

RESERVED on 12.01.2018

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

This the 01st day of February, 2018.

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 330/1286/2011

1. Dr. D.S. Singh S/o Late K.C. Singh R/o C-301, The Crescent, Plot F-2, Sector 50, Noida – 201307.
...Applicant

VERSUS

1. Indian Council of Agricultural Research, Krishi Bhawan, New Delhi – 110114 through it's Secretary.
2. Director, Project Directorate of Vegetable Research (Now Indian Institute of Vegetable Research), P.O. Jakhni (Shahjahanpur), Varanasi..
.... Respondents

Advocate for Applicant : Dr. D. Singh, the applicant appeared
in person

Advocate for the respondents : Shri N.P. Singh

ORDER

This applicant has filed this OA seeking the following reliefs:-

"(i) to issue a writ order or direction in the nature of certiorari quashing the order dated 25.05.2011 passed by respondent no. 1.
(ii) to issue a writ or direction in the nature of mandamus directing the respondent no. 2 to correct the entries in service book of the petitioner treating the petitioner on duty from 22.10.1995 to 10.03.1996 and to release the leave encashment amount of petitioner accordingly along with penal interest at the rate which this Hon'ble Tribunal may deem fit and proper in the circumstances of the instant case.
(iii) to issue any other writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
(iv) to award the costs to the applicant."

2. The facts in brief as per the OA are that the applicant is a retired senior scientist of the Indian Council of Agricultural Research (in short I.C.A.R.). The applicant was a member of Agricultural Research

Service and as per his service conditions, he can be transferred anywhere in India. While the applicant was working at Project Directorate of Vegetable Research, Varanasi, an order transferring him from Varanasi to Port Blair was issued on 20.10.1995 and relieving order was also issued on the next date i.e., 21.10.1995 without intimating him. The transfer order dated 20.10.1995 and the relieving order dated 21.10.1995 were served on the applicant on 31.10.1995. Charge was not taken from the applicant in pursuance of the transfer order dated 20.10.1995 against which the applicant filed Original Application No. 1141 of 1995 before this Tribunal. Vide order dated 13.10.1995 this Tribunal stayed the transfer order dated 20.10.1995 which was ultimately quashed by this Tribunal vide order dated 28.02.1996 (Annexure A-6) on the ground of malafide and for being issued against rules and guidelines.

3. It is stated in the OA that even after the stay order and quashing of the transfer order, the respondent no. 2 withheld the salary of the applicant. In this regard, the applicant also furnished representations dated 13.03.1996 (Annexure No. A-7) and 22.04.1996 (Annexure No. A-8) before respondent no. 2 and respondent no. 1 respectively. When the orders of this Tribunal passed in O.A. No. 1141/1995 were not complied with, the applicant filed contempt petition no 39/96 against respondent no. 2, after which the respondents complied with the order passed by this Tribunal. Thereafter, the applicant filed an application for withdrawing the contempt petition which was dropped vide order dated 29.08.1996.

4. The applicant retired from service on 31.01.2006 after attaining the age of 62 years. After 4 years of his retirement, the applicant came to know that the respondent no. 2 had treated the intervening period of litigation w.e.f. 22.10.1995 to 10.03.1996 during which he attended office by virtue of the interim order of this Tribunal, as earned leave. This fact came to the light in October 2010 when the applicant obtained a copy of his service book through RTI and found that leave at his credit for leave encashment was only 134 days instead of 300 days. In this regard the applicant furnished a representation dated 27.01.2011 (Annexure No. A-12) requesting the respondents to treat the period from 22.10.1995 to 10.03.1996 on duty. The respondents vide impugned order dated 25.05.2011 (Annexure No. A-17) rejected the representation of the applicant on the ground that the applicant did not perform any duty during the intervening period from 22.10.1995 to 10.03.1996. This order dated 25.05.2011 has been challenged in this OA.

5. Being aggrieved by the actions of the respondents, the applicant filed Civil Miscellaneous Writ Petition No. 48528 of 2011 before the Hon'ble Allahabad High Court and the Hon'ble High Court vide order dated 25.08.2011 (Annexure No. A-19) dismissed the said Writ Petition on the ground of availability of alternative remedy of filing Original Application before this Tribunal. The applicant, subsequently, filed the instant original application before this Tribunal.

6. The applicant submitted that he had never applied for earned leave for the period 22.10.1995 to 10.03.1996 and was regularly attending the office. The applicant was also not served any notice by the respondents alleging his absence from office during the aforesaid period, which is a pre-condition as provided under Central Civil Service (Leave), Rule-1972. Further, it has been submitted that treating the service period of applicant as earned leave amounts to punishment in the form of deduction from leave.

