

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 518/2010

This the 22nd day of December, 2010

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Hon'ble Sri S.P.Singh, Member (A)

Kali Prasad Singh aged about 49years son of late Chandra Pal Singh resident of village and Post Office- Sarkaura, District- Sultanpur.

Applicant

By Advocate: Sri Anand Kumar

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, North Block, New Delhi.
2. Ministry of Agriculture, Govt. of India, Delhi Milk Scheme, West Patel Nagar, New Delhi.
3. Controller of Accounts, Ministry of Home affairs, North Block, New Delhi.
4. Senor Accounts Officer (Administration), Principal Accounts Officer, Ministry of Home Affairs, Room No. 217, North Block, New Delhi.
5. Senior Accounts Officer, Ministry of Home Affairs, Govt. of India, Zonal Pay and Accounts Officer, Shasasthra Sima Bal, B-1/125, Sector J, Aliganj, Lucknow.

Respondents

By Advocate: Sri R.Mishra

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This O.A. has been preferred challenging the relieving order on repatriation dated 11.10.2010 passed by O.P. No. 5 in pursuance of order dated 23.9.2010 passed by O.P. No. 4, allegedly discriminating the applicant to other similarly situated employees working in the office of opposite party No.5 and the order dated 11.11.2010 passed by opposite party No.5 by means of which the applicant has been informed that in compliance of order dated 2.11.2010 passed by the Hon'ble High Court in Writ Petition No. 1645 (S/B)/2010, for status quo since he has already been relieved by the office on 11.10.2010, his status would be same. It is

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said that the present O.A. has been filed in pursuance of order dated 1.12.2010 passed in Review Application No. 471 of 2010 by the Hon'ble High Court, Lucknow Bench against the order dated 2.11.2010 passed in writ petition No. 1645 (S/B) of 2010. By means of which, it has been provided that fresh O.A. may be filed before the Tribunal.

2. Briefly stated the facts are that earlier O.A. No. 434/2010 was filed before this Tribunal which was dismissed on merits on 27.10.2010 (Annexure -11). The background facts are that the applicant was working as LDC in the Milk Scheme, New Delhi. He had applied for the post of Accountant on deputation in Shastra Sima Bal, Aliganj, Lucknow. The terms and conditions of deputation were communicated to him on 17.3.2004, according to which, the pay of the applicant was regulated in accordance with the instructions issued by DOP&T vide O.M. dated 5.1.94, 2.8.97 and 11.3.98 as amended from time to time. The period of deputation was to be initially for one year likely to be extended upto three years as per rules. The cadre controlling authority of the applicant was Chief Controller of Accounts, Ministry of Home Affairs. At the time of final disposal of the earlier O.A., it was contended on behalf of the applicant that deputation of the applicant has been terminated by the borrowing department i.e. Ministry of Home Affairs, Shastra Seema Bal (in short SSB) and he has been relieved on repatriation to his parent office vide order dated 11.10.2010 with a direction to report to D.G.M. (Admn.) Milk Scheme, New Delhi. It was contended that the applicant was suffering from ailment from 23.9.2010 to 22.10.2010 (the date on which relieving order was passed) and he was advised by the doctor to resume duty on 25.10.2010. Accordingly, he submitted his joining report to opposite party No.4 i.e. Sr. Accounts Officer, Ministry of Home Affairs, Govt. of India, Zonal Pay and Accounts Officer, Shastra Sima Bal, Lucknow but he was told that after

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issuance of relieving order dated 11.10.2010, he stood relieved from the office of Sr. Accounts Officer on 11.10.2010 itself. During the course of arguments, the learned counsel for the applicant submitted that O.A. may be dismissed as not pressed and accordingly, it was so ordered. After the dictation of the order, learned counsel for the applicant withdrew his request of not pressing the O.A. However, the O.A. was finally dismissed with no order as to costs.

3. Against this order, the applicant preferred a writ petition before the Hon'ble High Court, Lucknow Bench (Writ Petition No. 1645 (S/B)/2010) which has been disposed of finally on 2.11.2010 by passing the following order:-

"The petitioner has an alternative remedy to approach the Central Administrative Tribunal, Lucknow Bench.

