

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of March, 2010

Original Application No.159/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Prahlad Sharma
s/o Shri Moti Lal Sharma,
r/o Plot No.80,
Sunder Nagar,
Khatipura Road, Jaipur,
and now working as Tax Assistant,
Office of Income Tax Officer, Churu.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi.
2. Chief Commissioner,
Income Tax, Rajasthan,
Central Revenue Building,
Bhagwan Das Road,
Jaipur
3. Commissioner,
Income Tax,
Income Tax Appellate Tribunal,
Jaipur Bench,
Chamber Bhawan,

M.I.Road,
Jaipur

.. Respondents

(By Advocate: Shri Gaurav Jain)

ORDER (ORAL)

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

- i) That entire record relating to the case may kindly be called for from the respondents and after perusing the same respondents may be directed to treat the period from 23.11.2004 to 25.1.2005 as spent on duty and to release pay and allowances for the month December, 2004 and January, 2005 along with interest at the market rate.
- ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- iii) That the costs of this application may be awarded.

2. Briefly stated, facts of the case, so far as relevant for the purpose of deciding the point involved in this case, are that the applicant was transferred from Jaipur to Behror vide order dated 13.7.2004. Against this order the applicant approached this Tribunal by filing OA No. 510/2004 on 22.11.2004. This Tribunal vide order dated 23.11.2004 while issuing notices granted order of status-quo. It is case of the applicant that he was relieved vide order dated 22.11.2004, copy of which has been placed on record as Ann.A/2. It is further case of the applicant that pursuant to the order dated 23.11.2004 passed by this Tribunal, he attended duty on 24.11.2004 and has also performed overtime duty for the period from 14.00

hours to 20.00 hours and respondents also paid over time to the applicant, but the reply so filed by the respondents in the earlier OA No.510/04 is that the applicant stood already relieved vide order dated 22.11.2004. The applicant has also filed Contempt Petition No.56/04 for non-compliance of the order annexing copy of the relieving order dated 22.11.2005 in which no date has been mentioned. The order of transfer was cancelled on 25.1.2005. Thus, the applicant has claimed pay and allowances for the period w.e.f. 23.11.2004 to 25.1.2005 i.e. the date when according to the respondent the applicant stood already relieved till the order of transfer was cancelled on 25.1.2005.

3. Notice of this application was given to the respondents. The respondents have categorically stated that the applicant did not work for the period from 23.11.2004 to 25.1.2005, as such, he is not entitled for pay and allowances for the said period on the ~~of the~~ principle of 'no work no pay'. It is further stated that the order of status-quo was passed by the Tribunal on 23.11.2004 in the transfer matter of the applicant but in view of the fact that the applicant stood already relieved on 22.11.2004, as such, he ought to have joined duty at the new place of assignment. It is further stated that the applicant neither joined at the new place nor submitted any application for leave, therefore, he was not allowed pay and allowances for the aforesaid period. Regarding performing duty on 24.11.2004 and payment of overtime allowances for the said date, the respondents have stated that in fact the applicant was on casual leave on 24.11.2004. In attendance register, it appears that

he has over written his signatures over the noting of casual leave of 24.11.2004. The respondents have also stated that as per the attendance register he was entitled for overtime allowance for 14.11.2004 instead of 24.11.2004. In the overtime allowance bill for the entire month the date i.e. 24.11.2004 has been deliberately inserted by the applicant instead of mentioning the date chronologically and he has purposely placed the date 24.11.2004 between the dates without maintaining chronology with the other dates. According to the respondents, the contention of the applicant that he was not allowed to work from 25.11.2004 is incorrect as he was on casual leave for 24.11.2004 and 25.11.2004. It is further stated that subsequent to these days the applicant was not present as per the attendance register. The respondents have also placed on record a copy of the relieving order dated 22.11.2004 as Ann.R/3 in which day and date of the relieving of the applicant has been categorically mentioned.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The question which requires our consideration is whether the applicant was relieved on 22.11.2004 or not and whether he is entitled to pay and allowances for the period w.e.f. 23.11.2004 to 25.1.2005 when the order of transfer of the applicant was cancelled. According to the learned counsel for the applicant, when the order of relieving the applicant dated 22.11.2004 was passed he was on off leave (compensatory leave) for 22.11.2004 and 23.11.2004 and he has also applied casual leave for 24.11.2004 and 25.11.2004.

According to the learned counsel for the applicant, the applicant was never relieved and the date of 22.11.2004 has been subsequently inserted by the respondents. For that purpose, the learned counsel for the applicant has placed reliance on Ann.A/2 whereby date and day of relieving the applicant has not been mention in the photocopy. The applicant has also placed another order of relieving dated 22.11.2004 (Ann.A/2) in which date and day has been mentioned. Thus, according to the learned counsel for the applicant, it is the order dated 22.11.2004 which was blank order and the date has been inserted subsequently. Thus, according to the learned counsel for the applicant, the applicant was never relieved and in view of the order of status-quo passed by this Tribunal on 23.11.2004, it was not permissible for the respondents to prevent the applicant from performing duty at Jaipur. The learned counsel for the applicant has also placed reliance on the self prepared overtime bill of the applicant whereby the applicant has also claimed overtime allowance for 24.11.2004 in order to show that the applicant has in fact not only attended the duty on 24.11.2004 but also claimed overtime which amount has also been sanctioned in favour of the applicant.