7. The respondents filed counter affidavit (in short CA) wherein it has been stated that the applicant was transferred from PDVR, Varanasi to CARI, Port Blair on 20.10.1995 and he was also relieved from Varanasi on 21.10.1995 to enable him to join at CARI, Port Blair. Instead of joining at

CARI, Port Blair, the applicant filed a case before this Tribunal against the transfer order. This Tribunal vide order dated 28.02.1996 quashed the transfer order and relieving order dated 21.10.1995 of the applicant. In compliance of the court order, the applicant submitted his joining report and resumed duty at PDVR, Varanasi on 11.03.1996. The period from 22.10.1995 to 10.03.1996 was therefore treated as leave due to the applicant. Accordingly, office order dated 14.04.1996 (Annexure CA-2) was issued cancelling the transfer order of the applicant and allowing him to work at PDVR, Varanasi. It was also decided therein that the period of absence may be regularized by granting the leave of kind due. The applicant had also represented that he stayed back at Varanasi and did not go to Port Blair and therefore the period of his stay at Varanasi may be treated as duty. The case was examined in detail in the light of the order passed by this Tribunal and it was decided that even though the applicant was in Varanasi he neither attended the office nor did he work in the office. Therefore, his request for treating the period from 21.10.1995 to 10.03.1996 was not acceded to. This position was informed vide letter dated 19.07.1996 informing that the decision conveyed as per the office order dated 14.04.1996 was correct as the applicant had not performed any official duty during the period from 22.10.1995 to 10.03.1996. Thereafter, the applicant never represented against the above decision.

8. Further, it is stated in the CA that the applicant by way of this O.A. prays for a direction to the respondents to correct the entries in his service book treating him on duty from 22.10.1995 to 10.03.1996. He has filed this O.A. after a long spell of 15 years and therefore the O.A. is time barred.

9. It is further stated in the CA that the matter pertains with regard to treating the applicant on duty from 22.10.1995 to 10.03.1996, which has already been decided by the competent authority vide order dated 14.04.1996 and the subsequent order dated 31.07.1996 issued by the ICAR.

10. The applicant has filed rejoinder affidavit broadly reiterating the facts stated in the O.A. It is stated that since the OA challenges the impugned order dated 25.05.2011 rejecting the representation of the applicant to treat the period from 22.10.1995 to 10.03.1996 as duty, the OA is within time as per law considering the impugned order dated 25.05.2011.

11. Heard the applicant who appeared in person and learned counsel for the respondent. Both of them broadly reiterated their respective stand in the OA and CA.

12. I have considered the pleadings and submissions of the parties in this case. As stated by the respondents in the CA, the decision as to how the period in question from 22.10.1995 to 10.03.1996 is to be treated has been decided by the competent authority vide the order dated 14.04.1996 (Annexure CA-2 to the CA) by which the transfer of the applicant to Port Blair has been cancelled allowing him to continue to work at Project Directorate of Vegetable Research, Varanasi and in this order it was indicated that the period of absence of Dr. D.S. Singh may be regularized by granting leave as due to the applicant. As stated in the OA, the applicant could not know about this decision till about four years after his retirement. The applicant could not know about it even at the time of his retirement when he would have received the leave encashment dues. It is not understood how the applicant could not know that he had less than 300 days of earned leave for which the applicant received the leave encashment dues after his retirement.

13. It is noted that in para 13 of the Rejoinder, the applicant has admitted to have received the order dated 14.04.1996 (Annexure CA-2), but it was stated that he could not know the specific period which was treated as his absence was not specified in the said order. The contention of the applicant is not at all convincing. It was very clearly stated in the order dated 14.04.1996 that:

".....The period of absence of Dr. D.S. Singh may be regularised by granting the leave of the kind due. Consequently his pay may be released....."

It was clear from this order dated 14.04.1996 that the respondents have treated the period of absence of the applicant as leave due. The applicant did not object to this decision of the respondents, nor did he try to find out from the respondents about the period which was being treated as his absence from duty.

14. It is further noted that the order dated 14.04.1996 has not been challenged in this OA. Moreover, its challenge is barred by limitation as timely step was not taken by the applicant to challenge this order after receiving the same.

15. The order dated 13.11.95 of this Tribunal in OA No. 1141/1995 filed by the applicant challenging his transfer to Port Blair, copy of which was filed by the applicant has observed: "It may not be appropriate to grant interim order of stay on the transfer itself. Status quo may, however, be maintained till Short Counter reply is filed....." Admittedly, as on 13.11.1995, the applicant was already served with the relieving order date 21.10.1995, hence he stood relieved from Varanasi. Hence, the interim order dated 13.11.1995 meant that the applicant would continue to remain relieved from duty till he was allowed to rejoin there. The order dated 28.02.1996 of this Tribunal in OA No. 1141/1995 quashing the transfer order of the applicant is also silent about how the period between the date of relief to the date of rejoining at Varanasi would be treated. Hence, there was no violation of the order of this Tribunal when the respondents decided to treat this period as leave as due.

16. In view of above, the OA being devoid of merit is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.

(GOKUL CHANDRA PATI)
MEMBER-A

Arun...