

CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA.

ORIGINAL APPLICATION NO.1493/96.

Dated : 10.5.2005.

Hon'ble Shri J.K.Kaushik, Judicial Member,
Hon'ble Shri Anand Kumar Bhatt, Administrative Member.

Gokul Bhattacharya,
S/o. Late Bholanath Bhattacharya,
Assistant Surveyor of Works,
Office of the Superintending Surveyor
Of Works (EZ-I), C.P.W.D., Nizam Palace,
Calcutta - 700 020, a resident of
P.O. & Village - Sonarpur, near
Shishu Niketan,
District - 24 Paraganas (South)
(By Advocate Shri N.C.Chakraborty)

...Applicant.

v.

1. Union of India service through the
Director General of Works,
Central Public Works Deptt.,
Nirman Bhawan,
New Delhi.
2. The Director of Administration,
C.P.W.D.,
Nirman Bhawan,
New Delhi.
3. The Chief Engineer (EZ),
C.P.W.D., Nizam Palace,
Calcutta - 700 020.
4. The Superintending Surveyor of Works
(EZ-I),
C.P.W.D., Nizam Palace,
6TH floor,
Calcutta - 20.
5. The Superintending Engineer,
Coordinating Circle (EZ),
Calcutta,
C.P.W.D.,
Nizam Palace,
Calcutta - 20.

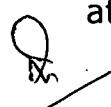
...Respondents.

(By Advocate Shri M.S.Banerjee)

: O R D E R (ORAL) :

{J.K.Kaushik, Judicial Member}

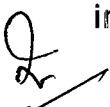
O.A. No.1493/96 has been filed under section 19 of the
Administrative Tribunals Act, 1985, wherein the order dt. 1.10.1996
at Annexure - A-1 has been assailed and has inter alia prayed for



quashing the same, in addition to seeking a mandate to the respondents for regularization of the period from 1.1.1988 to 19.10.1990 by invoking Section 8 of CCS Joining Time Rules and allowing him all the consequential benefits amongst other reliefs. We have heard the learned counsel for both the parties at great length and have very carefully perused the record of this case.

2. This is perhaps the third round of litigation, the applicant has entered into almost in the same matter. The episode starts from 23.9.1986 when an order came to be issued for re-patriation of the applicant who was on deputation to Mizoram whereby he was required to join his parent department i.e. C.P.W.D. at Calcutta. The applicant was duly relieved from Mizoram Office on his repatriation and he was to join at his headquarters at Calcutta. There was further an unusuality in the position, inasmuch as, the applicant instead of joining at Calcutta headquarters office, submitted an application for leave for a period of two months. It seems that he submitted the application without joining his duties at headquarters office, Calcutta. During his leave period he filed an OA before this Bench of the Tribunal whereby he challenged an order dt. 14.2.1985 whereby he was ordered to be transferred from Calcutta to Shillong, Meghalaya. Admittedly, before his repatriation date the said order had been passed.

3. Further facts of this case, are that. the applicant without joining at headquarters office at Calcutta or carrying out the order of transfer and joining at Meghalaya he filed above O.A. before this Bench of the Tribunal, whereby a specific prayer was made for an interim order, but the same came to be rejected vide order dt.



3.8.1988 on the ground that it was brought to the notice of this Bench of the Tribunal that the applicant was on leave. Thereafter, there is nothing on record to indicate as to whether the applicant has made any efforts to join at Calcutta or at Meghalaya or else he was not allowed to join on that basis. Finally, this bench of the Tribunal quashed the order of transfer dt. 14.2.1985 and it was directed vide order dt. 8.3.1990 that "applicant to report for duty at any office of the C.P.W.D. in or around Calcutta within a period of three months. Thereafter, an order admittedly came to be passed on 17.4.1990 whereby the applicant was transferred to Barasat. The applicant did report there to the Controlling Officer who probably wanted to transfer him giving posting under his control, but the applicant insisted that he should be kept only at Barasat and at no other place. The controlling authority expressed his inability on the ground that there is no post available and thereby the matter was reported to headquarters office at Calcutta. Thereafter, he despite on our insistence it has not been possible to give a link as to whether the applicant at all reported back to Calcutta or not or he was taken on duty or not. However, there is no further details available as to whether the applicant has reported to Calcutta office or he was in any way not allowed to resume his duties. There is no record to this effect. Subsequently, in December, 1990, the applicant was promoted and posted to Siliguri where he joined. Therefore, the period from 1.1.1988 to 19.10.1990 was required to be regularized. In one of the case, which the applicant had filed earlier, a direction was given to the effect that the said period should be regularized in accordance with

