

Central Administrative Tribunal  
Jaipur Bench, JAIPUR

OA No.111/2008

This the 4th day of March, 2011

**Hon'ble Shri M.L. Chauhan, Member (Judicial)**  
**Hon'ble Shri Anil Kumar, Member (Administrative)**

Dinesh Kumar Tinker S/o Shri Ratan Lal Tinker, aged about 27 years  
R/o H.No. 1692, Film Colony, S.M.S. Highway Jaipur (Raj.) working as  
Clerk, C/o Officer of D.P.DO. B-89, Gautam Marg, Vaishali Nagagar,  
Jaipur(Raj.)

...Applicant

(By Advocate: Ms. Manisha Surana)

**- VERSUS -**

1. Union of India, through the Secretary, Ministry of Labour,  
Government of India. Rafi Marg, N. Delhi.
2. Director General of Mines Safety Dhanbad-  
826001 (Jharkhand)
3. Director of Mines Safety ( SD)Dhanbad.
4. Deputy Director General of Mines Safety, Northern Zone  
Ajmer, Anna Sagar Link Road, Ajmer.

.....Respondents

(By Advocate: Shri Prakash Gangwat)

**ORDER (ORAL)**

The applicant has filed this OA, thereby praying for the  
following relief (s):-

- i) That by an appropriate order or direction, the impugned  
orders dated 7.3.2006 and 23.11.2005(Annexure A/1 &  
A/2) may kindly be quashed and set aside and the  
respondents may kindly be directed to make the  
payments with interest to the applicant for the period  
w.e.f. 19.3.2004 to 7.2.2005.
- ii) Any other relief which this Hon'ble Tribunal deems fit  
may also be granted to the humble applicant.

2. Briefly stated facts of the case are that the applicant filed OA No-  
93/2004 before this Tribunal thereby challenging the order dated  
17.2.2004 whereby the applicant was transferred from Department  
of Director General of Mines Safety, North Zone, Ajmer to Uargaon

9

Area, Uargaon (Karnataka). The said order was challenged on the ground that he is the President of the Association and as such he could not have been transferred, in view of the instructions dated 19.8.1988, reproduced in Para No. 4.9 of the OA and also that some of the vacancies are still lying vacant in Jaipur and Udaipur where the applicant could have been adjusted instead of transferring him to a far of place in Karnataka. This Tribunal did not grant any stay to the applicant at the initial stage, however, when the matter was listed on 19.3.2004 this Tribunal after noticing the aforesaid facts was of the view that applicant should make representation before the appropriate authority by highlighting his grievances. In case such a representation is made to the competent authority within seven days from today, the competent authority shall decide the same within four weeks from the date of the receipt of such representation by passing a speaking and reasoned order. It was further observed that in that eventuality, the applicant who stood already relieved shall not be forced to join at the new place of posting till the disposal of the representation and the matter was adjourned and ordered to be listed on 7.5.2004. This Tribunal however finally quashed the impugned order of transfer vide it's judgment dated 7<sup>th</sup> Feb. 2005 and the applicant was permitted to join at Jaipur where he was working prior to his transfer. This Tribunal further directed that the intervening period shall be decided inconsonance with the rules on the subject.

3. Pursuant to the observation made by the Tribunal while deciding the matter finally the respondent has passed the impugned order, dated 7.3.2006 (Annexure A/1) and November

2005 (Annexure A/2) whereby the period of the applicant has been regularized as leave admissible to him vide order (Annexure A/2) and the applicant was also informed that as per the entry made in the service book there is neither Earned Leave nor Half Pay Leave in your account as on 30.6.2004 and during the period from April 2004 to February 2005 he did not attend office for duty, as such his request for payment of salary for the period of April 2004 to February 2005 cannot be acceded to. It was further clarified that in case applicant submit an application for extra ordinary leave (EOL) then the same shall be placed before the competent authority for its consideration in accordance with Rule 25 of the CCS Leave Rules. It is these orders which are under challenge in this OA.

