

31

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.428 of 2013

Cuttack this the ~~7~~ day of November, 2014

CORAM:

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Bhanu Kishore Biswal
Aged about 48 years
S/o. late Kanhu Charan Biswal
At-Adhanga, PO-Kuanpal, PS-Mahanga
Dist-Cuttack
At present working as L.D.C.,AIR, CCW
All India Radio Cuttack
Dist-Cuttack

...Applicant

By the Advocate(s)-Ms.U.R.Padhi

-VERSUS-

Union of India represented through

1. Secretary to Govt. of India
Ministry of I & B,
Sashtree Bhawan
5th Floor
New Delhi-110 001
2. The Director General (C.E.O.)
All India Radio P
rasar Bharati Broad Casting Corporation of India
Parliament StreetAkashbani Bhawan
New Delhi-110 001
3. Station Director
Prasar Bharati Broad Casting Corporation of India
All India Radio
Cuttack
District-Cuttack-753 001
4. Executive Engineer(Civil)
Civil Construction Wing
All India Radio
PO-Sainik School
Near Door Darshan Kendra
Bhubaneswar-751 005
Dist-Khurda



32

5. The Asst.Engineer(Civil)
Civil Construction Wing
All India Radio
Bhubaneswar
Dist-Khurda
6. The Addl.Director General (P)
Eastern Region
All India Radio-J1
Akash Vani Bhawan
Kolkata-700 001
7. The Dy.Director General(P)
All India Radio
Dr.P.K.Parija Marg
Cuttack-753 001

...Respondents

By the Advocate(s)-Mr.P.R.J.Dash

ORDER

R.C.MISRA, MEMBER(A):

The applicant, who is an L.D.C. in the All India Radio, Civil Construction Wing(CCW), Cuttack has approached the Tribunal in this O.A. claiming the following relief.

- i) To allow this Original Application and notice to show cause to the Respondents No.2, 3 and 4 why the applicant's case shall not be considered for disbursing the monthly salary w.e.f. May, 2012 (which has not yet disbursed) till date keeping in view of Annexure-A/1 series and Annexure-A/6(a) to the O.A.
- ii) To pass an appropriate order directing the Respondent No.2 for quashing/setting aside the Memorandum issued by the Respondent No.4 to the Applicant vide Annexure-A/6 along with other memos dtd. 17.4.2012, 23.4.2012/24.5.2012 since the order dtd. 28.3.2012 has not yet



33

been carried out by the Respondent No.3

- iii) To pass an appropriate order directing the Respondent No.3, 6 and 7 to consider the representation and vide Annexure-A/5(a) and A/B along with other representations dtd. 2.4.2012 and 9.4.2012 within a stipulated period and disburse the arrear dues at least pending disposal of this O.A.
- iv) To pass appropriate orders may be deemed just and proper in the facts and circumstances of the case and allow this O.A. with costs.

2. The facts of the case are that the applicant was transferred from AIR, Cuttack to CCW, AIR, Rourkela by an order dated 2/5.09.2011 of the Respondent authorities. He was also relieved from his place of posting for joining at CCW, AIR, Rourkela by an order dated 24.10.2011. The applicant being aggrieved by these orders, challenged the same by filing O.A.No.738 of 2011 before the Tribunal. This O.A. was disposed of by an order dated 28.3.2012. A perusal of this order reveals that the respondents by filing a counter affidavit opposed the prayer of the applicant, mentioning that the Cuttack Sub-Division was shifted to Rourkela for smooth functioning of the office of the Asst. Engineer(Civil), CCW, AIR, Rourkela as per the order of the Director General, CCW, AIR, New Delhi dated 7.4.2011, in view of which the applicant was posted to Rourkela. On the other hand, the applicant had taken the plea

P.
Jue

34

that while other employees affected by the shifting of the Sub-Division were adjusted either at Cuttack or nearby places, he was transferred to Rourkela, which was a glaring action of discrimination by the Respondents. The Competent Authority, while ordering the shifting of the Sub-Division from Cuttack and its staff, made a specific request to the Station Director, Cuttack to adjust the administrative staff of Cuttack Sub-Division and post substitute for newly created Sub-Division at Rourkela. In fact, none except the applicant was transferred to Rourkela.

