

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 436/2013
&
M.A No.506/2013

MONDAY,....., this the 8th day of June, 2015

CORAM:

Hon'ble Mr.U.Sarathchandran, Judicial Member
Hon'ble Mr.R.Ramanujam, Administrative Member

N.Gopalakrishnan
S/o.C.Madhavan Nair
Retired Stenographer Grade – I
All India Radio, New Delhi
Now residing at No. V/154 "Sreyeas"
Peringavu P.O, Thrissur – 680 008 | **Applicant**

(By Advocate – Mr.Lal K.Joseph)

V e r s u s

1. The Director General (News)
News Services Division, All India Radio
New Delhi – 110 001
2. The Director General
All India Radio (HQS) Parliament Street
New Delhi – 110 001
3. The Secretary
Ministry of Information and Broadcasting
Sasthri Bhavan, New Delhi – 110 001
4. The Secretary, Department of Personnel and
Public Grievances, Patel Bhavan
Parliament Street, New Delhi – 110 001..... **Respondents**

(By Advocate - Mr. N.Anil Kumar, Sr.PCGC(R))

This Original Application having been heard on 01.04.2015, the
Tribunal on ..08:06:2015. day delivered the following:



ORDER

By Hon'ble Mr.U.Sarathchandran, Judicial Member

For the reasons stated in the Miscellaneous Application No.506/13, we are inclined to condone the delay occurred in filing the O.A. However, this has been done only to facilitate the adjudication of the reliefs sought for in this Original Application.

2. This is the 6th round of litigation undertaken by the applicant since 1997. He joined the Government service as Steno III in the Films Division of the Ministry of Information and Broadcasting in 1965. During 1992, he became Steno II and was posted in Delhi. As he wished to get posted in the vacancy of Steno II in Doordarshan Kendra, Bangalore, he sent several representations to respondent no.1, which were turned down by the latter. On approaching this Tribunal his prayer was allowed by this Tribunal. While he was working at Doordarshan, Bangalore he was again transferred to Delhi. Thereafter, with great difficulty, he was posted at Thrissur temporarily in the vacancy of All India Radio, Cuttack. While he was working in Thrissur he got appointment as Private Secretary to the Chairman, Central Administrative Tribunal, Jabalpur Bench on deputation basis. On repatriation after deputation, he joined back at AIR, Thrissur on 26.07.1997. Later, on 11.09.1997 the respondent no.1 issued order posting him as Steno II at AIR, New Delhi. Applicant being a heart patient under prolonged treatment with diabetic nueropathy, he filed O.A 1343/97 to set aside the order of transfer to Delhi. Since the counsel for respondents stated before this Tribunal that if the applicant makes a representation to respondent no.2, the same would be considered. The Tribunal in its order dated 22.10.1997 directed to give a speaking order to the applicant within a month from the date of receipt of this representation. Though the applicant submitted a representation on 24.10.1997, respondent no.2 disposed it of and directed the applicant to report for duty at New Delhi forthwith. Therefore, he was informed that his

representation was not allowed. As the order of respondent no.2 was contrary to the observations made in the order of this Tribunal, applicant again approached this Tribunal with O.A 1675/97. This Tribunal allowed the said O.A vide Annexure A-1 order dated 13.08.1998, setting aside the impugned order and directed the respondents to allow the applicant to join as Steno II at Thrissur, treating the period he was kept out of duty as duty for all purposes including the pay and allowances. Applicant waited for two months. No salary was paid for the preceding 13 months. No TA/DA was paid to him to enable him to join at Delhi. In the meantime, respondent no.1 filed OP No.21583/98 before Hon'ble High Court of Kerala in. The High Court vide Annexure A-2 judgment set aside Annexure-A/1 order of this Tribunal. Applicant had not received salary for the joining period of 15 days when he joined at Thrissur from Jabalpur. He was also entitled to 15 days joining time with salary, from Thrissur to Delhi. He had worked at AIR Thrissur up to the date of Annexure A-1 judgment of this Tribunal. Finally, without any alternative and without getting any salary for the previous months and without any TA/DA, he joined Delhi on 16.12.1999. Finding it very difficult to survive, applicant's wife made Annexure A-3 representation to respondent no.4 and requested for a transfer to Thrissur and also to disburse the salary of the applicant from 21.08.1997 to 16.12.1999. Annexure A-3 representation was forwarded by respondent no.4 to the Ministry of Information and Broadcasting vide Annexure A-4 communication. Thereafter, respondent no.1 issued the impugned Annexure A-5 Office Memorandum stating that the alleged period of absence of the applicant from 21.08.1997 to 16.12.1999 for 838 days was treated as Extra Ordinary Leave without pay. Immediately applicant made Annexure A-6 representation requesting to treat the period of extra ordinary leave as leave not due. In response to Annexure A-4 direction of respondent no.4, respondent no.1 issued Annexure A-7 communication to the applicant with her name and the name of the post office mis-spelt. In Annexure A-7 it is stated by the respondent no.1 that since the applicant had taken

voluntary retirement with effect from 04.04.2001, his posting in AIR Thrissur does not arise and that the period of absence from 21.08.1997 to 16.12.1999 has been settled by grant of joining time and extra ordinary leave as requested for by the applicant and that the pay of the joining time and leave salary were already paid to him.

3. Applicant was suffering from heart ailments and wounds on both his legs and was fully bed-ridden for nearly 8 years. Due to his ill-health and the unbearable harassments by respondent no.1, he has taken voluntary retirement with effect from 04.04.2001. He continued to submit Annexure A-9, A-9(a) and A-9(b) representations and finally decided to file O.A before the Principal Bench of this Tribunal which was ordered to be filed before this Bench vide Annexure A-10 order. In the present O.A, the applicant seeks the following reliefs:

- " i) To declare that the applicant is entitled for the salary and allowances as per Annexure A-1 order of this Honourable Tribunal, for the services he rendered to the State.
- ii) To set aside the Annexures A5 Memo & A7, directing the respondent to disburse the salary and other allowances for the period from 21.08.1997 to 16.12.1999.
- iii) Such other reliefs that this Hon'ble Tribunal may deem just, fit and proper in the facts and circumstances of the case."

