

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Original Application No.338/2004.

Lucknow; this the day of 1st October, 2004.

HON'BLE SHRI SHANKER RAJU, MEMBER (J).

HON'BLE SHRI S.C. CHAUBE, MEMBER (A).

Madan Lal Bhardwaj, about 52, years Son of Late Sri Sita Ram, Resident of Quarter No.80-87, Type-IIIrd, Akasnsha Colony, Jankipuram, Lucknow.

...Applicant.

By Advocate: |Shri R.C. Saxena.

Versus.

Union of India through Secretary to the Government of India, New Delhi.

2. Dr. Tej Singh, Director-in-charge, National Research Laboratory for Conservation of Cultural Proerty, E-3, Aliganj, Lucknow.

...Respondents.

By Advocate:-Shri Rajendra Singh.

O R D E R (ORAL)

(BY SHRI S.C. CHAUBE, MEMBER (A)).

Through this O.A. the applicant has impugned the show cause notice dated 22.2.2002 issued by Respondent No.2 (Annexure-1) and order dated 6.8.2003 treating the period w.e.f. 3.3.1990 to 1.12.2002 as dies-non (Annexure-2). The applicant has also sought payment of full pay and allowances for the aforesaid period alongwith interest at the market rate.

...2...

2. Breifly, the facts, as per the applicant, are that after his selection by Staff Selection Commission, Central REgion, Allahabad was appointed on 13.12.1981 on the post of Accountant in the Head Quarter Office of National Research Laboratory for Conservation of Cultural, Lucknow (NRLC) in the pay scale of Rs.425-700. Later, he was declared as Permanent on this post. On 14.8.1978 the post of Office Superintendent was upgraded and redesignated as Junior Administrative Officer (Gazetted Class |II). This post of J.A.O. as per Recruitment Rules,1980 was required to be filled in by transfer on deputation failing which by direct recruitment. The applicant was on the basis of selection by UPSC appointed as JAO w.e.f. 24.7..1991 and vested with the Power of Drawing and Disbursing Officer of NRLC, Lucknow.

3. As the term of deputation period came to an end on 23.7.1994 and no order either regularising the applicant as JAO or formal sanction of extending period of deputation upto 23.7.1995 was passed. Meanwhile, Director, N.R.L.C., Lucknow written a letter to the Under Secretary to the Department of Culture for extension of deputation period of the applicant for a period of one year. He also clarified that on his repatriation or reversion the administrative set up will be effected badly. According to the applicant on 2.7.1992 one Dr. K.K. Jain, Senior Seientific Officer of N.R.L.C., Lucknow came to the room of the applicant and hitted him with a steel rod and used abosive and unparliamentory language. He was also threatened the applicant to

Abhauj

that if he did not listen about the orders issued by the Project Officer, Dr. Tej Singh. The applicant lodged complaint against Dr. K.K. Jain and Project Officer, Dr. Tej Singh who was at that time Incharge of the laboratory. After reporting the matter to the Ministry the applicant lodged an F.I.R. with the Aliganj, Police Station and on the instructions of the police, he was medically examined by the Medical Officer, Balrampur, Hospital, Lucknow. The Preliminary enquiry was ordered by the Department of Culture, Ministry of Human Resources Development, New Delhi which revels that Dr. Tej Singh was prejudiced and biased against the applicant. Latter a misconduct entry vide order dated 6.12.1992 was issued to the applicant.

4. On account of above incident, Dr. Tej Singh, was also transferred to Mysore from Lucknow. Dr. Tej Singh, filed an O.A. NO. 648/1992 in Central Administrative Tribunal and challenged the above transfer order. However, the case was dismissed and transfer order was upheld. The applicant further stated that Dr. Tej Singh, Project Officer, became highly prejudiced and annoyed with applicant for the reason that the applicant pointed out a financial irregularity with regard to the maintenance of Matador No. U.R.U. -3413 reported against him in writing. Due to malice venegence on the part of the Dr. Tej Singh, transferred the applicant to Mysore instead transferring Shri Dinesh Chandra who was already appointed as Accountant against the permanent vaca post at Mysore vide order dated 7.11.1994. In the transfer order dated 12.9.1995 Dr. Tej Singh

Khank

passed the order in a malafide manner and relieved from his present duties with immediate effect and on the other hand directed to the applicant to handover the charge to Shri Dinesh Chandra, Accountant who had already been sanctioned leave for a period of 54 days. This was purposely done by the Dr. Tej Singh to cause undue harassment to the applicant rendering him handicapped to handover charge to Shri Dinesh Chandra. Against the malafide transfer order the applicant submitted a detailed representation dated 19.9.1995 requesting for cancellation of the transfer order dated 12.9.1995 to the Secretary to the Government of India, Department of Culture. The Department of Culture stayed the transfer of the applicant for a period of ending May, 1996 vide order dated 18.3.1996. Since the charge of the applicant was taken over by the Sri Dinesh Chandra the applicant continued to work in continuation. This fact was known to the Respondents No.2 yet he mentioned in letter dated 18.3.1996 that the applicant may join Lucknow completely ignoring that the applicant was already working and was never relieved in purview of the transfer order dated 12.9.1995.

