

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 17.11.2014

OA No. 291/00178/2014

Mr. V.D. Sharma, counsel for applicant.

Mr. D.C. Sharma, counsel for respondents.

Heard learned counsel for the parties.

Order is reserved.

Anil Kumar

(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

The order was
pronounced in open
court to day
i.e. 28/11/14
by the Hon'ble Bench
comprising Hon'ble
Mr. Anil Kumar M(A)
28/11/14

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/00178/2014

Order reserved on : 17.11.2014

Date of Order: 28.11.2014

CORAM

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Dr. M.N.Khan S/o Shri Nihal Ahmed Khan, aged about 54 years, resident of 37, Kidwai Nagar, Imli Phatak, Tonk Road, Jaipur and presently holding the post of Scientist-D, Central Ground Water Board(WR), Jaipur under transfer as Officer-Incharge of State Unit Office, Allahabad.

.....Applicant

(By Advocate Mr. V.D.Sharma)

VERSUS

1. Union of India, through Secretary to the Ministry of Water Resources, Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Chairman, Central Ground Water Board, Government of India, CHQ, New CGO Complex, NH. IV, Faridabad.
3. The Director (Admn.), Central Ground Water Board, Central Head Quarter(CHQ), NH-4, Faridabad.
4. The Regional Director (Western Region), Central Ground Water Board, 6-A, Jhalana Institutional Area, Jaipur,

.....Respondents

(By Advocate Mr. D.C.Sharma)

Anil Kumar

ORDER

(Per Hon'ble Mr. Anil Kumar, Administrative Member)

The applicant has filed the present OA praying for the following reliefs:-

8. (A) By an appropriate order or direction, the impugned order dated 21.2.2014 (Ann.A/1) so far it relates to directing the applicant to join duties at Allahabad and observing that the regularization process of the intervening period w.e.f. June, 2011, till date after his joining at Allahabad.

(b) By an appropriate order or direction, the respondents may kindly be directed to issue a proper relieving order along with correct L.P.C. showing the last pay drawn on the date of relieving after regularizing the intervening period with effect from 13.6.2011 to the date of passing of the relieving order afresh, in view of direction given by the Hon'ble Tribunal and respondent No. in its order dated 9.10.2013.

(C) By an appropriate order or direction, the respondents may kindly be directed to provide salary withheld w.e.f. July, 2011 to the date of passing of the relieving order afresh, as aforesaid and also direct the respondents to release TTA as admissible to the applicant as per rules.

The applicant may kindly be permitted to file the original application at Jodhpur and same may kindly be entertained in the interest of justice.

(D) Any other order or direction, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of applicant.

(E) The cost of the original application may kindly be awarded in favour of the applicant.

2. The brief facts of the case as stated by the Ld. Counsel for the applicant are that the applicant was transferred vide

Anil Kumar

order dated 13.6.2011 at the Western Region, State Unit Office, Allahabad which was challenged by the applicant by way of filing Original Application No.400/2011 and the Hon'ble Tribunal vide the order dated 1.9.2011 stayed the effect and operation of the order dated 13.6.2011(Ann. A/2). That the applicant joined the service on 2.9.2011 but he was not allowed to mark the attendance and ultimately the Hon'ble Tribunal vide the order dated 13.10.2011 dismissed the original application.

3. It is relevant to mention here that before passing of the aforesaid order by the Tribunal the respondents issued fresh relieving order dated 16.10.2012 whereby the joining of the applicant w.e.f. 2.9.2011 was accepted and was ordered to stand relieved w.e.f. 16.10.2012 to join the duties at Allahabad. (Ann.A/3).

4. That the Ministry of Water Resources also observed in the comments/notes that many discrepancies and administrative faults were there in deciding the case of the applicant. Therefore, advised to provide facility to him to join at Allahabad and his period may also be regularized and after that he will have the right to apply for his transfer fresh, which could be decided on merits without prejudice.

