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CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

....

JUNE 1, 1990

Registration O.A. No. 190/1990

Radhey Mohan Saxena ... Applicant

vs

Union of India and ors Respondents

Hon' Mr P.C. Jain, A.M.

Hon' Mr J.P. Sharma, J.M.

(By Hon' Mr P.C. Jain, A.M.)

The applicant who was working as Head Clerk, Time Office, Northern Railway, Locomotive Workshop, Charbag, Lucknow, was transferred vide order dated 5-1-90 and posted to the Production Section vide order dated 20-1-90. The applicant challenged the above two orders in O.A. No. 145/1990(L), which was decided vide orders dated 2-5-90. The grounds of the challenge were not up-held and the petition was disposed of with the observations that the applicant may make representation to the competent authority at the earliest and the competent authority shall dispose of the same within a period of one month from the date of receipt thereof (Annexure-A-1).

2. The applicant did not make any representation as directed in the above order, but addressed a letter dated 8/9-5-90 to the Senior Accounts Officer, Northern Railway, Locomotive Workshop, Charbag, Lucknow (Annexure A-2) in which he stated that subject matter of his transfer to Production Office from the Time Office, " is stayed, as a result of filing redressal through which the impugned order of transfer vide staff order No.10 dated 5-1-90 and
(1)

partial modification dated 20-1-90 by S.O. No.26 has been opposed under reference in the C.A.T./ Additional Bench, Allahabad, sitting at Lucknow", and prayed that necessary instructions be issued to the O.S. (Time Office) to permit him to sign and work as usual in Time Office till the disposal of the representation against the transfer order which has to be submitted as earliest in view of the directions issued by the Central Administrative Tribunal and that he may please be allowed to resume in Time Office with immediate effect. This communication also shows that he has not made a representation against the transfer order in pursuance of the judgment in O.A. No. 145/90(1 Supra).

3. This application has been filed against an alleged oral order dated 9-5-90 passed by the Office Superintendent, Time Office, Northern Railway, Locomotive Workshop, Lucknow, according to which respondent no.3 did not allow him to join the duty and ^{ed}asked him to go and take duty in the Production Section.

4. The applicant has prayed for a direction to the respondents to allow him to resume his duty as Head Clerk in the Time Office, and to treat him on duty in Time Office from 9-5-90 till he resumes his duty under the orders passed by the Tribunal. He has also prayed that the respondents be directed to pay the salary and other emoluments from 9-5-90 up to the date of resuming duty.

5. We have perused the material on record and have also heard the learned counsel for the applicant. After giving careful consideration to the contentions of the

applicant, we are of the view that the application is misconceived. The order of transfer, as well as, the order of posting were subject matter of the O.A. ^{was} No. 145/90(L) which disposed of on merits. The averments made in respect to these orders in this application were also made in that O.A. Therefore, to the extent this application challenges the transfer and posting orders, this is barred by the principle of res-judicata. As regards the plea that he has not been allowed to resume duty in the Time Office, it may be stated that the order transferring the applicant from the Time Office to the Production Section having not been quashed and set aside, the applicant has no right to resume duty in the Time Office. He should have complied with his transfer order and reported for duty to the Production Section. In Gujrat Electricity Board and ors vs. Atma Ram Sungomal Poshani, Judgments today 1989(3) S.C. 20, the Hon'ble Supreme Court observed that, " Whenever, a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the transfer of order 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 the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules. x x x "

6. The applicant in this case has neither complied with the transfer order nor has he made any representation to the competent authority in respect of the same as directed in the order in O.A. No. 145/90. He has also not filed a copy of any impugned order as is required under section 19 of the Administrative Tribunals' Act, 1985. His transfer has neither been quashed, nor modified nor stayed. His assertion in his communication dated 8/9-5-90 to the effect that the subject matter of his transfer to the Production Office is stayed is factually not correct and virtually amounts to a mis-representation. It is stated in the application that when any employee goes on leave, then he shall resume his duty at the place from where he went on leave. He has not cited any rule/instructions in support of this contention. Moreover, the applicant's transfer in this case is from one section to another section of the same Office at the same place. It has neither been found to be in violation of any statutory rules, nor malafide nor arbitrary.

7. In view of the above discussion, the application is devoid of any merit and is accordingly dismissed. Though it appears to be a fit case for awarding costs against the applicant, yet taking a lenient view, we direct the parties to bear their own costs.

Shivam
MEMBER (J)
(sns)

June 1, 1990

Lucknow.

Cec. 11/6/90
MEMBER (A)