[Signature]

rules. The respondents have passed specific order in this regard on 3.6.1994, as well as, on 18.1.1994 at R-1 and R-2 whereby they have passed an order for regularizing the said period. As regards the period in question, the same has been treated as leave without pay.

4. The learned counsel for the applicant has contended that the applicant is being harassed in multiple way, inasmuch as, there has been a delay in promotion, as well as, due increments have not been granted to him and his pay was fixed at lower pay scale than the one he would have actually fixed. He has also contended that the transfer order came to be quashed as was illegal and in this view of the matter the intervening period ought to have been treated as spent on duty. In any case, the learned counsel for the applicant has drawn our attention to the instructions which have been issued by Comptroller and Auditor-General's decision dt. 30.8.1967 at page 574 to Appendix 10 of Swamy's Compilation of F.R.S.R. 2001 Edition. He has contended that the applicant's case ought to have been decided in the light of the aforesaid instructions which are extracted as under :

"A question has been raised whether any joining time is admissible to a Government servant who is transferred from one place to another but whose transfer is subsequently cancelled, after he has handed over charge of his old post but before he could take charge of the new post. It has been held that the period intervening between the date of handing over charge of the old post and taking over the same later on account of cancellation of transfer orders should be treated as joining time".

Therefore, he is entitled to the reliefs claimed in this application.

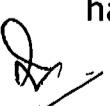
5. On the contrary, the learned counsel for the respondents has strongly opposed the contentions and has submitted that there was



no stay in favour of the applicant and therefore no fault can be fastened on the respondents. The applicant has not joined his duties and unless a person joins, he would be treated as absent. The respondents have been quite lenient in granting him the leave i.e. leave without pay and no disciplinary action has been taken against the applicant. In this view of the matter, the applicant has to thank himself for the whole episode and should not blame the respondents who had been quite fair in their action and approach.

6. We have heard the rival submissions put forth on behalf of both the parties and we find that in the beginning the matter looked quite pathetic, but when we tried to carry out a close analysis, we found that there are some missing links in this case, inasmuch as, it has not been possible for us to appreciate the facts, as once the Hon'ble Tribunal has refused the stay, why the applicant was sitting idle and why he has not joined his duties. We are also little surprised as to why the applicant when he was repatriated from Barasat, has not reported back at Calcutta. Another amazing thing is that one side the applicant had already submitted an application for grant of leave, but nothing has been said as to whether the leave was sanctioned for a period of three months or not.

7. As regards the leave position and the instructions which has been submitted on behalf of the applicant as aforesaid, we find that the same does not apply to the facts of the instant case, inasmuch as, in the instant case the applicant has not joined the place of posting and it is not a case where one is transferred from one place to another and whose transfer is subsequently cancelled after he handed over the charge of his old post. In the instant case, if at all



any transfer order existed that was on an earlier date than his repatriation and no transfer order was passed and it is only by the Hon'ble Tribunal transfer order came to be quashed. In this view of the matter, we are unable to persuade ourselves with the submission of the learned counsel for the applicant and we are of the considered opinion that the applicant has not been put to loss in any way and therefore, the applicant, as rightly said by the respondents has to thank to himself for his own inactions.

8. In the result, we do not find any force in this O.A., the same stands dismissed with no order as to costs.



(ANAND KUMAR BHATT)
ADMINISTRATIVE MEMBER



(J.K. KAUSHIK)
JUDICIAL MEMBER

B.