

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 1538/94.

Dt. of Decision : 10.9.97

L.R.Jaichandran

.. Applicant.

Vs

1. The Development Commissioner, (Handicrafts), Min. of Textiles, Govt. of India, West Block No.7, R.K.Puram, New Delhi-110 066.
2. The Director (Southern Region), O/o the Development Commissioner (Handicrafts), Govt. of India, Shastri Bhavan, IIIrd Floor, No.26, Haddows Road, Madras-600 006.
3. The Dy.Director, Regional Design & Technical Development Centre (Technical Wing), O/o the Development Commissioner (Handicrafts), No.32, Victoria Road, Bangalore-560 047.

.. Respondents.

Counsel for the applicant : Mr.D.R.Gopal

Counsel for the respondents : Mr.V.Rajeswara Rao for Mr.N.V.Ramana, Addl.CGSC.

CORAM:-

THE HON'BLE SHRI R. RANGARAJAN

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

Heard Mr.D.R.Gopal, learned counsel for the applicant and Mr.V.Rajeswara Rao for Mr.N.V.Ramana, learned counsel for the respondents. The applicant was present in the Court.

2. The facts of this case are as follows:-

The applicant who is working as Investigator presently under R-3 was earlier posted to Bangalore from Nagpur. By transfer order No.3/14/92-DSP/ dated 17-02-93 he was transferred

to Vijayawada to meet the requirement of the Investigator at service centre for Carpet Weaving Training Centre, Vijayawada. The applicant preferred a representation by way of appeal to R-1 who is the appellate authority against the said transfer order and simultaneously applied for 42 days of Earned Leave to R-3, though this EL asked for was not sanctioned earlier. Subsequently the same was sanctioned by the memorandum No.1/170/94-SCV/1105 dated 31-07-94 (Annexure-26 enclosed to the rejoinder filed by the applicant) after he joined at Vijayawada. The appeal of the applicant against his transfer was turned down by R-1 by order No. 18/11/90-Admn-III/ 5206 dated 29-3-93 (Annexure-3). It is stated that the applicant joined the office of R-3 on 2-4-93 after availing the 42 days EI upto 1-4-93 (The EL though not regularised earlier was subsequently regularised). It is stated that the applicant handed over his complete charge as per the oral order of R-3 and no demand certificate was issued to him on 6-4-93 by R-3.

3. The applicant submits that on 7-4-93 (Annexure-5) he had submitted a representation for grant of TA/DA, pay advance and other allowances amounting to Rs.3,978/- as laid down in Fundamental Rule and Settlement Rule Part-2 and also payment of his salary from 17-2-93 till the date of his actual relief, duly endorsing a copy of the same to R-1. It is stated that R-3 refused to pay him the advance as above. Subsequently also the applicant states that he had addressed various letters to R-1 who is an appellate authority. His main contention is that due to non payment of entitled payment ^{PA} of transfer TA/DA, pay advance and salary dues till his relief he was unable to move out and join his new place of posting at Vijayawada. Though the applicant subsequently also approached R-1 by submitting a representation on 3-9-93 and also to R-3 by Registered post he was not paid the advances in gross violation of rules and that he

5. This OA is filed to set aside the impugned order No.DSR /Estt/Investigator/94 dated 26-10-94 (Annexure-24) by holding it as illegal, arbitrary and unreasonable and for a consequential direction to treat the period from 2-4-93 to 7-2-94 as spent on duty with all consequential benefits which he is entitled by way of salary and other allowances for that period.

