

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 23

1991

DATE OF DECISION 17-12-91

K. Ramachandran Applicant (s)

Mr. M. R. Rajendran Nair Advocate for the Applicant (s)

Versus

Director of Doordarshan Kendra, Respondent (s)
Trivandrum and others

Mr. V. V. Sidharthan, AGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

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

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The limited claim in this application dated 30.12.90 filed under section 19 of the Administrative Tribunals' Act, 1985 is to declare that the applicant continued in service from 29.12.89 to 3.7.90 notwithstanding the impugned order of transfer which was quashed by the order of the Tribunal in O.A. 641/89. The admitted facts are as follows:

2. The applicant while working as Senior Engineering Assistant in Trivandrum Doordharshan Kendra was ordered to be transferred to Port Blair by orders dated 11.8.89 and 27.10.89. He challenged these orders in O.A. 641/89.

application

Though this ~~order~~ was dismissed on 12.8.89, the judgment was recalled as per Annexure-III order in R.A. 3/90. By another order Annexure-IV dated 29.6.90, the impugned orders were quashed with the following observations:

"In the result, for the reasons mentioned in the foregoing paragraphs, we allow the application and quash the impugned orders dated 11.8.89 and 27.10.89 passed by the Chief Engineer, South Zone, Madras as arbitrary and illegal and direct the respondents to allow the applicant to resume his duties as Sr. Engineering Assistant, Doordarshan, Trivandrum. We direct that this order should be complied with within a period of seven days from the date of communication of this order.."

3. Thereafter, the applicant submitted Annexure-V representing who was
tation quoting similar case of Mr. Pratap, Ward Robe Assistant/
transferred to DDK, Cuttack and claimed salary and
consequential benefits for the period from 29.12.89 to
2.7.1990.

4. The claim of the applicant is opposed by the respondents by filing a reply statement stating that the applicant was relieved after his transfer to Port Blair and he did not join duty either ^{at 12} /the station to which he had been transferred or at Trivandrum nor did he file any application for leave. Hence, he is not entitled to pay and other benefits as claimed by him because the period has been treated as unauthorised absence by the Department. ⁵ Unless there is specific direction from the Tribunal, the respondents are not in a position to grant the reliefs as claimed by the applicant.

5. The case cited by the applicant regarding the grant of relief to one Pratap was sought to be ^bdistinguished by the respondents as ~~xxxxxx~~ stating that the facts are different and it is not ^bsquarely applicable to

the present case. Applying the principle of 'no work no pay', the applicant cannot be granted any relief.

6. The learned counsel Shri M. R. Rajendran Nair, ^{us} stressed before/only one point; namely that after Annexure-IV order the transfer of the applicant to Port Blair from Trivandrum has no existence in the light of the finding of this Tribunal. The applicant also ~~attempted~~ ^{to} join duty at Trivandrum and when this attempt failed, he obtained an order for keeping the post of Sr. Engineering Assistant at DDA, Trivandrum vacant. Hence, the applicant is entitled to get the benefit of salary during the period of his absence in the light of the decision of the ^{the} Madras Bench of the Tribunal in ~~the~~ ^{the} O.A. 806/86. He submitted that if a ^{to mm - G} ~~Scheduled Caste~~ candidate (Shri Pratap) who was transferred to a distant place under similar circumstances and relieved from the place but allowed to rejoin duty in the same place after quashing of the order of transfer, can be granted the benefit of salary for the entire period, the applicant cannot be denied the same benefit. These facts were clearly stated by the applicant in the rejoinder filed on 31.7.91. Though the respondents filed additional reply statement on 29.10.91, they have not stated how the case cited by the applicant is distinguishable and why it is not applicable to the facts of this case. The only statement made by the

See. 1st order
in MP 1689/91.
dated 31.12.91
Counsel (the)
had submitted
case (Shri)
referred case.
Sd/-
31/11
31/12

to

respondents is that the applicant and Mr. Pratap are not in the same footing and the applicant is not entitled to salary under the principle of 'no work no pay' unless the period of absence is regularised by granting of leave by the Department.

7. Considering the case of Mr. Pratap cited by the learned counsel for the applicant, the petitioner⁴⁰ in O.A. 808/86, we are persuaded to accept the contention of the applicant that there is discriminatory treatment. There is no justification on the part of the Department in denying the benefit of salary to the applicant⁴¹ and regularisation in service/during the period of absence from 29.12.89 to 2.7.90 when similar benefit has already been granted by the Department to Mr. Pratap, particularly when the applicant made his earnest attempt to join duty at Trivandrum pending consideration of the validity of the transfer order by this Tribunal in O.A. 641/89. After filing the aforesaid O.A. since the applicant has indicated his willingness to work at Trivandrum, the principle of 'no work no pay' cannot be applied on the facts of this case.

8. In the result, we are of the view that the applicant is entitled to the pay for the period of absence from 29.12.89 to 2.7.90 and other consequential benefits of continuance⁴² regularisation in service⁴³ and / as if there was no transfer order transferring him from Trivandrum to Port Blair in the light of Annexure-IV judgment of this Tribunal dated 29.6.90 in O.A. 641/89..

42

9. The application is accordingly allowed to the extent indicated above. There will be no order as to costs.

N. Dharmadan
17.12.91.

(N. DHARMADAN)
JUDICIAL MEMBER

S. P. Mukerji
17.XII.91.

(S. P. MUKERJI)
VICE CHAIRMAN

kmm