S. Against the malafide transfer order dated 12.9.1995 the applicant was filed O.A. challenging the validity of transfer order dated 12.9.1995 impleading Dr. Tej Singh by designation of Respondent No.2 and also by name as Respondent No.1. Unfortunately the prayer for stay of the impugned transfer order was rejected with the result that the applicant had no other option but to join at R.C. Mysore, under the compelling circumstances. However the applicant even without being relieved from the charge and permitted to continue at Lucknow via letter dated 18.3.1996 (Annexure-II) was in a most arbitrary and malafide way subjected to order dated

9.1.1996

27.4.1996

to

7.11.1996.

28.9.1996

to

However, the order dated 27.12.1996 was not known to the applicant for sufficient long time."

It is also stated by the applicant that the order dated 27.12.1996 was deliberately sent at the home address of the applicant at Faridabad (Hariyana) by ordinary post and the applicant could be able to get the same on 6.5.1997 while he was working at R.C.L., Mysore.

6. Aggrieved with the order dated 27.12.1996 received by the applicant only on 6.5.1997, filed O.A.No.290/1997 in Central Administrative Tribunal which is pending decision.

7. According to the applicant he was paid salary w.e.f. 15.4.1997 to 31.8.1997 but thereafter Respondent No.2 stopped paying salary to applicant w.e.f. 1.9.1997 and onwards without just and valid reason. It is further stated that Respondent No.2 unduly harassed the applicant by a possible means. Despite transferring and posting the applicant at Mysore the Respondent No.2 deliberately did not ensure for any seating arrangement of the

Ansari

applicant and no work was given to him. It is further stated by the applicant while the applicant was not being paid salary at Mysore he had to sell his residential house at Lucknow in the year 1999 to save him self and members of his family from starvation. Meanwhile, the O.A.N.39/1997 was decided by the Division Bench of Central Administrative Tribunal which quashed the transfer order dated 12.9.1995 and while doing so the Tribunal obserbed as followes:-

" We find that there is enough substance of a convincing nature to show that his transfer was malafide. Dr. Tej Singh, private respondent No.3 in this OA, against whom senious allegations have been made by Shri Bhardwaj, has failed despite notice to file a reply. It is settled that in such a situation it has to be presumed that the allegations made are well founded. The charge of malafide against Dr. Tej Singh, in the circumstances, stands proved. Having arrived at this conclusion, we are compelled to quash and set aside the respondents' order dated 12.09.1995 transferring this applicant to Mysonre."

8. According to the applicant the Depaprtment of Cullture, Govt. of India has accepted the aforesaid judgment. However, Respondent No.2 was moved an application that he had no knowledge of the fact that the Hon'ble Tribunal had also issued notice to him and that the Hon'ble Tribunal passed order dated 9.11.2000 for proceeding ex parte against him. He further prayed for setting aside judgment and order dated 22.11.2002. M.P.No.3673/2002 was moved by Respondent No.2 for setting aside judgment and order



dated 22.11.2002 which was rejected by the Central Administrative Tribunal held that Respondent No.2 had the knowledge of the proceedings and his application was highly misconceived.

9. The applicant has further challenged the show cause notice on the ground that the actual period of absence from his duties w.e.f. 3.3.1998 but the actual period of absence onwards from 3.3.1998 has not been mentioned. Thus, the show cause notice is illegal and arbitrary. Further, the applicant has argued that any period of service treating as dies-non results break in service and bring serious adverse effects and visits the employee concer with the civil consequences and this tentamounts to imposition of a major penalty. He has however denied that he never remained absent during the period 3.3.1998 to 1.12.2002. He has submitted an appeal/representation dated 25.9.2003 to Respondent No.1 i.e. Secretary to the Govt. of India, Department of Culture followed by reminder dated 5.12.2003 requesting for personal hearing. The last reminder was submitted by the applicant on 8.3.2004 but no orders of the Competent Authority have been communicated to the applicant.

10. Learned counsel for Respondent No.1 has submitted his objections to the OA and further pleaded that the appeal of the applicant agaisnt O.M. dated 6.8.2003 is pending before the Secretary, Govt. of Inida, Department of Culture, therefore, the OA is premature so for as the reliefs prayed therein. They

Amrit

have also contested the claim of the applicant and further stated that he was failed to discharging his duties from 3.3.1998 to 1.12.2002. Accordingly this period has rightly been treated as dies-non which is not a punishment Under Section 11 of the CCS (CCA) Rules.

11. We have perused the pleadings and heard the counsel for the parties.

12. It is noticed that the representation dated 25.9.2003 of the applicant is pending for consideration in the Department of Culture, Govt. of India, New Delhi. The applicant further sent reminders and have also made a request for personal hearing before the Competent Authority.

13. In our considered opinion the ends of justice will be met if the Competent Authority in the Department of Culture, Govt. of India, New Delhi allows the personal hearing to the applicant before disposing off his representations dated 25.9.2003, 5.12.2003 and 8.3.2004 (Annexure-16-17 and 18 to the O.A) respectively. Accorodingly, the Respondent No.2 is directed to dispose off the representations dated 25.9.2003, 5.12.2003 and 8.3.2004 of the applicant within a period of four months from the date of receipt of the copy of this order. No costs.

Shank
(S.C. CHAUBE)
MEMBER (A)

S. Raju
(SHANKER RAJU)
MEMBER (J)

1st October
Dated: September, 2004.
Lucknow. *km.*
ak/.