

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.354/2006

Reserved on 04.03.2014.

Pronounced on 24th March 2014.

**Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

Raj Kumar Chopra aged about 42 years, Son of late Ram Prakash Chhopra, presently posted as PGT, Jawahar Navodaya Vidyalaya, Bokaro, Jharkhand.

-Applicant.

By Advocate: Sri Y.S. Lohit.

Versus.

1. Navodaya Vidyalaya Samiti, A-28, Kalashi Colony, New Delhi through its Commissioner.
2. Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, III Floor, Sector-2, Vikas Nagar, Lucknow.
3. Principal, Navodaya Vidyalaya Balla, Rae Bareli.

-Respondents.

By Advocate: Sri Ankit Srivastava for Sri Anurag Srivastava.

O R D E R

Pre Ms. Jayati Chandra, Member (A).

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

"(a). Hon'ble Tribunal may kindly be pleased to quash the impugned order dt. 6/15.6.06 contained in Annexure No.A-1 and also to issue a direction to the respondents for payment of salary & other allowances for the period commencing from Nov. 1998 upto 3.2.2000 and from 18.8.2000 to 24.8.04, followed by the consequential benefits of the same.

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(b). *Any other order or direction may also be passed in favour of the applicants which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."*

2. The facts of the case as stated by the applicant are that the applicant had been working as PGT (Commerce) at Jawahar Navodaya Vidyalaya, Rae Bareli since the month of September, 1997. Pursuant to an arbitrary decision taken in the Chamber of the then Deputy Director, Navodaya Vidyalaya Samiti, Lucknow the applicant was relieved from the normal duties w.e.f. 27.11.1998 and he was ordered to report back after complete medical checkup. This action was taken arbitrarily as he was physically fit and did not required any treatment as he was not suffering from any kind of illness. The applicant reported for duty after obtaining fitness certificate on 30.09.1999. He was allowed to resume duty on 04.02.2000. He had earlier filed O.A.No.469/2000, which was decided on 11.09.2000 in which a direction was passed to consider his representation for payment of salary etc. and pass appropriate orders. In compliance of the direction by him order dated 01.11.2002 Deputy Director, Jawahar Navodaya Vidyalaya Samiti, Lucknow Region instructed the Principal, JNV, Rae Bareli to regularize the period from 28.11.98 to 03.2.2000 in the following manner:-

- (i). 22.11.1998 to 7.1.1999 = 41 days earned leave.
- (ii). 08.1.1999 to 3.2.2000 = 392 days extra ordinary leave. The Principal, JNV, Rae Bareilly passed order accordingly.

3. He was paid Rs.11,740/- for 41 days earned leave and noting for the period 08.1.1999 to 3.2.2000. The applicant was made a victim of the displeasure of

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respondents and as such, he was transferred from Rae Bareilly to Shillong against a non-existing post by order dated 08.08.2000 and was relieved. He filed O.A.:No.470/2000 before the CAT, Lucknow Bench and the Bench was pleased to protect his interest by an interim order dated 8.9.2000 directing the respondents to maintain status-quo in respect of the applicant and further directed that he should not be forced to join at Shillong in pursuance of the impugned transfer order. The copy of the aforesaid order dated 08.09.2000 is annexed as Annexure A-11 to the OA. The applicant was finally transferred to JNV, Bokaro and by the order dated 29.07.2004 in compliance thereof, he joined at JNV, Ujjain. The order had specifically mentioned that the issue relating to salary will be decided after his joining at JNV, Shillong. Thereafter, he made a representation dated 28.10.2004 with the request to commissioner to pass appropriate order for payment of salary for the period November, 1998 upto 03.2.2000 and from 18.8.2000 to 24.8.2004 but the respondents passed the impugned order dated 06/15.6.2006 holding that he did not work between 22.7.2000 to 24.8.2000 and that he applied for leave in order to regularize the said period. Further, he was threatened, if the leave is not applied for the aforesaid period the period in question would be treated as dies-non and salary shall not be released on the principle of "no work no pay". He has sought the quashing of the impugned order dated 6/15.6.2006 on the ground of jurisdiction as the Deputy Commissioner, Lucknow Region, Lucknow was not competent to pass the aforesaid order as at the time of issue of order as he was working under the jurisdiction of Deputy Commissioner, Patna. Secondly, the applicant's decision

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to contemplate treating the period 28.8.2004 as "no work no pay" was unjustified as he had obtained the stay order against his transfer to Shillong and continued to be on the roll of JNV, Rae Bareilly. The operation of the aforesaid order was stayed by the order of this Tribunal. His subsequent transfer to JNV, Bokaro is in the nature of cancellation of the earlier transfer order to the non-existence post at Shillong.

