

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

OA No. 372 of 2002

Jabalpur, this the 16th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Member (J)

S.P. Mishra s/o Sh. H.P. Mishra,
Upper Division Clerk,
Kendriya Vidyalaya,
Chirmiri, Sarguja, Distt. Korea,
Chhattisgarh.

...Applicant

(By Advocate: Shri S. Ganguly for Sh. Manoj Sharma)

-versus-

1. Union of India through
Kendriya Vidyalaya Sangathan,
through Commissioner,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi.

2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regd. Office GCF Estate,
Jabalpur.

...Respondents

(By Advocate: Shri M.K. Verma)

O R D E R

By G. Shanthappa, Member (J) -

The above O.A. is filed seeking the relief to quash the impugned order dated 27.3.2002 as per Annexure A-1 and for direction to the respondents to regularise the intervening period of transfer of the applicant w.e.f. 17.11.2000 to 25.11.2001 as period spent on duty and to further direct payment of full salary alongwith consequential benefits of pay, perks and status with appropriate interest thereon and arrears thereof, in the interest of justice.

2. The brief facts of the case are that the applicant was transferred to Kendriya Vidyalaya, Bandipur alongwith consequential relieving order dated 16.11.2000. The applicant



preferred a representation dated 16.11.2000 before the respondent no. 1, the same was rejected vide order dated 11.1.2001, after a gap of 56 days.

3.1 Being aggrieved by the said order, the applicant had approached the Tribunal by filing OA No. 71/2001. This Tribunal granted the interim order of stay to the effect "Status quo with regard to the service of the applicant would be maintained". The said interim order was passed on 30.1.2001 and continued till the final order passed on 1.6.2001.

2.2 The said application was allowed with a direction to the respondent no. 1 to consider by amending transfer order of the applicant to any of the places mentioned in para 6 preferably as close to Satna as possible within a period of two weeks from the date of receipt of the said order.

2.3 The applicant has communicated the said order to the respondents alongwith the cover letter dated 7.6.2001. The respondents failed to amend the transfer order and challenged the same before the Hon'ble High Court of Madhya Pradesh in W.P. No. 3062/01. The High Court had dismissed the said W.P. on 20.7.2001.

2.4 The respondents have challenged the said order of the High Court before the Hon'ble Supreme Court in S.L.P. and the said S.L.P. was also dismissed. Subsequent to the said litigation, the respondents have passed the office order dated 9.11.2001 by complying the orders of this Tribunal as per Annexure A/7. The applicant in compliance of the said order, joined at Kendriya Vidyalaya, Chirmini on 26.11.2001.

2.5 Subsequently, the applicant submitted his representation on 4.12.2001 to the respondent no. 2 for regularising the intervening period of transfer from 17.11.2000 to 25.11.2001 as period spent on duty and also for payment of salary. Since the respondents



did ~~not~~ consider his request, he submitted two more reminders. Finally the respondents have passed the impugned order (A/1). In the impugned order the respondents have mentioned that absence from duty from 17.11.2000 to 25.11.2001 may be regularised by grant of leave of any kind due and admissible at the request of the individual in writing.

2.6 Being aggrieved by the said order, the applicant has filed the present O.A. seeking the aforesaid relief.

3. The respondents have filed their reply denying the averments made in the OA. The specific contention taken by the respondents is that the applicant has not performed his duties during that period by his own willingness and, therefore, the applicant's absence is liable to be treated with the principle of "no work no pay" and his period from 17.11.2000 to 25.11.2001 cannot be treated as spent on duty as per law and rules on the subject.

3.1 This Tribunal in a similar case dismissed the ^{No.181/2002} O.A./~~filed~~ by the applicant therein. The respondents have produced the copy of the said order alongwith reply (R/1). In view of the decision taken by the Tribunal in a similar case, the applicant has failed to make out his case for grant of any relief and the O.A. is liable to be dismissed.

4. The applicant has filed the rejoinder contending that the order passed in the said O.A. i.e. OA No. 181/2002 has been challenged before the Hon'ble High Court of Madhya Pradesh in WP No. 4881/2002 and the said writ petition is pending adjudication.

4.1 The respondents have passed the order in a similar circumstance case treating the non-duty period as duty in respect of one Mr. V.D.Tiwari, P.G.T.(Chemistry). A copy of the said order dated 27.5.2002 is also produced alongwith the rejoinder. The case of the applicant is that the respondents are showing discrimination between the applicant and Mr. V.D.Tiwari including Shri Chaturvedi, applicant in

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OA No. 181/2002, hence the relief as prayed for in the O.A. is liable to be granted to the applicant.

5. We have heard the learned counsel for the parties and have perused the pleadings and other material available on record.


6. The admitted facts of the case are that the applicant has made his representation for treating the absence of duty from 17.11.2000 to 25.11.2001 as spent on duty for the purpose of salary and other consequential benefits. The applicant had challenged the orders of transfer before this Tribunal and on the basis of the interim order, he did not attend to his duty due to litigation he could not perform his duty. When the final decision has been taken by the judiciary, he has approached the authorities and they have allowed the applicant to perform his duties but the intervening period of absence from duty was not treated as 'duty' by the respondents. The applicant is asking the relief in accordance with the similar order passed in favour of Shri V.D.Tiwari (RJ/2) dated 27.5.2002. The respondents have treated the non-duty period from 23.1.2001 to 16.4.2001 as duty in the case of the above person. Due to litigation, the applicant could not attend to his duties accordingly the said period has to be treated as spent on duty and the respondents shall grant the pay and allowances. Hence, the decision taken by the respondents as per Annexure A-1 is illegal.

6.1 The respondents have relied on the judgement of this Tribunal in OA No. 181/2002 in which this Tribunal has rejected the O.A. The facts in the said case and the present case are more or less similar. The applicant has

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7. When such an issue is pending for adjudication before the Hon'ble High Court of Madhya Pradesh, ends of justice would be met if we direct the respondents to consider the case of the applicant for grant of relief, as prayed for in the O.A., in accordance with the order to be passed by the Hon'ble High Court in WP No. 4881/2002. We do so accordingly.

8. With the above observation, the O.A. disposed of. No Costs.


(G. Shanthappa)
Judicial Member

(M.P.Singh)
Vice Chairman

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उप रजिस्ट्रार 19.2.04