4. We have heard Id. counsel for the applicant and and gone through the material place on record. Notice of this application was given to the respondents and the respondents have filed their reply. The facts as stated above have not been disputed by the respondents. The respondents have further stated that the applicant was relieved on 19.3.2004 and the order of transfer was quashed on 7.2.2005. It is further stated that as per entries in service book there is neither Earned Leave nor Half Pay Leave in his account as on 30.6.2004 and also that he did not attend the office from April 2004 to February 2005 therefore his is not entitled to any kind of payment for the aforesaid period on the principle of no work no pay. The respondents have further stated that grievance of the applicant for payment of salary for the aforesaid period was duly considered in the light of the judgment of this Tribunal ~~order~~ dated 7<sup>th</sup> February 2005 and in case applicant submits an application for

extra ordinary leave then the same shall be placed before the competent authority for its consideration, in accordance with Rule 25 of the CCS Leave Rules. Thus, according to the respondents under these circumstances applicant is not entitled to any relief.

5. We have heard learned counsel for both the parties and gone through the material placed on record. From the material placed on record, it is evident that the applicant was transferred vide order dated 17.2.2004 and relieved on 19.3.2004. The facts that the applicant stood already relieved was also noticed by this Tribunal in order dated 19.3.2004 and it was however ordered that applicant may not be forced to join at the new place of posting till the representation of the applicant is not decided by the competent authority. The OA was finally allowed on 7.2.2005. In this way the only protection which was granted by this Tribunal, by way of interim stay was that the applicant may not be forced to join at the new place of posting. This fact itself does not mean that applicant once transfer is not bound to join at the new place of posting even if he has challenged the order before the Court of Law. The consequence of non-joining his posting pursuant to the transfer order issued by the authority entails the disciplinary proceedings against the employee. But since this Tribunal protected the interest of the applicant to the extent that he may not be forced to join at the new place of posting it does not mean that applicant shall be entitled to pay and allowance especially when he has not performed the duty of the post. Needless to add that so long as the order of the transfer order is not cancelled / set aside by the court of law the employee is bound to obey the said order. Thus, we see no

te

infirmity in the action of the respondents whereby the respondent has regularized the period of the applicant by granting leave for a period for which leave was due in his credit and for ~~removing~~<sup>remaining</sup> period as neither Earned Leave nor Half Pay Leave was there in his leave account as on 30.6.2004, as such the remaining period of absence of the applicant could not have been regularized. Rather the respondent has acted fairly by asking the applicant to submit an application for EOL so that the case of the applicant can be considered in accordance with the Rule 25 of the CCA Leave rule.

Thus according to us the applicant has been fairly treated in the matter and we see no infirmity in the action of respondents. The view which we have taken is in consonance with the law laid down by the Apex Court in the case of *Somesh Tiwari vs. Union of India and others* ( **JT 2009 (1) SC page 96** ) whereby the Apex court has held that "while applying principle of no work no pay, the court must consider conduct of both parties. The order of transfer, suffered from non application of mind and malice in law as allegations were found to be untrue. Even though the matter was subjudice, second transfer order was passed which also suffered from non-application of mind. Appellant also committed misconduct by not joining his posting at Ahmedabad although no order of stay was passed by Tribunal. In view of conduct of both the parties interest of just would be served if the appellant is treated to be on leave." As already stated above in the instant case this Tribunal while allowing OA has directed the respondents to pass appropriate order regarding intervening period i.e. when the applicant has not joined new place of posting pursuant to transfer

order. The ratio as laid down by the Apex court in the case of Somesh Tiwari is fully attracted in the facts and circumstances of this case. As already stated above, the apex court declined the payment of the salary on the principle of no work no pay, although the apex court has held that transfer order of the appellant suffered from total non-application of mind and the period was regularized by granting leave invoking provisions of leave rules. In the instant case also respondents has invoked provision of the leave rules for the purpose of deciding aforesaid intervening period. Since no leave was there in the credit/account of the applicant, as such the applicant was directed to make fresh application for regularizing the period of absence in terms of rule 25 of the leave rules. Thus, we see no infirmity in the action of the respondents. Accordingly the OA is bereft of merits, which is dismissed with no order as to costs.

*Anil Kumar*

**(Anil Kumar)**  
**Member (Administrative)**

*M.L. Chauhan*

**(M.L. Chauhan)**  
**Member (Judicial)**

mk