4. The respondents have contested the claim of the applicant through their Counter Reply. The respondents have stated that the applicant's case has to be dealt-with in different segments in so far as the applicant had filed O.A.No.470/2000 against the forcible relieving on 27.11.1998 and had prayed for payment of salary and wages w.e.f. 28.12.1990 till January, 2000. This OA was dismissed with an order passed on 19.3.2004 in which the applicant was directed to submit a representation indicating his place of preference of posting and the respondents were directed to take a decision regarding the salary for the period from when he was relieved on medical grounds and subsequently, transferred to Shillong. As a result of the aforesaid direction, the applicant was transferred to JNV, Bokaro and joined there on 25.8.2004. The issue of payment of salary from 1998 to 3.2.2000 and 18.8.2000 to 24.08.2004 was dealt with and order dated 6/15.6.2006 i.e. the impugned order was passed. In the impugned order it is clearly stated that the applicant did not perform any duty from 22.8.2000 to 24.08. 2004 and the period would be regularized on receipt of application from the applicant for sanctioning of leave that was available to him or else on the ground of "no work no pay". In the meantime, the

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applicant filed O.A.ANo.558/2006 before the Principal Bench, New Delhi and the same was disposed of by an order dated 26.3.2007. The relevant portion of the order reads as follows:-

“As we find the OA of the applicant is exhaustive with all his contentions, let this OA be treated as a consolidated representation by the respondents and the claim of the applicant for pay and allowances, as referred to in para 8 (a) of the OA on supporting documents, be decided within a period of two months from the date of receipt of a copy of this order by passing a reasoned and speaking order. If the applicant is still aggrieved, it shall be open for him to revive the present OA. No costs.”

5. A comprehensive order dated 25.6.2007 has been passed in compliance of the direction thereof. In this case the relief sought has been bifurcated in two phases and had been adjudicated. This order has not been assailed by the applicant by way of the relief in the present OA. By the later order dated 25.06.2007 the OA is rendered infructuous.
6. The applicant has filed his Rejoinder Affidavit stating more or less same things as earlier stated by him in his OA. The applicant has stated that the order dated 25.6.2007 cannot be termed to have adjudicated the final relief sought in view of the directions given by Principal Bench, New Delhi by an order dated 26.03.2007.
7. We have heard the learned counsel for both the parties and perused the entire material available on record.
8. The respondents have also filed Supplementary Counter Affidavit reiterating more or less same things as earlier stated by them in their Counter Affidavit and the

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applicant has also filed Supplementary Rejoinder Affidavit thereof.

9. The learned counsel for the applicant relief upon the direction of Hon'ble Supreme Court in ***Union of India Vs. Madhusudan Prasad reported in (2004) 1 SCC-43*** by which it has been held that an employee is entitled to back wages between dismissal and reinstatement if the order of dismissal was passed in contravention of principles of natural justice.

10. Before going into the merits of the OA, the history of litigation between the parties require to be scrutinized. The applicant had filed an O.A.No.558/2006, before the Principal Bench, New Delhi. The relief sought in that OA was the payment of salary w.e.f. Nov. 1998 to 03.02.2000 and from 18.08.2000 to 24.08.2004, with consequential relief. This relief was adjudicated by the Principal Bench and an order dated 26.03.2007 was passed in which the following direction was given:-

“As was find the OA of the applicant is exhaustive with all his contentions, let this OA be treated as a consolidated representation by the respondents and the claim of the applicant for pay and allowances, as referred to in para 8 (a) of the OA on supporting documents, be decided within a period of two months from the date of receipt of a copy of this order by passing a reasoned and speaking order. If the applicant is still aggrieved, it shall be open for him to revive the present OA. No costs.”

Subsequently, to that the respondents have passed an order dated 25.6.2007.

11. In the present OA the applicant have sought the same relief i.e. payment of salary w.e.f. Nov. 1998 to 03.02.2000 and from 18.08.2000 to 24.08.2004 and the

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quashing of the impugned order dated 6.15.6.2006, which had been rendered infructuous by the subsequent order dated 25.06.2007. The order dated 25.06.2007 has not been assailed through any amendment. Moreover, liberty was given to the applicant by Principal Bench to revive O.A.No.558/2006 if still aggrieved whereas, the applicant has chosen to file an O.A. before this Bench

12. For the reasons stated above, we are not inclined to interfere in the present O.A. As such the O.A. is liable to be dismissed and is accordingly dismissed. No order as to costs.

J. Chandra

(Ms. Jayati Chandra)
Member (A)

VR. Agarwal

(Navneet Kumar)
Member (J)

Amit/-