6. We have given due consideration to the submissions so made and the documents so relied by the learned counsel for the applicant. We are of the view that the applicant has not made out a case for grant of relief. The respondents have also produced the original relieving order dated 22.11.2004 in order to show that the date and the day of relieving of the applicant has been mentioned

in the body of the order. Not only that, the respondents have also produced receipt of the speed post in order to show that the said relieving order was sent to the applicant by speed post on the same day. Thus, in view this document, it cannot be said that the applicant was not relieved on 22.11.2004 and the day and the date has been subsequently inserted in the body of the letter by the respondents. The respondents have also placed on record copy of the attendance register for the relevant period, perusal of which shows that the applicant was marked as 'off' for 22.11.2004 and 23.11.2004 and for 24.11.2004 and 25.11.2004 the entry of casual leave was marked. Perusal of this document also reveals that the applicant has subsequently put his signature over the entry of casual leave made in the attendance register for 24.11.2004. Perusal of this document further reveals that the concerned officer has made entry to show that the applicant stood relieved on 22.11.2004 (A/N). In view of this contemporaneous record, which has been placed on record, contention of the applicant that he has not been relieved on 22.11.2004, cannot be accepted. Admittedly, as per own showing of the applicant he was on casual leave on 24th and 25th November, 2004 and when the applicant was on casual leave how he could join and mark attendance on 24.11.2004 without any application for cancellation of leave.

7. The respondents have also clarified in the reply affidavit that the overtime for 9 days as submitted by the applicant was sanctioned as per the entry made in the attendance register and payment of overtime was for 14.11.2004 and not for 24.11.2004 as

deliberately mentioned by the applicant in his self prepared overtime bill. Thus, in view of what has been stated above, we are of the view that contention of the applicant that he has never been relieved by the respondents and pursuant to the status-quo order granted by this Tribunal on 23.11.2004, he was required to perform duty at Jaipur but was prevented to perform such duties, cannot be accepted.

8. The facts remain that the applicant stood relieved on 22.11.2004 and the order of status-quo was granted on 23.11.2004 on which date the applicant stood already relieved. The order of transfer of the applicant was cancelled on 25.1.2005. Thus, it was incumbent upon the applicant to join and report for duty at the new place of posting but the applicant has not performed duty either at Jaipur or at the new place of posting. Under these circumstances, no direction can be given to the respondents to give pay and allowances for the aforesaid period.

9. The learned counsel for the applicant has placed reliance on the decision of the Apex Court in the case of Electronics Corporation of India Ltd. vs. Sateesh S.Rao Sonawalkar, 2005 SCC (L&S) 82 whereby direction was given to regularize the period of absence of the respondent therein w.e.f. 17.7.1995 to 8.4.1996 as spent on duty. We fail to understand how the applicant can draw assistance from this judgment rendered by the Apex Court as noticed supra. That was a case where the respondent on promotion was transferred from Hyderabad to Aurangabad vide order dated 2.5.1995. Ultimately, the respondent was relieved from duty on

17.7.1995. The respondent applied leave from 17.5.1995 to 19.7.1995 which was however not granted by the appellants therein. The respondent then filed Writ Petition before the High Court challenging transfer order and ex-parte ^{stay} order was passed on 20.7.1995. Pursuant to such stay order granted by the High Court, the respondent reported for duty on 21.7.1995. The respondent was not paid salary for the period 17.7.1995 to 7.10.1995 and he was treated absent from duty. The appellant moved an application for vacation of stay order on 19.12.1995 and the stay order was vacated on 8.4.1996. It was under this factual background that the Apex Court has held that since the respondent stood relieved on 17.7.1995 and application for vacation of stay order was moved on 19.12.1995 and the stay was vacated on 8.4.1994 and the factum of relieving order dated 17.7.1995 was not brought to the notice of the court at the earliest and rather the stay was allowed to continue for such long time, it was under these circumstances the court held that period w.e.f. 17.7.1995 to 8.4.1996 when the stay was vacated shall be treated as the period spent on duty.

10. It may be relevant to mention here that this Tribunal has not stayed operation of the transfer order but the Tribunal's order was that status-quo as existing on the date of passing of the order be maintained. The factum of relieving of the applicant was also brought by the respondents in earlier OA when reply was filed. Thus, it is not a case of such nature where the applicant was not allowed to perform duty at Jaipur pursuant to the transfer having been stayed. The facts remain that the applicant neither performed duty

9

at Jaipur nor at the new place of posting till the order of transfer was cancelled by the competent authority, as such, no direction can be given to the respondents to release pay and allowances to the applicant for the said period. From the reply filed by the respondents it is evident that the applicant has not submitted any application for regularizing the aforesaid period of absence and in case the applicant submits such application for regularizing the said period as leave of the kind due, in that eventuality, the competent authority may consider request of the applicant for regularizing the said period of absence as leave of the kind due.

11. With these observations, the OA stands disposed of with no order as to costs.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judi. Member

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