

(Reserved on 30.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/01461/2010

This the *08th* day of *August, 2018*

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Greash Babu, S/o Shri Hakim Singh, presently working as Junior Engineer (Civ), Office of the Garrison Engineer, Tal Behat (U.P.) .

.....**Applicant**

By Advocate: Shri Rakesh Verma

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The chief Engineer (Headquarters), Central Command, PIN 900450, C/o 56 APO.
3. The Chief Engineer, Lucknow Zone, Lucknow- 02.
4. The Commander Works Engineer No. 1, Wheeler Barracks, Kanpur Cantt – 4.
5. The Garrison Engineer (MES), Kanpur Cantt -4.
6. The Garrison Engineer, Military Engineering Services, Lake View Camp, Tal Behat – 284 125 (UP).**Respondents**

By Advocate : Shri R.K. Srivastava

O R D E R

DELIVERED BY:-

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

The OA has been filed by the applicant impugning the order dated 3.3.2010 (Annexure A-1) by which his representation dated 1.8.2009 requesting the pay and allowances for the period from 17.10.2008 to

24.4.2009, was considered as per the order dated 15.12.2009 (Annexure A-11) in OA No. 1514/2009 filed by the applicant on this issue.

2. The applicant was transferred from Kanpur to Talbahat on a hard tenure posting vide order dated 23.1.2008. The applicant submitted a representation on 24.1.2008 requesting to defer the transfer for a year on the ground of illness of his wife. But no action on the representation was taken and the applicant was issued 'Movement Order' dated 15.10.2008 (Annexure A-2) and his name was struck off from Kanpur establishment w.e.f. 16.10.2008. The applicant then filed the OA No. 1116/2008, which was disposed of by this Tribunal vide order dated 5.11.2008 (Annexure A-3) with the following direction:-

“8. In view of it, I direct the applicant to file certified copy of the order alongwith additional representation (if any) as well as copy of the OA (with all Annexures) and an undertaking in writing to move to place of posting on and after 31.03.2009 before concerned Competent Authority within 2 weeks from today and the said Authority (provided certified copy of the order is filed as contemplated / stipulated above), shall decide the same as expeditiously as possible in the light of above observation and if deemed appropriate – pass fresh order of posting or allow the applicant to stay at Kanpur 31.3.2009 (as prayed for). It is also provided that impugned order of posting / transfer dated 23.1.2008 and consequential movement order dated 23.10.2008 (Annexure A-1 and A-2 to the OA) shall not be given effect to, if not already given effect to, till decision of Representation / Addl. Representation provided applicant files Representation / Addl. Representation or alongwith certified copy of this order within the period as stipulated above in this order and the same shall be subject to the ‘order’ passed by the ‘respondent/s authority’ on the representation / additional representation of the applicant in pursuance to the direction given by this Court.”

3. The applicant submitted a copy of above order of the Tribunal in his letter dated 8.11.2008 (Annexure A-4) and requested to be allowed to join duty in Kanpur as per the direction of the Tribunal. It was also requested that the period of absence from 16.10.2008 to 7.11.2008 allowed as EL. The applicant also furnished his undertaking vide letter dated 19.11.2008 (Annexure A-6 & A-7) as per the order dated 5.11.2008 of this Tribunal. The applicant also refunded the amount of Rs. 19070/- taken by him as advance for the transfer

which was acknowledged by the authorities on 29.11.2008 (Annexure A-8). No decision was taken by the authorities on the applicant's representation as well as on his letters dated 8.11.2008 and 19.11.2008 in spite of the direction of the Tribunal to decide the representation of the applicant as expeditiously as possible by passing an appropriate order.

4. The applicant filed a Contempt petition for non-compliance of the order dated 5.11.2008. Then the respondents passed an order dated 25.4.2009 allowing the applicant to defer the applicant's transfer till 31.3.2009, while rejecting his representation (Annexure A-9) in compliance of the Tribunal's order dated 5.11.2008. The applicant was allowed to join under GE, Kanpur with direction to join at Talbahat by 7.5.2009 in compliance of the transfer order. With this order of disposal of the representation, the Contempt petition filed by the applicant was dismissed.

