

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

O.A. 62/2005

LUCKNOW, THIS THE ^{62nd} DAY OF DECEMBER, 2005.

HON'BLE JUSTICE M.A. KHAN VICE CHAIRMAN V.C.
HON'BLE SHRI S.P. ARYA, MEMBER (A)

Q.A. Khan aged about 61 years son of late T.A. Khan, resident of Kakori, District Lucknow retired from Navodaya Vidyalaya Samiti, Regional Office-Lucknow.

Applicant.

By Advocate: In Person

Versus

1. Union of India through the Secretary, Ministry of HRD, Govt. of India, New Delhi.
2. The Commissioner, Navodaya Vidyalaya Samiti, Indira Gandhia Indore Stadium, I.P. Estate, New Delhi.
3. The Joint Director (Admn.) Navodaya Vidyalaya Samiti, Indira Gandhi Indore Stadium, I.P. Estate, New Delhi.
4. The Deputy Director, Navodaya Vidyalaya Samiti, Sector 2, Vikas Nagar, Lucknow.

Respondents.

By Advocate: Sri Anil Kumar

ORDER

HON'BLE JUSTICE M.A. KHAN VICE CHAIRMAN V.C.

The applicant is seeking a direction to the respondents to treat the period 1.9.2001 to 4.11.2001 and 20.6.2002 to 21.7.2002 as joining time and to pay the consequential benefits.

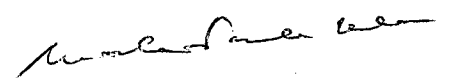
2. The facts, in brief, are that the applicant initially joined Central Council for Research in Ayurveda and Siddha at Nagpur in 1991. He was absorbed as UDC in Navodaya Vidyalaya Samiti w.e.f. 8.12.1994 at Regional Office at Lucknow. By order dated 9.8.2001, he was transferred to Head Office of the Samiti at New Delhi but the said order was cancelled vide order dated 31.7.2004 (Annexure A-3), "in view of his superannuation is due w.e.f. 31.7.2004." He was promoted to the post of Assistant on 7.5.2002. Thereafter, by another order dated 18.6.2002 (Annexure A-6), he was again

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transferred along with the post to New Delhi Head Office on administrative grounds. He was relieved from the said post to join at the transferred place by order dated 19.6.2002 (Annexure No.7). The applicant challenge this order by filing O.A. No. 325/2002 which the Tribunal disposed of on 19.7.2002 by directing the respondents to decide the representation of the applicant within one month from the date of receipt of the order and till the representation was disposed of, the transfer order dated 18.6.2002 and relieving order dated 19.6.2002 would not be given effect and that the applicant would be taken back on duty within three days from the date of receipt of the order.

3. The respondents challenged this order in a Writ Petition No.1066 (S/B) of 2002 which was dismissed on 5.8.2002 (Annexure No.9). The applicant was allowed to join duty on 21.7.2002. Thereafter the applicant approached the respondents to regularize the period from 1.9.2001 to 4.11.2001 and from 20.6.2002 to 21.7.2002 as joining time in the light of the decision of Comptroller and Auditor General of India dated 30.8.1967. It is alleged that the respondent No. 2, who was the competent authority, accorded the approval for treating this period as joining time but Dy. Director (Administration) has added the word "and leave available at the credit of the individual." in the said order. As a result the period was not treated as joining time. The applicant filed several representation but respondents have not given any favourable response. Hence this O.A.

4. O.A. is contested by the respondents and the allegations made in the O.A. were controverted in the counter reply. It is stated that the transfer order dated 9.8.2001 was cancelled on the request of the applicant made in the application dated 15.1.2001 and the order dated 30.10.2001 was issued on the request of the applicant on humanitarian grounds, so the contention of the applicant that the cancellation of the transfer order be considered in public interest was not tenable and the applicant was not entitled to any benefit of



the decision of the Comptroller and Auditor General (Annexure A-4) since it applies to the case of a transfer which is cancelled on administrative ground and not on the request of the individual.

5. In the Rejoinder the applicant has reiterated his own case.

6. We have heard the learned counsel for the parties and perused the relevant documents on records.

7. The applicant has heavily relied upon on the decision of Comptroller and Auditor General dated 30th August, 1967, copy of which is filed as Annexure -4. The decision is as follows:-

"A question has been raised whether any joining time is admissible to a Government Servant who is transferred from one place to another but whose transfer is subsequently cancelled, after he has handed over charge of his old post but before he could take charge of the new post. It has been held that the period intervening between the date of handing over charge of the old post and taking over the same later on account of cancellation of transfer orders should be treated as Joining Time. (C&AG's letter No. 997-Audit /161-67 dated the 30th August, 1967)".

