

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.1110/2018

Reserved on 13th July 2018

Pronounced on 25th July 2018

**Hon'ble Mr. Justice Dinesh Gupta, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. Tejinder Kaur (aged 54 years)
d/o Shri Sudershan Singh
r/o M-16, Green Park (Main)
New Delhi – 110 016

(Applicant in person)

..Applicant

Versus

1. Union of India through Secretary
Ministry of Women & Child Development
& Vice Chairperson, NIPCCD
(Appointing & Disciplinary Authority)
Room No.601, A Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi – 110 001

2. National Institute of Public Cooperation
& Child Development (NIPCCD)
(Autonomous organization)
Through its Director
5, Siri Institutional Area, August Kranti Marg
New Delhi – 110 016

..Respondents

(Mr. Gyanendra Singh, Advocate for respondent No.1 –
Mr. Sanjeev Joshi, Advocate for respondent No.2)

O R D E R

Mr. K.N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main relief:-

“a) quash the order passed by Respondent no.2 on 24.5.2017 to stop payment of salary to Applicant, while approving draft of Memoranda dated 24.5.2017 and set aside content of note dated 25/26.5.2017, based on aforesaid decision dated 24.5.2016 (both at Annexure-I colly) and direct payment of arrears of pay & allowances since 10.9.2016 by calculating HRA @ 30% throughout and refund Professional Tax deducted from salary of Applicant under Madhya Pradesh Professional Tax Act, 1995 with effect from 1.4.2016, alongwith payment of compound interest on arrears of pay & allowances @ 8.5% till date of payment of such arrears.”

2. Factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant has been working in National Institute of Public Cooperation & Child Development (NIPCCD) – respondent No.2 since 27.09.1987 in different capacities. On contract basis, she was selected as a Joint Director in NIPCCD and joined as such on 10.06.2013.

2.2 The NIPCCD has its Headquarters at New Delhi and 4 Regional Centres at Bengaluru, Indore, Lucknow and Guwahati. Each of these

Regional Centres is headed by a Regional Director, who is in the grade of Joint Director.

2.3 In terms of O.M. dated 27.11.2014 of Department of Personnel & Training (DoPT), an Internal Complaints Committee (ICC) was constituted by NIPCCD under the “Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013” (for short “2013 Act”), of which the applicant was made the Presiding Officer.

2.4 The applicant had alleged that a complaint of sexual harassment was received on 16.07.2015 by the Secretary, Ministry of Women & Child Development – respondent No.1, who is also the Chairperson of NIPCCD and that the respondent No.1, who, instead of referring it to ICC, as statutorily required, referred the same to some other person for investigation. The applicant felt slighted and apprehending that her powers of Presiding Officer of ICC is being usurped, she approached the Hon’ble Delhi High Court in W.P. (C) No.5928/2016 and also filed C.M. No.24471/2016 in the said W.P. The Hon’ble High Court, vide its Annexure A-8 order dated 18.07.2016, restrained the Secretary, Ministry of Women & Child Development from constituting any Complaints Committee in contravention of Section 4 (5) of 2013 Act.

2.5 Apprehending that the respondents may resort to transferring the applicant to outside Delhi, she had filed C.M. No. 30301/2016 in W.P. (C) No. 5928/2016, in which the Hon'ble High Court observed/ directed as under:-

“By this application, the petitioner seeks restrained on the respondent No.2 from transferring the petitioner out of the Headquarters at New Delhi, till she completes her normal tenure at New Delhi.

Learned counsel appearing for respondent No.2 submits that firstly, the petition itself is not maintainable and such application would not lie before this Court and secondly, if it is maintainable, it would lie before the Central Administrative Tribunal. He further submits that, as of date, there is no order of transfer, transferring the petitioner out of Delhi, and the application has been filed merely on an apprehension.

In view of the statement of the counsel for the respondent No.2 that as of now there is no transfer order passed qua the petitioner, no interim order is required in this application at this stage.

In case any transfer order is passed, the petitioner would be at liberty to approach this Court by filing an appropriate application, which would be considered in accordance with law.”