Since the controversy relates to the Central Govt. employee, accordingly it is provided that in case the petitioner files Original Application along with an application for interim relief, the application for interim relief shall be considered and decided within a period of one month from the date of institution of the case and production of certified copy of the present order.

For the period of one month or till dispose of the application for interim relief whichever is earlier, the status quo as it exists today, shall be maintained.

Petition is disposed of accordingly."

Then the applicant moved a review application No. 471 of 2010 which has also been finally disposed of by passing the following orders:-

"This review petition has been filed by the applicant/ revisionist against the order dated 2.11.2010 passed in writ petition 1645 (S/B) of 2010 whereby the writ petition was disposed of with a direction to the petitioner to avail the appropriate remedy.

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We find no good ground to review the order dated 2.11.2010. However, the central Administrative Tribunal is directed to decide the Original Application of the petitioner, expeditiously preferably within a period of six months.

It shall also be open to the petitioner to approach appropriate forum for any subsequent cause of action.

Subject to above, the review petition stands disposed of finally."

4. From the perusal of the order dated 2.11.2010 passed by the Hon'ble High Court which has been extracted hereinabove, it comes out that the petition was dismissed only on the ground of alternative remedy.

5. The review petition filed by the applicant against the aforesaid order dated 11.2.2010 was also found to be devoid of any substantial ground and hence dismissed.

6. Heard the learned counsel for the parties and perused material on record.

7. At the out set, it may be mentioned that the applicant had already worked on deputation for six years. He moved a representation for permanent absorption in the grade of Accountant but that did not find favour and the first office order was passed on 23.9.2010 for his relieving. The applicant, however, applied leave with effect from same date i.e. 23.9.2010. When the applicant approached the respondent No.5 to resume duty after obtaining medical /fitness certificate, he was asked to report to the parent Department on the ground that he had already been relieved

8. As stated hereinabove, the O.A. filed earlier by the applicant impugning the relieving orders has already been dismissed by this Tribunal, against which he went to Hon'ble High Court which has

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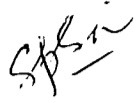
dismissed his writ petition as well as review application on the ground of alternative remedy.

9. The factum of disposal of earlier O.A. by this Tribunal, however, could not specifically find place in the orders passed by the Hon'ble High Court. Nevertheless, the validity of the impugned order, which has been once decided by this Tribunal cannot be re-opened by filing another O.A. It appears that in the present O.A., the applicant has expressed an anxiety that during the pendency of legal proceedings, he could not join the parent Department in compliance of the repatriation order dated 11.10.2010, particularly in circumstances of the status quo maintained by the Hon'ble High Court and therefore, it is necessary in the interest of justice to consider and dispose of his leave application at the level of opposite No. 5 itself. It is further stated that in absence of consideration of leave application, the applicant will suffer irreparable loss.

10. Learned counsel for the applicant confines his argument to the extent that some appropriate orders/ directions may be accorded so that there may not be any break in service on account of non-sanction of leave by the borrowing or parent department. In this regard, it is sufficient to observe that since the applicant had already been relieved by the borrowing department, he should now immediately join his parent Department. Thereafter, he may move in his parent department a fresh leave application w.e.f. 23.9.2010 to 22.10.2010 and for other intervening period till he joins in the parent department. Keeping in view all the facts and circumstances of this case and also having regard to the orders passed by the Hon'ble High Court in Writ Petition No. 1645 (S/B) of 2010 and Review Application No. 471 of 2010, we direct the respondents No. 3 to 5 to arrange to get necessary sanction of the competent authority in respect of granting him leave of the kind due.

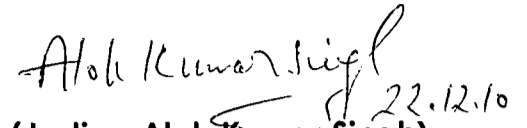
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11. With these observations, this O.A. stands disposed of without any order as to costs.



**(S.P.Singh)
Member (A)**

HLS/-



**(Justice Alok Kumar Singh)
Member (J)**