5. Thereafter, the applicant filed a fresh OA No. 1514/2009, for consideration of the period from 16.10.2008 to 24.4.2009 as duty. This Tribunal vide order dated 15.12.2009 (Annexure A-11 to the OA) quashed the order dated 25.04.2009 and remitted the matter to the competent authority for consideration of the grievance of the applicant with regard to payment of salary for the aforesaid period as per provision of law within two months. In pursuance of this direction of the Tribunal, the respondents have passed the order dated 03.03.2010 (Annexure A-1), which is impugned in this OA with prayer for allowing pay and allowance for the aforesaid period.

6. In their Counter Affidavit (in short CA), the respondents have mainly stated the following: -

- a. Posting order dated 23.01.2008 was issued as per the choice of the applicant.
- b. The representation dated 24.05.2008 filed by the applicant against posting was rejected and thereafter the movement order was issued.

c. Further, in compliance of the direction of the Hon'ble Tribunal in OA No. 955/2008 , the representation dated 04.10.2008 filed by the applicant was also considered and disposed of by a speaking order dated 14.10.2008 (Annexure CA-4).

d. The applicant was relieved for Kanpur on 16.10.2008 vide order dated 15.10.2008, thereafter he did not perform any duty in this office . However, on receipt of the instruction from CE, HQ CC Lucknow vide letter dated 25.04.2009, the applicant was taken on the strength and then he was relieved on permanent transfer on being SOS w.e.f. 07.05.2009 (AN) vide movement order dated 27.04.2009.

e. As per order of the HQ Chief Engineer, Lucknow (respondent No. 2) vide letter dated 25.04.2009, the applicant was asked to apply for regularization of his absence w.e.f. 17.10.2008 to 27.04.2009 for the purpose of pay and allowances, but he did nothing in this regard. Hence, he could not be paid dues for the aforesaid period due to non-regularization of absence period.

f. As per attendance register of GE, Kanpur, the applicant remained absent from duty w.e.f. 16.10.2008 to 25.04.2009 and as such his pay and allowances for the period cannot be admitted. As already stated, the applicant was advised that the absence period was to be regularised as per leave rules, no application has been filed by the applicant in this regard.

g. As per order dated 03.10.2010 of CE CC, Lucknow, the applicant is not entitled for pay and allowances during the period, as claimed, unless the said period is regularised as per leave rules.

7. We have heard learned counsel for the applicant and the respondents and also perused the record. In pursuance to the order dated 5.11.2008 of this Tribunal to dispose of the representation of the applicant to reconsider/defer his transfer as expeditiously as possible, the respondents did not take any decision and nothing has been mentioned in the pleadings of the respondents about the reasons for delayed action. Finally, the authorities took the decision to allow the applicant in Kanpur till 31.3.2009 and he was allowed to join at Kanpur vide order dated 25.4.2009, with direction to report at the place of transfer on 7.5.2009. If this order would have been passed within a reasonable

time after the direction was given by the Tribunal to dispose of the representation expeditiously, that would not have prejudiced the applicant. But by not taking any decision on the matter, in spite of specific direction of this Tribunal, injustice has been done to the applicant, who was made to move this Tribunal to get his grievances redressed. The issue would have been resolved had the authorities taken the decision on the applicant's representation as per the order dated 5.11.2008 of this Tribunal within a reasonable time after the applicant submitted his letter dated 08.11.2008 (Annexure A-4) alongwith a copy of the order dated 05.11.2008 of this Tribunal, also requesting to sanction EL for the period from 16.10.2008 to 07.11.2008. However, the authority did not take any decision in the matter till 25.04.2009 and the reasons for not taking the decision till 25.04.2009 the same have not been explained in the pleadings.

