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In the Central Administrative Tribunal
Jodhpur Bench, Jodhpur

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Date of order : 17.11.2000

O.A.No. 116/1998

Brij Singh S/o Shri Mohan Singh aged about 57 years, R/o Arun Bhawan 138, Roopnagar BJS Colony C Road, Jodhpur, last employed on the post of Stores Supdt. in the office of Regional Director, CGWB, North East Region, Tarun Nagar Bye Lane-1, GS Road, Gauhati.

... Applicant.

Vs.

1. The Union of India through Secretary to Government of India, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.

2. The Chief Engineer and Member, Headquarter Office, Central Ground Water Board, N.H.-IV, Faridabad (Haryana).

3. The Deputy Director, Navodaya Vidyalaya Samiti, A-12, Shastri Nagar, Jaipur 302 016.

4. The Principal, Jawahar Navodaya Vidyalaya, Chhan District Tonk.

5. Regional Director, CGWB, North East Region, Tarun Nagar, Bye Lane-1, GS Road, Gauhati.

... Respondents.

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CORAM :

HON'BLE MR A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR A.P.NAGRATH, ADMINISTRATIVE MEMBER

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Mr.J.K.Kaushik, Counsel for the applicant.

Mr.V.S.Gurjar, Counsel for the respondents No. 3 and 4.

Mr.Kuldeep Mathur, Adv.Brief Holder for

Mr.Ravi Bhansali, Counsel for the respondents No. 1,2 and 5.

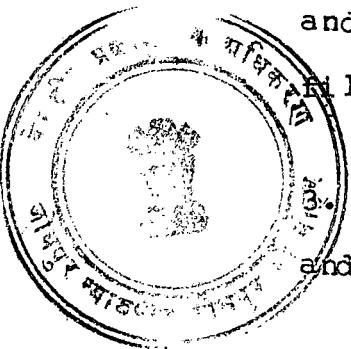
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Yours

PER HON'BLE MR.A.K.MISRA :

The applicant had filed this O.A. with the prayer that the impugned order dated 22.1.98 (Annex.A/1), rejecting the claim of the applicant for treating the intervening period from 13.3.97 to 31.7.97 as spent on duty for all purposes, be quashed with all consequential benefits and the salary of the said period be ordered to be paid to the applicant along with interest at the market rate.

2. Notice of the O.A. was issued to the respondents. One set of respondents i.e. respondents No. 1 and 2 and 5 and second set of respondents i.e. respondents No. 3 and 4 filed their separate replies each.


We have heard the learned counsel for the parties and have gone through the case file.

4. The facts of the case are not much in dispute. The only question which is required to be decided is whether the applicant could avoid proceeding to his place of posting after he was repatriated and relieved by respondent No.3 and 4 to join duties ~~with~~ his parent organisation.

5. The contention of the applicant is that due to not granting advance Transfer Travelling Allowance (for short 'TTA') and advance Pay by respondents No. 3 and 4 with whom the applicant was on deputation, he could not proceed to his place of posting and consequently the period starting from 13.3.97 to 31.7.97 be treated as having been spent on duty. On the other hand, it is the contention of

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13

the respondents that the applicant proceeded on leave after the service of transfer order and did not report on duty. Consequently, he was relieved in absentia. The applicant, thereafter, did not report on duty at either of the places, instead he filed an O.A. for grant of advance TTA and advance pay. In the mean time, a sum of Rs. 28,000/-, 15,000/- once and 13,000/- second time, was paid to the applicant as advance. However, the period which the applicant had spent at a place of his sweet will without joining the duties at the point of transfer, cannot be treated as on duty.

6. Both the learned counsel for the parties advanced their arguments in the lines of their pleadings.

7. We have considered the rival arguments and pleadings of the parties. As mentioned above, it appears that the applicant after receiving the transfer order, proceeded on leave and in order to avoid joining at his new place of posting, moved one application after another for grant of advance TTA and advance Pay. In our opinion, an employee cannot refuse to proceed on transfer simply on the ground that advance TTA and advance pay has not been granted to him. Grant of advance TTA and advance salary is only a facility which is extended to an employee by the employer as per rules. But, it is not a condition precedent for compliance of the order of transfer. What we feel is that applicant took it to be his right and continued to stay at the place of his choice without reporting to his place of posting till advance TTA and advance salary was granted to him. In 1989 SCC (L&S) 393-

8/11

Gujarat Electricity Board and Another Versus Atmaram Sungomal Poshani, it was observed by Hon'ble the Supreme Court in para 4 of the judgement as under :-



"4..... . If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case.".