3. The above mentioned O.A. was disposed of with an order that the applicant would submit a fresh representation within a period of seven days which the Respondents will consider and dispose of with a reasoned order in a period of fifteen days thereafter. Till the disposal of the representation, it was directed that the order of status quo dated 1.11.2011 would remain in force. Based upon the direction of the Tribunal, the applicant submitted a representation dated 9.4.2012 to Director, All India Radio, Cuttack requesting for his accommodation either at Akashvani or at Door Darshan High Power Transmission at Cuttack. But after sympathetically considering the representation, the competent authority did not find it possible to accede to his request. The decision of the authorities was communicated to the applicant by Memorandum dated 17.4.2012. However, applicant has moved



35

the Tribunal for passing an order to Respondents to disburse his monthly salary with effect from May, 2012. The applicant has also prayed for quashing a Memorandum issued by Respondent No.4 to the applicant. I have perused this Memorandum copy of which is placed at Annexure-A/6 of this O.A. This Memorandum dated 18/19.09.2012 is a direction to the applicant to join at CCW, AIR, Rourkela since his representation was considered sympathetically, but rejected, and he has been relieved in the after-noon of 30th October, 2011 from CCW, AIR, Cuttack. It has been also intimated that applicant's salary will be released after his joining at Rourkela Sub-Division. According to this Memorandum, the applicant was continuing on leave, without submitting application.

4. The applicant has also alleged violation of the interim order of the Tribunal in O.A.No.738 of 2011 in which it was directed that till the disposal of representation the status quo order dated 1.11.2011 of the Tribunal will remain in force. Applicant's counsel argued that the relieve order of the applicant was a 'stand relieve order' and, not a final relieve order.

5. On the other hand, the learned counsel for Respondents has submitted that the applicant was relieved on 31.10.2011, and before status quo order dated 1.11.2011 was passed, the applicant was already relieved. It is worthwhile to mention that alleging violation of the status quo order of the Tribunal,

36

applicant had filed C.P. No.90/12. In the meantime, the said CP has been heard and decided. The Tribunal has found no merit in the Contempt Petition, and dropped the proceedings. It has therefore been decided that the status quo order of the Tribunal was not violated by the authorities. The relevant part of the order of the Tribunal in CP No.90/12 is quoted below.

"In view of the above, since the order of this Tribunal has been duly complied with by the alleged contemnors, we do not find any reason to hold that the alleged contemnors have committed any contempt more so willful or deliberate. Accordingly, the C.P. is dropped. Notices are recalled".

6. The main prayer of the applicant is that his salary which has been held up since May, 2012, may be disbursed to him. It is, however, admitted that applicant was relieved on 31.10.2011, and thereafter did not join his new place of posting in spite of the direction of the authorities. He has been continuing on unauthorized leave since then. The applicant's counsel in the written note of argument submits that applicant was living in a financially precarious position because of non-receipt of salary for a long period. On the other hand, learned counsel for the Respondents submits that unless work is done, no salary can be paid. The learned counsel for the Respondents is on sound legal footing. Unless an employee joins work and discharges his duty, it is inconceivable that payment of salary will be expected. In the given circumstances, the Tribunal



cannot pass any direction for disbursing pay of the applicant. It is incumbent upon the applicant to join his new place of posting, and thereafter, only, his demand for salary will have force with the authorities. As per the record, applicant has also not submitted any application for leave, leading us to a conclusion that he is on unauthorized leave. Being an employee of the Government, it is expected that he would be aware of the discipline and conduct rules attached to his job and would follow the instructions of authorities, lest he would be charged with disobedience of orders.

7. Law is well settled that transfer is incidental to the life of a Government employee, and the decision of authorities to transfer a Government servant is administrative in nature where the Courts and Tribunal would not interfere, unless there are some exceptional situations like infringement of statutory regulations, and grounds of mala fide. In the case of Mrs.Shilpi Bose vs. State of Bihar and Ors. reported in AIR 1991 SC 532(C.A.No.5418 of 1990), the Hon'ble Apex Court observed as follows.

"A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights".

8. In case of the present applicant, being aggrieved by the order of transfer, he approached the Tribunal in the first

38

instance, and the Tribunal passed orders that applicant will make a representation which the Respondents will consider and dispose of with a speaking order. After the disposal of representation, the Respondents passed an order turning down the request of the applicant. The applicant has not joined his new place of posting, and has claimed his salary for the period after he has been relieved, and not reported for duty in the new place of work. The conduct of a Government Servant must demonstrate the qualities of discipline and obedience to the valid order of the authorities. Salary cannot be demanded as a matter of right when no work is discharged. There was visible misconduct on the part of the applicant in not joining his new place of work. The applicant must therefore join his new place of posting forthwith.

9. However, after the joining in his new place of posting the applicant is free to make a representation to the Respondent-authorities incorporating his difficulties and grievances asking for a fresh consideration. The applicant has already averred that all other employees affected by the decision of shifting of the CCW Sub-Division to Rourkela have been absorbed in and around Cuttack. The applicant is the only employee shifted to Rourkela. The applicant may make fresh application to the authorities submitting all his grievances, after his joining in the new place of posting, which the Respondents shall consider with due sympathy.



31

With these observations, the O.A. is dismissed being
devoid of merit. No costs.

R. C. Misra
(R.C.MISRA)
MEMBER

BKS