5. That the applicant submitted a representation on 17.7.2013 to facilitate the joining at Allahabad after releasing the salary with effect from July, 2011 and further

Anil Kumar

to issue correct LPC and fresh relieving order(Ann.A/6). That the matter remained pending with the respondents to provide correct LPC and to make the payment of the salary w.e.f. July, 2011, as the order of the Tribunal with regard to not giving the effect to the relieving order until fresh LPC is issued, was in currency. However, nothing in the black and white was provided, therefore, the applicant again filed an OA No.639/2013 before the Hon'ble Tribunal at Jaipur Bench and the Tribunal was pleased to dispose of the aforesaid OA vide its order dated 9.9.2013 while directing the respondent No.1 i.e. the Secretary, Ministry of Water Resources, Govt. of India, New Delhi to consider and decide the representation of the applicant dated 17.7.2013 strictly in accordance with law and to pass reasoned and speaking order within a period of one month from the date of receipt of the order(Ann.A/7). That the respondent No.4 issued an order dated 15.10.2013 whereby he advised the applicant to join the duties at Jaipur and further a letter dated 17.10.2013 was issued demanding the leave application from the applicant for the purpose of regularization of the services w.e.f. 18.6.2011 to 16.10.2013.

6. That the Secretary, Ministry of Water Resources vide its order dated 9.10.2013 was pleased to dispose of the representation of the applicant dated 17.7.2013 in view of directions given by the Tribunal vide order dated 9.9.2013

Anil Kumar

wherein he gave a direction to issue a fresh relieving order for joining at Allahabad and further to issue correct LPC, showing the last pay drawn after regularizing the intervening period as per rules and further to provide the arrears of TTA and release of GPF advance as per rules(Ann.A/10). That the respondent No.4, however, did not pass any order after responding to the direction given by the respondent No.1 in its order dated 9.10.2013, therefore, applicant again submitted a representation dated 23.1.2014 to the respondent No.1 and requested to issue proper relieving order along with correct LPC showing the last pay drawn and further to regularize the intervening period w.e.f. July, 2011 to till date (Ann.A/11).

7. That the Director, JWE, vide its order addressed to the Chairman, CGWB, Faridabad dated 20.2.2014 observed that the applicant be directed to join the duties at Allahabad and the regularization process for the intervening period as per the decision of the competent authority would be appropriately taken once he joins at Allahabad. The respondent No.3 vide its order dated 21.2.2014 (Ann.A/1) addressed to the applicant in pursuance of the order dated 20.2.2014 advised the applicant to report for duties at Allahabad and the regularization process for the intervening period with regard to his services, will be taken after joining at Allahabad.

Anil Kumar

8. That being aggrieved by and dissatisfied with order dated 21.2.2014 (Ann.A/1) passed by the respondent No.4 the Regional Director (Western Region), Central Ground Water Board, 6-A, Jhalana Institutional Area, Jaipur in not issuing the proper relieving order along with correct LPC showing the last pay drawn and further by not regularizing the intervening period of service w.e.f. 13.6.2011 to till date, and so also, aggrieved by the order dated 21.2.2014 so far as it relates to directing the applicant to join the duties at Allahabad and observing that regularization process for intervening period will be decided after his joining at Allahabad the present Original Application is being filed.

9. The Ld. Counsel for the applicant submitted that the impugned order dated 21.2.2014 to the extent it observes that regularization of the intervening period will be decided after the applicant joins at Allahabad is illegal and unjustified.

10. That the applicant has a statutory right to receive the salary w.e.f. June, 2011 and the applicant is really willing to join the duty at Allahabad but in the absence of the salary of almost 33 months and a fresh LPC after regularizing his service, he is not in a position to join at Allahabad. Therefore, the learned counsel for applicant submitted that the OA be allowed.

Anil Kumar

11. On the other hand the respondents have submitted the reply. In their written reply they have stated that the applicant was transferred vide order dated 13.6.2011 and in pursuance to the said transfer order he was relieved w.e.f. 17.6.2011 (AN) vide office order No.143 of 2011 dated 16.6.2011. However, in the original application No.400/2011 filed by the applicant against his order of transfer this Hon'ble Tribunal was pleased to stay the transfer order on 1.9.2011. Thereafter the said original application was finally dismissed on 13.10.2011 and the stay order was also vacated forthwith.

