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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 7/91

Transfer Application No.

Date of decision 6.7.1993

Dr. Vasudeo Pundalik Pathak Petitioner

Shri J.M. Chitale Advocate for the Petitioner

Versus

Union of India & Ors. Respondent


Shri A. I. Bhatkar. Advocate for the Respondent(s)

Coram :

The Hon'ble Shri Justice M.S. Deshpande, Vice-Chairman,

The Hon'ble Shri M.Y. Priolkar, Member(A).

1. Whether the Reporters of local papers may be allowed to see the Judgement ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- yes
M.


(M. S. DESHPANDE)
VICE-CHAIRMAN.

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.7/91.

Dr.Vasudeo Pundalik Pathak. Applicant.

V/s.

The Union of India & Ors. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri M.Y.Priolkar, Member(A).

Appearances:-

Shri J.M.Chitale for the
applicant.

Shri A.I.Bhatkar for the
respondents.

Oral Judgment:-

{Per Shri M.S.Deshpande, Vice-Chairman} Dt. 6.7.1993.

The facts are in a very narrow compass. The applicant who had a Doctorate in Sociology was working as an 'Extension Officer' at Nagpur Station of All India Radio. He sought a transfer and came to be transferred from Nagpur to Bombay on the grounds of health by the Order dt. 7.3.1989. When he reported to the Station Director at Bombay on 16.3.1989 after having been relieved at Nagpur on 13.3.1989 he was not allowed to join on the plea that the transfer had been cancelled on 14.3.1989. The applicant approached this Tribunal and Original Application No.296/89 was decided on 14.2.1990. It was observed in para 7 of the Judgment that though elaborate averments have been made in the application pointing out certain facts to lead to the inference of malafides, ^{the Tribunal} ~~we are~~ not adverting to the same as ^{it was} ~~we are~~ clearly of the view that the cancellation of the order of transfer is arbitrary, capricious and unfair, and as such cannot be sustained. The order of cancellation was cancelled and the Respondents were directed to implement the order dt.7.3.1989

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without delay. The applicant sent a telegram and followed it up by letter dt. 17.2.1990 making a grievance that he had not been allowed to join even after the decision by the Tribunal at Bombay and even his C.G.H.S. Card was cancelled. The applicant therefore, approached this Tribunal for several reliefs. But what is being pressed before us is only the monetary relief as against Respondent Nos. 1 to 4 as stated in the Schedule attached to the application including interest at the rate of 14%, the total amount being Rs.63,259.01.

2. The contention on behalf of the Respondents is that the applicant had been informed while he was at Nagpur about the cancellation of the order of transfer and he should not therefore have rushed to Bombay to report to the Station Director, Bombay. It is not possible for us to entertain this contention in view of the clear findings recorded by the Tribunal in the earlier Original Application holding that unilateral cancellation of the order of transfer was arbitrary. According to Shri Bhatkar, learned counsel for the Respondents after the application was filed before the Tribunal, a stay was sought and had not been granted and therefore it was imperative on the applicant to have joined at Nagpur and since that was not done he would not be entitled to the salary for the period which he had not worked. ~~This~~ The position, ^{was} that the order of cancellation of the transfer was held to be nonest by the final decision of the Tribunal and the Respondents would not be entitled to argue on the basis that there was ~~subsequent~~ ^{subsequent} ~~substantive~~ order of cancellation of transfer which required to be stayed by the Tribunal. Any action contemplated on the basis of the cancellation of the order of transfer will not be available to the respondents.



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3. The next contention was that after the Tribunal had decided the matter on 14.2.1990 it was incumbent on the applicant to have reported to the Bombay Station of A.I.R. and since this was not done, he will not be entitled to the salary for the period for which he hadnot worked. Obviously, the argument was grounded on F.R. 17 which says that subject to any exceptions specifically made in these Rules and to the provision of sub-rule(2)an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

This Rule obviously would not apply to the present circumstances, because it was not for the applicant after having once reported and not allowed to join to repeatedly go to the office of the Station Director and ask for being allowed to join. It was ~~for~~ the respondent who should have issued fresh orders requiring the applicant to join at Bombay after the decision in the previous case on 14.2.1990. Since this was not done the applicant would be entitled to the wages for the period ending 1.5.1990 as claimed in the schedule. Since the respondents unjustifiably refused to allow the applicant to work and deprived him^d the salary, we find that the applicant would be entitled also to the interest on the amount of salary.

4. In the result, we allow the application and the Respondent Nos. 1 to 4 are directed to pay Rs.63,259 .01 inclusive of interest upto 31.12.1990.

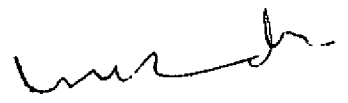
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The applicant would be entitled to interest on the entire amount until the date of payment from 1.1.1991 upto the date of payment at the rate of 12% p.a. together with the costs ^{quantified at} of Rs.1,000/-.



(M.Y. PRIOLKAR)
MEMBER (A)



(M.S. DESHPANDE)
VICE-CHAIRMAN

B.