6. A reply has been filed in this OA. The main contention of the respondents in the reply is that the applicant had never submitted any application for payment of transfer TA/DA, pay advances etc. The applicant's letter dated 7-1-93 ----- for payment of the above advances was never received by them. Unless the transferred employee submits his request for payment of transfer TA/DA etc., it cannot be paid. Further his service records were already sent to Vijayawada office which the applicant was aware of and hence he should have claimed the advances on joining at Vijayawada and not from office at Bangalore. The respondents submit that the applicant was interested to stay at Bangalore and he was making all excuses intentionally to avoid the transfer. He has also created excuses just to ensure that he remains ^{at} Bangalore. As regards treating the period from 2-4-93 to 7-2-94 as spent on duty the respondents submit that he was never in the service at Bangalore ~~nor he~~ ^{but} ~~joined at~~ ^{shamefully} Vijayawada. The officer was absent from duty without any authority and hence he ~~shall~~ not be entitled to any pay and allowances during that period of such absence in accordance with FR-17 of FRSR Part-I General Rule. Instead of taking disciplinary action for his unauthorised absence, his case was considered sympathetically by the respondents and R-2 has advised the applicant to apply for leave for the period ^{and for} to regularise his services. But the applicant refused to file any leave application and hence his services cannot be regularised for that period till his case was finally disposed of.

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could not carry out his transfer and to join his new place of posting at Vijayawada.

4. The applicant approached the CAT, Bangalore Bench by filing OA.No. 195/94 for redressal of his grievance. The Bangalore Bench disposed of that OA by order dated 4-2-94 directing the applicant to make an application giving all details for release of TA as also advance pay for proceeding to his new place of posting i.e., Vijayawada to R-4 in that OA. In view of the above application the applicant was paid the advances on 7-2-94. Thereafter he proceeded to Vijayawada and joined there. The period from 2-4-93 to 7-2-94 during which period the applicant was neither allowed to work nor he was paid the transfer TA/DA, pay Advance to join his new place of posting the applicant contends that that period has to be treated as spent on duty with all consequential benefits. He filed an appeal after joining his new place of posting at Vijayawada on 11-1-94 to the CAT through proper channel requesting him to treat the period from 2-4-93 to 7-2-94 as spent on duty for all purposes with all consequential benefits and also to hear the applicant in person in the event of his not acceding his request. R-2 vide his letter No.DSR/Estt/Investigator/94-95 dated 13-9-94 (Annexure-23) called for comments from R-3 and thereafter by the letter No.DSR./Estt/Investigator/94 dated 24-10-94(Annexure-24) turned down the request of the applicant to treat the period from 2-4-93 to 7-2-94 as spent on duty and treated that period as leave to be debited to the leave account of the applicant subject to the availability at the credit of the applicant at the time after which the period from 2-4-93 to 7-2-94 is spent on duty. The applicant submits that the above said rejection without any valid grounds is in gross violation of rules and natural justice and requested that the period from 2-4-93 to 7-2-94 should be regularised as duty.

citation referred to above him was examined. We find that the above citation may not come to his rescue.

10. The applicant submits that he was starving because of want of money and hence he could not carry out his transfer without proper monetary assistance. The applicant had worked as Investigator for a long time. Hence his submission that without the transfer TA/DA and other advances he cannot carry out his difficulty in carrying out the transfer without financial assistance from the respondents. But that does not mean that the applicant had filed OA.No.195/94 in the Bangalore Bench of this Tribunal. It is seen from his submission that he took some loan for filing that OA. If that be the case he could have arranged for other loan even for his moving to Vijayawada and reaching Vijayawada he could have applied for the advances and ^{have} taken it from respondents' organisation and repaid the loan. Hence for want of money the applicant could not move out on transfer is not a reasonable excuse for not carrying out the transfer order.

11. Though the applicant submits that he ^{was} not paid the advances transfer TA/DA /because of which he could not carry out his transfer to Vijayawada he has not produced any rule or any instructions to the effect that a transferred employee can carry out his transfer only if the transfer TA/DA and other allowances are paid to him if he applies for the same. In the absence of any such instructions it has to be held that the contention of the applicant that he can move out only if the advances are paid cannot be upheld.