12. The respondents have also submitted that contention of the applicant that he was not allowed to mark his attendance is misleading because presently there is no system of marking attendance for gazetted officers like the applicant. However, for the period from 1.9.2011, the date on which the stay order was passed by the Hon'ble Tribunal dated 13.10.2011 the date on which the OA was dismissed and stay vacated, the applicant was treated on duty. Subsequently since the original application filed by the applicant was dismissed on 13.10.2011, his relieving w.e.f. 17.6.2011 holds good as this Hon'ble Tribunal did not interfere in his relieving order.

13. The applicant again filed OA No.496/2012 against letters dated 18.5.2012 and 8.6.2012. In the said original

Anil Kumar

application, this Tribunal was pleased to pass an interim order dated 26.7.2012 but ultimately the said original application was also dismissed by the Hon'ble Tribunal vide order dated 26.11.2012. However, the respondents were directed that the relieving order of the applicant may not be made effective till the correct LPC is issued.

14. The respondents have stated in their reply that as regards the issue of corrected LPC is concerned it is submitted that a small typographical error was noticed in the LPC issued earlier and the same was corrected vide letter dated 15.10.2012(Ann.R/1). He also submitted that it was decided by the Government to accept his joining w.e.f. 2.9.2011 and he was again relieved w.e.f. 16.10.2012.

15. The respondents have not disputed the contents of Para 4.5, 4.6, 4.7, 4.8 and 4.9 of the original application.

16. In reply to Para 4.10 of the original application the respondents have stated that the order issued by the Secretary, Ministry of Water Resources dated 9.10.2013 was complied with in letter and spirit. The applicant was served a copy of the order dated 9.10.2013 passed by the Secretary, Ministry of Water Resources and he was advised to join the duties latest by 17.10.2013 (FN). The applicant reported on 17.10.2013 (AN). The applicant was asked to submit leave application latest by 21.10.2013 for regularization of the period of absence. The applicant was against advised to

Arul Kumar

submit the leave application by 23.10.2013(FN). He was also asked to intimate his Bank Account Number. The applicant expressed his inability to provide the Bank Account Number and requested that all the dues may be paid by cheque. The applicant was asked to submit application for TTA and revised GPF Advance application latest by 23.10.2013(AN).

17. The respondents have submitted in their reply that although the applicant did not submit any proper application for leave despite letters/reminders, but considering all the facts, his services were regularized for the period from 18.6.2011 to 1.11.2013, as directed by the Secretary, MOWR and further as directed following was done:-

(i) An uptodate relieving order in respect of the applicant was issued on 1.11.2013.

(ii) The services of the applicant for the intervening period was regularized by treating him on duty for the period 2.9.2011 to 13.10.2011 and 27.7.2012 to 16.10.2012. The remaining period was regularized by sanctioning him EOL (Extra Ordinary Leave) since the applicant did not submit proper application for leave (Ann. R/3).

(iii) As per the request submitted by the applicant, his TTA advance and GPF advance were calculated and offered to him.

Anil Kumar

(iv) Three cheques, one each for salary (Rs.259949/-), TTA advance and one month salary advance (Rs.210500/-) and GPF advance (Rs.60000/-) were sent to the applicant. The applicant accepted the cheque for the GPF advance but refused to accept the cheques pertaining to salary and TTA advance. However, he received the leave sanctioned order, TTA advance sanction order and the relieving order.

18. The order of the Secretary, MOWR , Govt. of India dated 9.10.2013 also directed to the applicant to join his duties at SUO, Allahabad within stipulated time but the applicant has obviously failed to comply with these orders. Thus it is not correct to say that the services of the applicant have not been regularized since 13.6.2011. He has been offered the salary for the period for which he was deemed to be on duties. For rest of the period he has been granted appropriate leave. Since the applicant was relieved on 1.11.2013 and an uptodate LPC was issued on the same date. His absence from 2.11.2013 till date may be treated as unauthorized absence. The applicant is a senior officer of the department and the manner in which the applicant is acting, disentitles him for grant of any relief whatsoever by this Tribunal.