4. In the reply statement filed by the respondents it is contended that the Original Application is barred by limitation since the claim of the applicant is basically for payment of salary for the period from 1997 and 1999. Applicant has made a prayer for declaration that he is entitled for salary and allowances as per Annexure A-1 order of this Tribunal wherein respondents were directed to allow the applicant to join as Steno at Thrissur treating the period during which he was kept out of duty as duty for all purposes including pay and allowances. However, when the respondents approached the Hon'ble High Court of Kerala in OP (CAT) 21583/98, the Hon'ble High Court vide judgment dated 1.12.1999 quashed and

set aside the order of this Tribunal, dismissing the Original Application itself. Therefore, applicant is praying for a relief on the strength of Annexure A-1, which is no longer existing in the light of the judgment of the Hon'ble High Court. As regards, the claim for salary, respondents state that salary was already received by the applicant on 17.12.1999 on the post of Steno I when he joined at Delhi. It is after the joining time, he was granted 838 days of Extra Ordinary Leave without pay. Applicant took voluntary retirement on 04.04.2001. Respondents have indeed taken a lenient view in the case of the applicant, though his conduct was liable for disciplinary action. Respondents pray for rejecting the Original Application.

5. We have heard Mr.Shafik M.A, learned counsel for applicant and Shri.N.Anil Kumar, Sr.PCGC(R), learned counsel for respondents. We have carefully perused the documents produced by the applicant.

6. The applicant is claiming salary and allowances for the period from 21.08.1997 to 16.2.1999 i.e; for 838 days. This period was treated by the respondents vide Annexure A-5 as Extra Ordinary Leave without pay. It appears that applicant had made representation vide Annexure A- 6 to respondent no.1 for treating the said period as leave not due. It has to be noted that the aforesaid period was the time spent by the applicant in Thrissur till he finally joined at Delhi on 16.12.1999. Soon after he joined Thrissur, after having been repatriated from C.A.T Bench at Jabalpur, he rejoined at Thrissur on 26.08.1997 and on 11.09.1997 he was issued with an order of transfer to Delhi. The said transfer order was challenged in O.A 1675/97 of this Tribunal. The relevant portion of the order in that case is extracted below:-

"10. In the result, the application is allowed in part. The impugned orders Annexure A-9 and A 14 are set aside and the respondents are directed to allow the applicant to join as Stenographer Grade- II at Thrissur forthwith, at any rate within two weeks from today and to treat the period

during which he was kept out of duty as duty for all purposes including pay and allowances. The respondents have to treat that Annexure R2 dated 18.5.1998 transferring the post of Stenographer Grade - I from A.I.R, Trichur to A.I.R. Cuttack with retrospective effect from 10.01.1997 as a nullity and non est as the said order had been made for the purpose of defeating and frustrating the reliefs sought by the applicant in this application, while no necessity existed for such an order. There is no order as to costs.

Dated the 13th August, 1998. "

7. However, when the respondents challenged the aforesaid decision of this Tribunal in OP No. 21583/98, Hon'ble High Court of Kerala vide Annexure A/2 judgment held:

".....The inevitable conclusion is that the order of Tribunal is not sustainable. The same is liable to be quashed and we do so. Consequentially, Original Application filed by employee before Tribunal is to be treated as dismissed.

The Original Petition is allowed. "

8. A careful reading of Annexure A-2 decision of Hon'ble High Court of Kerala quoted above will show that the Original Application filed by the applicant i.e; O.A 1675/97 was treated as dismissed. Therefore, it goes without saying that the reliefs granted by this Tribunal in Annexure A-1 order to treat the period during which he was kept out of duty as duty for all purposes including pay and allowances also stand effaced by the judgment of the Hon'ble High Court of Kerala in Annexure A-2. Hence the respondents have no other option but to treat the aforesaid period as Extra Ordinary Leave. According to respondents this course of action was chosen by them in order to save the applicant from being proceeded against for unauthorised absence during the aforesaid period. Applicant states that he was waiting for the outcome of the judgment of the Hon'ble High Court till the OP was disposed of by the High Court on 01.12.1999. It appears to us that the respondents took a lenient view of the matter in view of the serious health problems the applicant was facing even while at Delhi till he decided to avail of the voluntary retirement scheme.



9. The applicant has narrated a sorrowful story of his health conditions and the tribulations he had to undergo for the past 8 years prior to the filing of this O.A. Despite having given anxious and sympathetic consideration of the case put forward by the applicant, we are unable to find any lawful circumstance, whereby we can come to his help.

10. It may be worthwhile to reproduce here the warning of Benjamin N. Cardozo in *The Nature of the Judicial Process*:

The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in social life'

11. As pointed out earlier, since Annexure A-1 order of this Tribunal directing the respondents to treat the period of his absence as with full pay and allowances has been set aside by the High Court of Kerala vide Annexure A-2 judgment holding that the O.A has to be treated as dismissed, it cannot be said that any right flowing from Annexure-A/1 order has survived for the applicant for the purpose of treating the period of his absence eligible for pay and allowances.

12. In the light of the above discussion, we find that the applicant is not entitled to any reliefs claimed in this Original Application. The Original Application is dismissed. The party shall suffer their own costs.


(R RAMANUJAM)
ADMINISTRATIVE MEMBER
Sv


(U.SARATHCHANRAN)
JUDICIAL MEMBER