

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

I/6

O.A. No. 04/2002

DATE OF DECISION 15.11.2002

Mukesh Sharma

Petitioner

Mr. Parmendra Bohra

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. S.K. Vyas

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. -

1. Whether Reporters of local papers may be allowed to see the Judgement ? No.
2. To be referred to the Reporter or ~~not~~ ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes.
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.


(J.K. Kaushik)
Judl. Member

I/7

CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO.: 04/2002

DATE OF ORDER: 15.11.2002

Mukesh Sharma son of late Shri Ram Kishan Sharma,
resident of C-B-AIR Colony, Jai Narayan Vyas Nagar,
Bikaner - official address: Mukesh Sharma, Announcer,
All India Radio, Bikaner.

...APPLICANT

VERSUS

1. Union of India through Secretary,
Ministry of Information and Broadcasting,
Shastri Bhavan, Dr. Rajendra Prasad Road,
New Delhi.
2. Director General, All India Radio,
Akashvani Bhawan, Parliament Street,
New Delhi.
3. Chief Executive Officer,
Prasar Bharti Corporation,
Parliament Street, New Delhi.
4. Station Director,
All India Radio,
Bikaner.

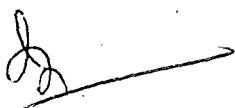
...RESPONDENTS.

For the applicant : Mr. Parmendra Bohra, Advocate.

For the respondents : Mr. S.K. Vyas, Advocate.

CORAM:

THE HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER



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: O R D E R :

PER KAUSHIK, JUDICIAL MEMBER

The admitted factual position as per the pleadings of the parties is that the applicant while working on the post of Announcer grade IV of All India Radio Bikaner was ordered to be transferred to Banswara vide order dated 8/9.6.2000. This order was assailed before this Bench of the Tribunal vide Original Application No. 163/2000 (Shri Mukesh Sharma vs. Union of India & Ors) and the same was allowed in the following terms:-

"15. The Application is, therefore accepted. The impugned transfer order dated 8/9.6.2000, Annex.A/1, is hereby quashed qua the applicant. The respondents are directed to accommodate the applicant at Bikaner as a consequence of the aforesaid order, within a period of one month from the date of communication of this order. The parties are left to bear their own costs."



Thereafter, he was allowed to join his duties at Bikaner on 01.12.2000. He did not carry out the order of transfer and was issued with a letter dated 29.11.2001 asking him to submit the leave application for the intervening period from 28.06.2000 to 30.11.2000 so that the period of absence can be regularised. Thereafter, the impugned order dated 06.12.2001 has been passed vide which the intervening period i.e. period of absence from 28.06.2000 to 30.11.2000 has been regularised as under:-

Earned Leave (Dated 28.06.2000 to 09.10.2000)
 Half Pay Leave (Dated 10.10.2000 to 30.11.2000)

2. The applicant ~~has~~ filed this application under Section 19 of the Administrative Tribunals Act, 1985, and has assailed the order dated 06.12.2001 (Annexure A/1), inter-alia on the grounds that the impugned order is per se illegal, arbitrary and discriminatory. The another

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ground is that since the transfer order itself was quashed, then the necessary consequences which flows therefrom is as if the order of transfer was never passed qua the applicant. There was no question of asking the applicant to submit leave application for the said period and he is entitled for the salary of the same periods there being no fault of the applicant. Yet another ground which has been mentioned is that the applicant has neither been allowed the salary for the intervening period nor allowed the due increments. Such action is un-warranted and contemptuous. Lastly, the impugned order does not contain any reason for grant of half pay leave for 52 days and the same is violative of principle of natural justice in addition to visiting the applicant with immense irreparable injury.

3. A detailed counter reply has been filed with three preliminary objections. It has been submitted that since there was no vacancy for the post of Announcer at All India Radio, Bikaner, one post had to be transferred from Banswara to Bikaner, to accommodate the applicant. The other two objections are in relation to that there is no provision under the rules to treat the period of un-authorised absence. Nextly, "no work no pay" rule is applicable since the applicant has not worked during the period of absence, he cannot be allowed the wages for that period. At the very outset, the preliminary objections seems to be a misnomer in the present case and these may be grounds for denying the relief claimed in the Original Application and not the preliminary objection as such, however the same are overruled and the matter is proceeded on merits.

