

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1259/93

Thursday, this the 8th day of July, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Mrs. V.A.Upadhye,
UDC (E-4 Section),
House No.3,
Sarvatra Society,
Paud Road,
Pune - 411 038.
(Advocate Shri S.P.Saxena)
Vs.

...Applicant.

1. The Chief Engineer,
Southern Command,
Pune - 411 001.
2. The Chief Engineer,
Poona Zone,
Poona - 411 001.
3. The Commander Works Engineer,
Poona - 411 001.
(Advocate Shri R.K.Shetty)

...Respondents..

: O R D E R : (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard Mr. S.P.Saxena, the learned counsel for the applicant and Mr.R.K.Shetty, the learned counsel for the respondents.

2. In this application, the applicant is asking for two reliefs. The first prayer is that she should get full salary and allowance for the period from 6.12.1991 to 20.2.1992 and the second prayer is that the said period should be treated as on duty and should be counted for the purpose of pension and gratuity.

Applicant's case is during the relevant time she was

...2.



reverted as LDC and then transferred to Bhusaval. She did not join at Bhusaval, but filed OA 62/91 challenging the order of transfer. Then, she filed OA 444/90 challenging the order of reversion, which came to be allowed by this Tribunal quashing the order of reversion with a direction to the Administration to consider her claim for promotion within three weeks by calling a Review DPC. It appears, the applicant had reported sick and did not join duty at Bhusaval. According to her, after she became alright she went to report for duty on 6.12.1991, but the Administration did not take her on duty and she was taken on duty only on 22.2.1992 by issuing an order of promotion as UDC and posting at Pune. The applicant's grievance is that she was prevented from joining duty from 6.12.1991 and 22.2.1992 and therefore she is entitled to get salary and allowances for that period.

The stand of the administration is that the applicant should have joined her post at Bhusaval in compliance of the order of transfer and she could not be taken on duty at Pune since she had been relieved to join her post at Bhusaval. It is their case that the applicant kept quite till she received the order of promotion and then joined the post on 22.2.1992. Therefore, the respondents say that the applicant is not entitled to either for salary and allowances for that period or for treating the said period for qualifying service for the purpose of pension.

3. After hearing both sides and going through the records we find that the first prayer of the applicant cannot be granted in view of the admitted facts and circumstances of the case.

The applicant was obliged to comply with the order of transfer and join her post at Bhusaval. No doubt, she challenged

the order of transfer by filing OA 62/91 in this Tribunal. We have secured the original records of the said OA 62/91, there is no stay of the order of transfer. The applicant had to comply with the order of transfer and report for duty at Bhusaval. Then the Original Application was disposed of with a direction to the Administration to consider the representation of the applicant for a posting near Pune. Therefore, even final order did not ^{disturb} ~~touch~~ the order of transfer. Hence, the applicant was dutybound to report at Bhusavan and join the post. But, she came and reported at Pune on 6.12.1991. The argument of the learned counsel for the applicant is that since the order of reversion was quashed by the Tribunal, she ^{was} ~~got~~ to report only at Pune. But since the applicant had been relieved from Pune and was already under order of transfer to Bhusaval, even after the order of reversion was quashed, she should have gone and joined her post at Bhusaval and the Administration would have given a direction to her either taking her on duty there or at a different place or giving her posting at Pune.


4. It is one of the fundamental principles in service jurisprudence "no work no pay". The only exception to this Rule is when an official is prevented from working due to administration errors and administrative orders. In the facts and circumstances of the case we can conclude that the applicant was prevented to join at Pune. If the applicant had reported at Bhusaval and if the administration had refused to take her on the ground that there is no vacancy or there is no post of UDC after the order of reversion was quashed, then the matter would have been different. Even if the Pune office has told her that she cannot join her post at Pune, then she should have gone to Bhusaval and reported there. In these circumstances, this is not a case of the

applicant being prevented by the Administration to join her duty.

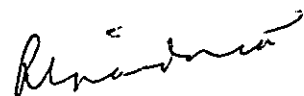
5. Now, on the second prayer of the applicant that the period should be treated as qualifying service for the purpose of pension, we feel that on humanitarian grounds and considering special circumstances the prayer should be granted. We have already seen that the applicant had reported sick and appear to be suffering from Cardiac problem. The order of reversion came to be quashed by the Tribunal and subsequently she has been promoted by the Administration, she did not immediately join the transfer post since she had filed an OA challenging the order of transfer. Then, subsequently, she had come to join the post at Pune on 6.12.1991. It is also brought to our notice that the applicant has since retired as UDC by taking voluntary retirement. The period with which we are concerned is a short period of three months. The Administration has not treated the period as unauthorised absence, but has granted Extraordinary Leave (EOL) for the said period. In these circumstances, we feel that this period should be treated as continuity in service and should qualify for the limited purpose of qualifying period for the purpose of pension.

6. In the result, the application is allowed as follows:

- (1) The applicant's prayer for full salary and allowances for the said period from 6.12.1991 to 22.2.1991 is rejected.
- (2) The applicant's prayer for counting the said period qualifying service for the purpose of pension is granted. The administration is directed to treat the period from 6.12.1991 to 22.2.1992 as continuity in service and qualify for qualifying service for the limited purpose of quantifying pension and gratuity and not for any other purpose.
- (3) The Respondents should revise the pension and gratuity of the applicant in terms of this order and pass appropriate orders within a period of three months from the date of receipt of copy of this order.
- (4) No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

B.


(R.G. VAIDYANATHA)
VICE-CHAIRMAN