12. The applicant submits that he had handed over the charges on 6-4-93 though it is denied by the respondents. In view of the Annexure-25 letter it may be reasonably concluded that he was present at Bangalore for handing over the charges on 6-4-93 and proceeded to Vijayawada on transfer. His absence from

7. A rejoinder has been filed in this OA. The contention of the rejoinder though bulky is more or less ~~in~~ ^{on} the same lines as was stated in his OA affidavit. He also relies on the judgement of the Bombay Bench of this Tribunal reported in 1994 (7) SLR 675 (Shailesh Chandra Sinha Vs. UOI and others) to state that he is entitled for the relief.

8. The applicant applied for cancellation of his transfer. But that was not agreed to by R-1 by memorandum No.18/11/90-Admn.-III/5206 dated 29-3-93 (Annexure-3). Thus the applicant must have carried out his transfer after issue of that letter dated 29-3-93. But he has not carried out his transfer as he submits that he was not paid the TA/DA and other advances. He ~~also~~ submits that he attended the office on 6-4-93 and handed over his complete charge. But he could not proceed to Vijayawada due to non payment of transfer TA/DA and other advances. Hence ~~the main point for consideration in this OA is whether the~~ applicant ~~is~~ ^{is} right in refusing to carry out his transfer to ~~Vijayawada even if the TA/DA and transfer advances are not paid~~ ^{work} to him.

9. The dispute arises in regard to the submission of the letter dated 7-4-93 (Annexure-5) wherein the applicant requested R-3 to pay him the transfer TA/DA and other advances. R-3 submits that he has not received it. The applicant himself states that he handed over the charge on 6-4-93 at Bangalore. If he handed over the charge on 6-4-93 then there is no necessity for him to submit his request letter dated 7-4-93. He could ~~have~~ ^{have} easily walked into the room of R-3 and submitted this letter ~~was~~ dated 7-4-93 personally. If R-3 ~~is~~ not available then he could have submitted it to one of the responsible officials in the Bangalore organisation taking acknowledgement of having received that letter. But for some un-known reason the applicant did not resort to that course of action. Further the submission of the applicant that he must necessarily be paid the transfer ~~and~~ ^{pay} other advances ~~pay~~ before he carries out the transfer in view of the

20-2-93 to 1-4-93 had already been treated as leave by order dated 31-7-94 (Annexure-26). Hence for the period when he had handed over the charge on 6-4-93 the applicant can be given the benefit of treating the period from 2-4-93 to 7-4-93 as spent on duty. But beyond the period till he joined at Vijayawada i.e., upto 7-2-94 the absence of the applicant can not be treated as spent on duty in view of the reasons stated above. Hence the period from 8-4-93 to 7-2-94 has to be regularised as leave only as already decided by the R-2 by his impugned letter dated 24-10-94 (Annexure-24). The applicant has to submit the leave application for regularising that period. It may be possible that the applicant may not have enough LAP and LHAP to count ^{anwile} ~~that~~ period as leave due to him with salary and other allowances as applicable. In view of that if some portion of that period has

... the applicant may be put to some inconvenience. In order to avoid such inconvenience the department can grant "leave not due" to the extent possible, for the period to be treated as leave without pay. The grant of "leave not due" has been clearly spelt out in Rule 31 of FRSR Part-III Leave Rules. Hence the respondents may not find it difficult to invoke this provision if necessary if the applicant requests for the same.

13. In the result, the following direction is given:-

The period from 2-4-93 to 7-4-93 should be treated as spent on duty by the applicant. The period from 8-4-93 to 7-2-94 should be debited to his leave account to the extent he has got LAP and LHAP in his leave account. If some portion of the period from 8-4-93 to 7-2-94 is to be treated as leave without pay then the applicant may submit an application for grant of "leave not due" in accordance with the Rule 31 of FRSR Part-III-Leave Rules. If such a representation is received then that request should be considered favourably by the respondent authorities in accordance with the rule.

14. With the above direction the OA is responsible for costs.

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