From the above observation, it appears that even in absence of grant of advance TTA and advance Pay, the employee has to carry-out the transfer order and no excuse of any sort of difficulty could be entertainable. It is a common experience that the employee does not move with his family and luggage to the new place of posting in the first instance while carrying-out a transfer order. It is generally experienced that an employee goes to his new place of posting, joins there, finds out a place for his residence and, only thereafter, shifts his family and luggage as per his convenience but within the stipulated time as per rules. Therefore, in the instant case, the applicant could not have advanced the excuse that in absence of advance TTA and advance Pay, he was not in a position to move to his new place of posting.

9. Further, from the facts of the case we find that even if the applicant had moved an application on 12.3.97 for grant of advance TTA and advance Pay, as claimed by him and denied by the respondents, he did not remain on duty to pursue the application for grant of

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desired amount. Had it been so, he would not have been relieved in absentia. This shows that moving an application on 12.3.97 for grant of advance TTA etc. was only an excuse for prolonging his stay at his residence. It may also be noted that applicant was granted first instalment of advance TTA of 15,000/- by Bank Draft dated 2.6.97. If the applicant was so eager about getting that advance before proceeding to his place of posting, he could have moved to his place of posting on receipt of advance of 15,000/- rupees but he did not do so. Thereafter again, he was granted second instalment of Rupees 13,000/- in pursuance of his application by a Bank Draft dated 27.7.97. But, again the applicant did not proceed to his place of posting ~~immediately~~ thereafter but availed ^{only} leave from 1.8.97 to 23.8.97 and then reported on duty ^{only} on 27.8.97. These facts also show that so long the applicant had one excuse or the other to stay at his place, he continued to stay. After having enjoyed such a long period of stay, now the applicant is claiming that period to be regularised as on duty. But, we are unable to accede to the prayer of the applicant. Had the applicant been continuously staying at his place of posting at Chhan District Tonk and had not been relieved in absentia, he could have been treated on duty but he never stayed there. Rather, he had come to his native place i.e. at Jodhpur wherefrom he had addressed a letter dated 19.3.97 at Annex.A/6 to the Dy. Director, respondent No.3. Thereafter, letter Annex.A/7 dated 7.5.97 was also endorsed to him at his Jodhpur address. Even the instalments of advance TTA were also sent to him at his Jodhpur address. All these facts go to show that he was staying

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at Jodhpur and was making lame excuses of not granting advance TTA and advance Pay in order to carry-out the transfer order. In our opinion, the applicant had no sincere intention to carry-out the transfer order as a faithful Government servant. When he had enjoyed his stay at his native place i.e. at Jodhpur how he could be treated on duty for the period as claimed by him.

10. Further from the letter dated 16.5.97, Annex.R/1, we find that the applicant had extended threats to the concerned authorities probably due to non sanction of TTA advance. This fact finds place in the letter dated 16.5.97. Shri A.K.Sinha, was advised by the Director (Administration), to take suitable action in respect of such threat. The advise could be usefully quoted to highlight the state of applicant's conduct in this regard, which is as follows :-

"You are also requested to take up the matter with the Police authorities regarding the threat given by Shri Rathore which tantamounts to blackmailing, as it is not possible to post him at Jaipur or Jodhpur due to non-availability of a vacant post.... .".

This also shows that by extending threat the applicant wanted to stay either at Jaipur or Jodhpur and in order to prolong his stay, he had taken shelter of the excuse that advance TTA and advance salary had not been granted to him so as to enable him to carry-out the transfer order.

11. From the foregoing facts, we are of the opinion that the applicant had not acted fairly in the matter under the given circumstances and his continuous stay

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at Jodhpur after he was relieved by the respondent No. 4 in absentia in order to carry-out the transfer order, cannot be treated as a period spent on duty and consequently, the applicant is not entitled to get any pay etc. for the said period. The Original Application, therefore, deserves to be rejected.

12. The Original Application is, therefore, rejected.

The parties are left to bear their own costs.

Amptd

(A.R.NAGRATH)
Adm.Member

27/11/2000

(A.K.MISRA)
Judl.Member

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Copy of order dated 7/11/02 sent to 426 alt 11/12/2002
order dated 7/11/02 sent to 426 alt 11/12/2002
vide No 3&4
Part II and III destroyed
in my presence on 2/2/02
under the supervision of
Section officer [REDACTED] as per
order dated 10/11/02

Section officer [REDACTED]

AT 12:15 PM
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