8. Learned counsel for the applicant has submitted at the time of hearing a copy of judgment of Hon'ble Supreme Court in the case of Commissioner, Karnataka Housing Board Vs. C. Muddaiah – (2007)2 Supreme Court Cases (L&S) 748. In this case, it was held as under: -

“34. We are conscious and mindful that even in absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, however, a court of law may, may nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering “as if he had worked”. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellate Board, therefore, has no substance and must be rejected.”

Another case cited is judgment of Hon'ble Supreme Court in the case of Somesh Tiwari Vs. Union of India & ors – (2009) 1 SCC (L&S) 411 was also

submitted at the time of hearing on the same issue of principle of “no work no pay” where it was held as under : -

“24. We, keeping in view the fact, that on the one hand the appellant did not join his posting at Ahmedabad, although no order of stay was passed and on the other wholly unwarranted and reprehensible conduct on the part of the authorities of the respondents, are of the opinion that interest of justice would be served if during the period from 28-12-2005 till his joining his post at Bhopal, the appellant is treated to be on leave and the respondents are directed to pass an appropriate order invoking the leave rules applicable in this behalf. It is ordered accordingly.”

As per the ratio of the above judgments, before applying principle of “No work No pay” to the case of the applicant in this case, we have to consider the facts and circumstances. From the facts and documents before us, it is clear that the applicant was willing to work from 08.11.2008 onwards at Kanpur but he was not allotted duty. His representation to consider his transfer from out of Kanpur was also not considered expeditiously as per the direction of this Tribunal vide order dated 05.11.2008 and reasons for delay in taking decision on his representation till 25.04.2009 have not been explained by the respondents. Therefore, it cannot be said that the applicant has a fault particularly after he refunded the advance amount taken on transfer on 29.11.2008. Therefore, we consider the applicant to be entitled for relief for the period after that date in accordance with cited judgment of Hon’ble Apex Court.

9. In view of the factual position as discussed above, we are of the view that the authorities have not taken the decision on the representation of the applicant as expeditiously as possible as per the direction of this Tribunal vide order dated 05.11.2008, as a result of which the applicant had to approach the Tribunal again. If the authorities would have taken a decision in accordance with the order dated 05.11.2008, this situation would not have arisen. It is also seen that in the impugned order dated 03.03.2010, which was passed in compliance of the order of this Tribunal dated 15.12.2009 in another OA filed

by the applicant, no reason has been assigned or no guideline or rule has been mentioned in the impugned order to justify the decision of the authorities not to allow any pay and allowances for the period in question, particularly when the applicant had applied for EL for the period 16.10.2008 to 07.11.2008, on which no decision has been taken by the respondents. The reasons of no attendance till 24.04.2008 as furnished in the CA, are not acceptable, since the applicant was directed to join at Kanpur only by the order dated 25.04.2009.

10. Therefore, we are of the view that the impugned order dated 03.03.2010 is non-speaking and taking into consideration the fact that the applicant has been prejudiced because of delay on the part of the respondents to take decision as per order dated 05.11.2008 of this Tribunal, the said order is not acceptable. Hence, the impugned order dated 03.03.2010 is set aside and the respondent No. 2 / competent authority is directed to sanction the period from 16.10.2008 to 30.11.2008 as EL or leave as due in view of the fact that the applicant has applied for EL from 16.10.2008 till 07.011.2008 and he refunded TA advance for transfer on 29.11.2008. Further, the period from 01.12.2008 till 24.04.2009 shall be treated as on duty with pay and allowances, as applicable under the rules since the applicant was not allowed to join at Kanpur till 25.04.2009 due to delay in passing order by the respondents as per order dated 05.11.2008 of this Tribunal. The entire period from 16.10.2008 to 24.04.2009 shall be counted for the purpose of continuity of service and for other service benefits as per rules. This order shall be complied by the respondents within a period of three months from the date of receipt of a certified copy of this order.

11. The OA is disposed of with the above directions. No costs.

(RAKESH SAGAR JAIN) (GOKUL CHANDRA PATI)
MEMBER-J MEMBER-A

Anand...