-noon of 1.3.1999 because of the order of repatriation received from the Ministry of Health and Family Welfare and ^{that} ~~he~~ has been sanctioned leave for the entire period from 18.2.1997 to 12.4.1998 and the entire arrear amount ^{Rs.1,21,359/-} ~~towards~~ salary for

above said period including his leave salary and T.T.A. etc. has been paid to him. It is seen from this letter of instructions that he has been granted commuted leave from 18.2.1997 to 17.7.1997, E.L. from 18.7.1997 to 28.12.1997, commuted leave from 30.12.1997 to 3.1.1998, E.L. from 4.1.1998 to 21.3.1998 and E.O.L. from 22.3.1998 to 12.4.1998.

Learned counsel for the applicant contended that since the applicant could not attend duties ^{all} on these days on account of orders of transfer, which was quashed by the Tribunal on the ground that the same was not sustainable, ~~accordingly~~, the entire period shall have to be treated as duties. In this connection he places reliance on the decision of the Division Bench of C.A.T., Ernakulam Bench in the case of **M.Sankaran Kutti vs. Director General, Telecommunications**, reported in ¹⁹⁸⁸⁽⁷⁾ ~~1988(5)~~ SLR 654, wherein the Ernakulam Bench relying on the decision of Karnataka High Court in **Manchaiah vs. Director of Medical Education**, 1985(1)SLJ 128, held that once an order of transfer is quashed, the employee cannot be made to suffer due to non-compliance of the order of transfer, ^{the} legal validity of which could not be upheld, ~~and~~ the period of absence cannot be due to any default on the part of the employee. The Bench further held that filing of application for leave by the concerned employee under such circumstance would mean filing of the applications under compulsion to get some ^{salary} ~~saviour~~. In view of this ruling of the Division Bench, ^{we} ~~we~~ have no hesitation to say that even if the applicant had applied leave to regularise the period of absence, it was under

compulsion. Since the order of transfer has been held to be not sustainable under law and consequently quashed, the entire period of absence has to be treated as on duty.

I, therefore, direct the respondents to treat the period of absence of the applicant from 18.2.1997 to 12.4.1998 as on duty and consequently sanction pay and emoluments and disburse the same to the applicant after deducting the amount, if any, already paid. The entire exercise shall be completed within a period of 90 days from the date of receipt of this order.

In the result, the application is allowed, but without any order as to costs.

B.K.SAHOO

13-7-99
(G.NARASIMHAM)
MEMBER(JUDICIAL)