19. The respondents in reply stated that as a matter of fact the applicant is avoiding his joining at SUO, Allahabad on one or the other pretext. That the respondents have

Anil Kumar

complied with the orders of this Tribunal as well as the orders passed by the respondents No.1. The action of answering respondent is legal and according to the rules. In fact it is the applicant who is avoiding the compliance of the orders issued by the respondent department.

20. That an uptodate relieving order and LPC have been issued on 1.11.2013 but still the applicant is avoiding his joining at SUO, Allahabad and, therefore, he cannot be held entitled for any salary. Non-joining of the applicant at SUO, Allahabad since 1.11.2013 clearly amounts to defy of the directions of the higher authorities and it amounts to gross mis-conduct and indiscipline on the part of the applicant.

21. The respondents have also stated that the applicant has already been relieved on 1.11.2013 and he has not challenged the relieving order in the present Original Application. Therefore, OA has no merits and it should be dismissed with costs.

22. The applicant has filed the rejoinder and the respondents have filed reply to the rejoinder.

23. Heard the learned counsel for the parties and perused the documents on record. The Ld. counsel for the applicant reiterated the facts as mentioned in the OA and argued that the orders of the Ministry of Water Resources dated 30.1.2014 (Ann.A/13) the Ministry have clearly stated "Shri

Anil Kumar

Khan is willing to join Allahabad as per our decision. The intervening period may be regularized and all past dues including entire salary shall be paid." That the Ministry also directed the CGWB to take necessary action positively by 7.2.2014 under intimation to the Ministry. The Ld. Counsel for the applicant argued that Shri Khan is willing to join Allahabad but the respondent No.4 is not complying with the directions of the Ministry. This Tribunal while dismissing the OA No.400/2011 directed the respondents to issue fresh LPC vide order dated 13.10.2011. The respondents issued the LPC on 16.10.2014 but it was not a correct LPC. Moreover, the respondents have not paid the full salary to the applicant from the date of his transfer i.e. 13.6.2011. Since the correct LPC was not issued by the respondents , therefore, the applicant could not join at Allahabad, however, the respondents have regularized the period from 2.9.2011 to 13.10.2011 and 27.7.2012 to 16.10.2012 treating him as on duty. The remaining period was regularized by sanctioning him EOL(Extra Ordinary Leave). The applicant was nowhere at fault, in fact he was debarred of the entry in the office vide order dated 6.8.2012 issued from the office of the respondent No.4. The learned counsel for the applicant also drew my attention to the office order No.293/2012 dated 10.10.2012 (Ann. A/3) in which it was clearly stated that the joining letter dated 2.9.2011 of Dr. Khan is accepted and he

Anil Kumar

is stand relieved from CGWB, WR, Jaipur w.e.f. 16.10.2012(AN) to join duties at CGWB, SUO, Allahabad. Thus from this letter even the respondents have accepted the joining of the applicant w.e.f. 2.9.2011 to 16.10.2012, therefore, the intervening period between 2.9.2011 to 16.10.2012 has to be treated as period spent on duty.

24. The Ld. Counsel for the applicant also submitted that even thereafter since correct LPC was not issued, therefore, the applicant could not join at SUO, Allahabad. He has been requesting for issue of correct LPC from time to time and grant of salary to the applicant in spite of the clear orders of the Ministry Water Resources dated 30.1.2014. Therefore, the applicant cannot be blamed for not joining at SUO, Allahabad. That the applicant is willing to join at Allahabad provided he is paid the salary for the intervening period and he is issued correct LPC.

25. On the other hand the Ld. Counsel for the respondents submitted that the applicant has been posted at Jaipur since 1983 and when he was transferred to SUO, Allahabad vide order dated 13.6.2011 and relieved on 17.6.2011, he did not join at Allahabad on the pretext of mistake of a typographical nature in the LPC issued to him. In the LPC originally issued to the applicant the station of his posting was shown as Dehradun instead of Allahabad. He filed an OA No.400/2011 which was dismissed by the Tribunal on

Anil Kumar

13.10.2011 and the stay was also vacated. Subsequently, he also filed an OA No.496/2012 which was also dismissed by the Tribunal vide order dated 26.11.2012, however, the respondents were directed that the relieving order of the applicant may not be made effective till the correct LPC is issued. An uptodate LPC has been issued and also the relieving order but still the applicant is avoiding his joining at SUO, Allahabad since 1.11.2013 which amounts to defying of the directions of the higher authorities. That the applicant has not challenged the relieving order dated 1.11.2013 in the present OA.