8. As per averment made in the counter reply, the above mentioned decision would not apply to the case of the applicant since the cancellation of both the transfer orders was on the request of the applicant.

9. Learned counsel for applicant has submitted that the competent authority had acceded to the request of the applicant by treating the period in question as joining time but Dy. Director (Administration) has added the word "and leave available at the credit of the applicant." in the letter dated 21.10.2001 which deprived the applicant of the benefit of the order of competent authority.

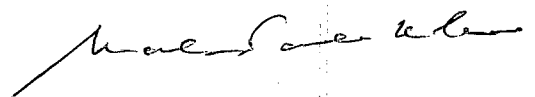
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10. During the course of hearing, learned counsel for the respondents drew attention to the documents which were filed along with the counter reply and additional counter reply which, inter-alia, showed that the applicant had submitted application for grant of leave for the period in question and the same has been sanctioned and paid. Learned counsel of the applicant has though conceded that the application for leave was submitted and the authorities have sanctioned the leave for period in question but added that the leave application was submitted under protest and the applicant had no option but to succumb to the desire of the respondents otherwise he would not have been paid pension and other pensionary dues.

11. It is admitted at the bar that the applicant was eligible for 12 days joining time in both these transfers. It is also admitted that in none of the cancellation of the transfer orders, it was stipulated that the applicant would not be entitled to the joining time since the cancellation was made on the request of the applicant.

12. It is indeed true that the transfer orders were cancelled on the request of the applicant. It is also true that the applicant had submitted application for grant of leave and the leave due has been sanctioned and paid for and he has also been granted the continuity in service and the pensionary benefits.

13. The question posed before us are two fold, firstly whether in view of the applicant's submitting leave application and grant of leave and the applicant receiving the leave pay and allowance, will he still be entitled to agitate the question of treating the said period as joining time and secondly whether the respondents ought to have treated the intervening period between the date of relinquishment of charge on transfer and date of joining back on it subsequent cancellation, as joining time?



14. It is admitted that CCS (Joining Time) Rules 1979 are applicable to the applicant. As per Rule 5 of the said rules, the applicant was eligible for 12 days joining time for jointing at New Delhi since his transfer necessarily involve continuous travel by road for more than 200 Kms. As per rule 7, the Government servant on joining time is regarded as on duty during that period and is entitled to be paid joining time pay equal to the pay which was drawn before relinquishment of charge in the old post except the conveyance allowance or permanent Traveling Allowance. The Rules do not allow joining time to a government servant whose transfer order has been cancelled subsequently. The order of Comptroller and Auditor General which has been relied upon indeed allowed the entire period between relinquishment of charge and rejoining as joining period. It does not distinguish between a case where the transfer is cancelled on the request of the government servant and a case where it is cancelled on administrative ground. In the absence of specific rule, it will be perfectly in order if the competent authority while canceling the transfer order on the request of the government servant put a condition that the intervening period would be regularized by allowing whole of it as joining time or partly as joining time which is admissible in such transfer and partly by sanction of the kind of leave due to the credit of the official or wholly by sanction of the leave of the kind of leave due to the credit of the government servant. In the instant case, no such order was passed while canceling the transfer order. Such a decision may be taken by the authorities later.

15. Competent authority in this case has decided to regularize the period in question by sanction of leave. The contention of the applicant Dy. Director (Estt.) who directed the period to be regularized by sanction of leave due by letter dated 6.8.2002 (Annexure No. 4) was not a competent authority has not been established. Even the Dy. Director (Administration) in the letter dated 21.10.2001 (Annexure A-10) had directed that the period in question be regularized by granting joining time applicable and leave available at the

credit of the individual. These two orders are not in conflict. The later decision that entire period be regularized by grant of leave is also by a competent authority.

16. Any how, the facts remains that both the transfer orders were cancelled by the respondents on the request of the applicant and not in public interest or in administrative exigencies. The respondents have already regularized the period during which the applicant did not ~~hold~~ the actual charge of the office on account of being relieved, pursuant to the transfer order and his joining the post again on its cancellation. The applicant has ~~been~~ been granted leave and has been paid for it. The applicant, therefore, does not seem ^{to} entitled the aforesaid period to be regularized as joining time. The use of word under protest in the application in our view cannot be taken advantage of by the applicant in pressing his claim in the present case.

17. As a result of the above discussion, we do not find any merit in the O.A. It is dismissed but without any order as to costs.


(S.P. ARYA)

Member (A)

HLS/-


(M.A. KHAN)

Vice Chairman