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4. The defence set-forth in the counter filed by the respondents is that there was no post of Announcer available at Bikaner and it is only to obey the directions of this Tribunal, a post was got transferred from Banswara to Bikaner to accommodate the applicant. According to the respondents, it is not a case where there has been any fault on the part of the respondents but there has been failure on the part of the applicant in as much as he never reported for duty at Banswara as per the direction and he did not carry out any duties during the period from 28.06.2000 to 30.11.2000 nor he submitted any application for regularisation of the un-authorised period. They have also submitted that the applicant was paid pay and allowances including grade increments as due and there was no question of treating the period of absence as duty during which he did not work. After regularisation of the un-authorised period, he has also accepted the payment of leave salary. They have very high regards to the orders of the Tribunal. The Original Application which is devoid of merit deserves dismissal with exemplary costs.

5. I have heard the arguments advanced by the learned counsel for the parties and have bestowed my earnest consideration to the pleadings and the documents on records.

6. The sole ground of attack put forward and argued on behalf of the applicant is that since the transfer order itself was illegal and the same has been quashed, the applicant is entitled to be treated on duty for the intervening period as he was not required to carry out any duties at the new Station and was arbitrarily relieved from the old Station.

There is no fault on his part and the complete fault was

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with the respondents that they passed illegal order. The applicant cannot be penalised for the wrong committed by the respondents and there cannot be any premium on the wrong done by the respondents.

7. The learned counsel for the respondents has strenuously contended that there was no interim order from this Hon'ble Tribunal and still the applicant had chosen not to join the duties at the transferred place. He should thank to himself and face the consequences. The transfer order remained in force valid till it was quashed. It is the applicant in-fact who was at fault and the theory propounded on behalf of the applicant by the learned counsel that there cannot be premium for doing wrong to the wrong doer and in this way the respondents cannot be burdened for the adamant attitude of the applicant who has dis-regarded the transfer order.

8. I have considered the rival contentions raised on behalf of the parties. I am of the firm opinion that the contentions raised by the learned counsel for the applicant are well founded since the settled position of the law is that if an order is quashed by the court, unless the order states otherwise, it is supposed to have been quashed from the very beginning and in the eyes of law it is non-existent from the date on which it was issued, as if the order were never passed. It cannot be argued that the court found it to be legal in the past and illegal for the future. If the order per-sists is found to be bad in law, it cannot be held to be good in for sometime and otherwise later.

The arguments of the learned counsel for the responde that since the court did not agree to stay the order of

transfer it can be presumed that the order of transfer survived till it is quashed cannot be accepted. The consideration of request of stay has nothing to do with the assessment of legality or otherwise of the impugned order. It is related only to the balance of convenience and damage or injury to the party concerned in the interim period, till the legality of the impugned order is finally adjudicated upon. It would be prejudging the issue if the refusal to grant the stay is considered to be an endorsement of the impugned order. I, therefore, find that for not complying with the order of transfer the petitioner cannot be punished by deprivation of his pay and allowances.

9. None of the parties has referred to any authority or judgment in support of their contentions. However, it has been possible to lay hand on a decision of Delhi Bench of the Tribunal passed in D.C. Sharma v. Union of India, ATR 1987 (2) CAT 113, wherein a similar controversy arose. It was a case of non-compliance of transfer order and the transfer order was subsequently cancelled by the High Court. The salary for the un-authorised absence was allowed to be paid. I have no reason but to follow the said judgment. In this view of the matter, the impugned order is not sustainable in law.

10. The up-shoot of the aforesaid discussions is that the Original Application merits acceptance and the same is hereby accepted. The impugned order dated 06.12.2001 (Annex.A) is hereby quashed. The applicant shall be deemed to have been on duty from 28.06.2000 to 30.11.2000 with full pay and allowance and all consequential benefits. However, there shall be no order as to costs.

J.K. KAUSHIK
(J.K. KAUSHIK)
J.D.L. Member

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