26. With regard to the submissions of the Ld. Counsel for the applicant relating to letter dated 30.1.2014(Ann.A/3) regarding regularization of the intervening period and payment of salary, a clarification was sought from the Ministry and the Ministry vide letter dated 20.2.2014 have clarified that "the competent authority's decision for payment of past dues to Shri Khan does not mean any payment beyond what is due to him as per rules and regulations." (Ann.R/10). This letter also states that the regularization process for the intervening period as per decision of the competent authority would be appropriately taken once he joins at Allahabad. Therefore, the claim of the applicant that he is entitled for salary for intervening period

Anil Kumar

is not correct. In fact the applicant is only avoiding his joining at SUO, Allahabad at one or other pretext.

27. Having heard the rival submissions of the parties and after the careful perusal of the documents on record I am of the opinion that the applicant is entitled for his salary from 2.9.11 to 16.10.2012 on the basis of the Office Order No.293/2012 (Ann.A/3). Vide this order the respondents have accepted his joining w.e.f. 2.9.2011 and the applicant was stand relieved from CGWB, WR w.e.f. 16.10.2012(AN) to join duties at CGWB, SUO, Allahabad. Therefore, the intervening period between 2.9.2011 to 16.10.2012 cannot be treated as extra ordinary leave (EOL).

28. From the perusal of record it is clear that he has been relieved from Jaipur again on 1.11.2013 and that the applicant has not challenged the relieving order in the present Original Application. With regard to the compliance of the order dated 30.1.2014 (Ann.A/13) issued by the Ministry of Water Resources, the Ministry have clarified vide their letter dated 20.2.2014 (Ann.R/10) that the competent authority's decision for payment of past dues to Shri Khan does not mean any payment beyond what is due to him, as per rules and regulations. In the same letter it has been directed by the Ministry to ask the applicant to join his duties at SUO, Allahabad immediately clearly indicating that the regularization process for the intervening period as per

Anil Kumar

the decision of the competent authority would be appropriately taken once he joins there. Under the facts and circumstances of the present case I do not find any illegality or irregularity in the directions issued by the Ministry vide letter dated 20.2.2014 (Ann.R/10). Therefore, the present OA is disposed of with the following directions:-

(1) The applicant is entitled for the salary for the period from 2.9.2011 to 16.10.2012.

(2) That the applicant should join at SUO, Allahabad as per the directions of the Ministry immediately on the basis of revised LPC issued to him.

(3) On joining at SUO, Allahabad the respondents shall take the decision regarding regularization of the intervening period from 17.10.2012 till the applicant joins at SUO, Allahabad according to the provisions of law and rules within a period of 2 months from the date of joining of the applicant at SUO, Allahabad.

(4) The respondents shall also take the decision with regard to the regularization of his period from 17.6.2011 to 2.9.2011.

(5) The applicant will be entitled to represent before the competent authority if he is aggrieved by the decision taken by the respondents regarding his

Anil Kumar

regularization as directed in Para 28(3) and Para 28(4) above.

(6) He will also be entitled to represent against the issuance of revised LPC if he is aggrieved by the revised LPC within a period of one month from the date of communication of his regularization orders issued by the respondents as directed above.

(7) The respondents shall pay salary within a period of one month from his joining at SUO, Allahabad for the period from 2.9.2011 to 16.10.2012.

(8) The applicant would be entitled for TTA advance and GPF advance as per rules. If the applicant is not satisfied with the amount of TTA advance or the GPF advance or both then he can represent before the competent authority after joining at SUO, Allahabad.

29. With these observations and directions the OA is disposed of with no order as to costs.

30. Interim Relief granted to the applicant on 20.3.2014 by Central Administrative Tribunal, Jodhpur Bench in OA No.290/00105/14 is vacated forthwith.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/