

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.106/2010

Reserved on 26.08.2014.

Pronounced on 9.9.2014.

HON'BLE MR. NAVNEET KUMAR, MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Nasir Ali, aged about 40 years, son of Late Shri Chhunu, resident of DS-84, Aliganj, Kursi Road, Behta Subhaul, Lucknow.

...Applicant.

By Advocate: Sri Praveen Kumar.

Versus.

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Directorate General NCC, West Block-IV, R.K. Puram, New Delhi.
3. The Deputy Director, Directorate NCC, U.P., Ashok Marg, Lucknow.

...Respondents.

By Advocate: Sri R. Mishra.

O R D E R

Per Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

"(1). To direct the respondents to release the salary of the applicant for the period in pursuance of the order dated 03.02.201 with other consequential orders.

(2). To release the salary for the period of July, 2009 to till the date of joining on 09.10.2009 as the

applicant was deprived of duty on account of illegal order.

(3). To pay the applicant salary regularly and other admissible dues while posting him at Lucknow.

(4). Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

(5). Cost of the present case."

2. The facts relevant to this case as averred by the applicant are that the applicant was appointed as Safaiwala at NCC Directorate, Jaipur and was subsequently transferred to NCC Directorate, Lucknow in the year 1993. The applicant was transferred from Lucknow to Dehradoon in July, 2009 but, the transfer order was cancelled by an order dated 10.07.2009 passed in O.A.No.307/2009. The applicant thereafter requested for being taken back on duty and the respondents allowed him to join duty. Since then, he is working regularly. He has preferred a representation dated 08.10.2010 by which, he requested for payment of salary for the intervening period, but he has not been given the same. Although, the applicant is working regularly but, has not been paid the salary attached to the post except for the salary of December, 2009. He submitted a representation dated 03.02.2010, for release of his salary from the month of July, 2009. The Assistant Director, Headquarters, New Delhi issued a letter dated 03.02.2010, admitting that as the applicant has joined his duties on 09.10.2009, he is entitled to pay and allowances from that date (Annexure A-6). In the same letter, it was indicated that the regularization of his absence-period is still pending a detailed statement of

case duly recommended by the DDG of the Dte is required to be forwarded to the Dte General for the purpose of regularization. Despite said order and after passing of the sufficient time he has not been paid salary for the period from the date he was sought to be transferred till he was allowed to join on 09.10.2009 as decision regarding the regularizing of this period is still awaited.

3. The respondents have filed their reply stating that the OA is defective and is not based on relevant papers and documents. They have stated that the applicant was appointed by an order dated 30.07.1990/19th October 1990 in which it was made clear that he is liable to work anywhere in India. The Director General, NCC, New Delhi issued the posting order dated 10.07.2009 posting the applicant from NCC Directorate, Lucknow UP to NCC Directorate Uttrakhand Directorate. However, the same was cancelled by an order dated 07.10.2009 passed in O.A.No.307/20009. He joined his duty on 09.10.2009, in compliance of the same. The matter of payment of his salary for the period of absence was taken up by Deputy Director, Directorate NCC, U.P., Lucknow i.e. Respondent No.3 with the Respondent No.2 i.e. Directorate General NCC, New Delhi as the period of absence has to be condoned by the Director General NCC, New Delhi and not the NCC, Directorate U.P., Lucknow. The Director General i.e. Respondent No.2 vide their letter dated 03.02.2010, passed the necessary instructions to the NCC Directorate, Lucknow, who has already paid all the pay and allowances w.e.f. 09.10.2009 onwards. An amount of Rs.54,692/- has already been paid as arrears

of salary from 09.10.2009 to 28.2.2010 as per (Annexure No.7 to the CA). He was further paid an amount of Rs.36,746/- in his SB A/c on 20.11.2009 as 60% arrears of 6th Pay Commission. Therefore, the contention of the applicant that only part of his salary paid in December, 2009 is not correct. Admittedly, the salary for the period 29.07.2009 to 08.10.2009 has not been paid as the period has not been regularized since, during that period the applicant had not joined at Dehradoon.

5. The applicant has filed a Rejoinder reply more or less reiterating his contentions as raised in the OA.

6. We have heard the learned counsel for both the parties and perused the entire material available on record.

7. The respondents have fairly admitted in para-28 of their counter affidavit that no payments have been made for the period between 29.07.2009 to 08.10.2009 as no decision regarding regularizing of this period has yet been taken. They cannot continue to evade regularizing the period of absence on the plea that the reference has been made to Headquarters. In so far as the payment for the period beginning with his rejoining his duties w.e.f. 09.10.2009 is concerned, in the face no details provided by the applicant as to what was due to him and how much was paid to him and in the face of rival submissions with documents that certain amounts have been paid, we are unable to finally adjudicate this matter.

8. In view of the above, the OA is disposed of with and direction to the applicant to provide the complete due and drawn statement month viz. from 09.10.2009 till date to the respondents within 15 days from the date of receipt of the copy of this order and thereafter, the respondents are directed to disposed of the same within a period of three months. Coming to the admitted position of non-regularization of the absence period between 29.07.2009 to 08.10.2009, the respondents are directed to take final decision regarding the same during this period. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

U.R. Agarwal
(Navneet Kumar)
Member (J)

Amit/-