2.6 The applicant alleges that her filing W.P. (C) No.5928/2016 and the Annexure A-8 order of the Hon'ble High Court dated 18.07.2016 in the said W.P. annoyed the respondents and as a consequence thereof, she was transferred by the respondents to the Regional Centre, Indore, vide

Annexure A-5 office order No.235/2016 dated 09.09.2016. This office order reads as under:-

“Consequent upon the approval of the Competent Authority, Dr. Tejinder Kaur, Joint Director (PC) is hereby transferred and posted from NIPCCD Headquarters, New Delhi to NIPCCD Regional Centre, Indore with immediate effect.

2. She will be entitled for Transfer TA and Joining Time as per Rules.

3. Dr. Tejinder Kaur will hand over the charge of the post of Joint Director (PC) to Shri S.C. Srivastava, Joint Director.

4. She stands relieved with effect from 9th September, 2016 (Afternoon).”

2.7 Availing the liberty granted by the Hon’ble High Court, vide its order dated 24.08.2016 in C.M. No.30301/2016 in W.P. (C) No.5928/2016, after the Annexure A-5 transfer order dated 09.09.2016 was passed whereby she was transferred to Regional Centre, Indore, the applicant moved C.M. No.33866/2016 in W.P. (C) No.5928/2016, which was disposed of by the Hon’ble High Court vide order dated 16.09.2016 with the following directions:-

“Till the next date of hearing, the respondents shall not enforce the order dated 09.09.2016.

It is further clarified that since the contention of the respondent is that the petitioner stands relieved on 09.09.2016, the petitioner would not be required to either report to Delhi Office or to Indore

Office and the absence of the petitioner shall not be taken as absence without leave.”

2.8 On the strength of the aforementioned order dated 16.09.2016 of Hon'ble High Court, the applicant, who had already been relieved from the NIPCCD Headquarters, New Delhi (respondent No.2), was not required to either report at Delhi Office nor at Indore Office. The applicant submitted Annexure A-11 representation dated 23.09.2016 to respondent No.2 for release of her salary. As her salary was not being released, she filed yet another C.M. No.44707/2016 in W.P. (C) No.5928/2016, with the following prayer:-

“a) direct Respondent no.2 to pay the Applicant/Petitioner full salary & allowances (including full arrears of Dearness Allowance, medical reimbursements, etc.) and perks that Petitioner is entitled to, as being appointed to the post of Joint Director in Respondent no.2 at its Headquarters in New Delhi, for the month of September, 2016 onwards upto November, 2016 and continue to pay the pay & allowances / perks thereafter, regularly and timely, from funds of Respondent no.2 at NIPCCD, New Delhi only, in terms of the interim orders passed by this Hon'ble Court on 16.9.2016 and thereafter, during pendency of the main matter.”

2.9 In the meanwhile, respondent No.2 issued Annexure A-14 (colly.) order dated 28.12.2016 directing the Regional Centre, Indore to release her salary. Accordingly, she has been paid salary up to April 2017 by the Regional Centre, Indore up to April 2017.

2.10 The applicant had challenged her Annexure A-5 transfer order dated 09.09.2016 in another O.A. No.3582/2016. The Hon'ble High Court had taken cognizance of this development, in its interim order dated 22.12.2016 in W.P. (C) No.5928/2016 with several C.Ms., regarding payment of salary to the applicant, directed for release of her salary and also made certain observations. The relevant portion of the said order is extracted below:-

“Without prejudice to the rights and contentions of the parties, in view of the interim order dated 16.09.2016, passed by this Court, the respondent Nos.1 and 2 shall release the salary as also the admissible perks, which the petitioner is entitled to under the Rules. It is for the respondents to administratively consider as to whether the salary and the perks are to be disbursed from the Indore Office or the Head Office at Delhi. It is clarified that release of salary from either the Indore Office or the Delhi Office would be without prejudice to the rights and contentions of the parties.

Learned senior counsel for the respondent Nos.1 and 2 submits that the salary shall be released within a period of one week from today.

Insofar as the issue No.2 i.e. the issue of transfer and relieving order of the petitioner dated 09.09.2016 is concerned, learned senior counsel for the respondents informs that the petitioner has already filed an original application being OA No.3582/2016 before the Central Administrative Tribunal, which is pending consideration.

It is clarified that since the issue of transfer is a service matter and is subject to the jurisdiction of the Central Administrative Tribunal, the Central Administrative Tribunal is at liberty to consider the same in accordance with law. The interim order dated 16.09.2016 passed by this court shall be subject to the further orders to be passed by the Central Administrative Tribunal in the OA No.3582/2016 filed by the petitioner. The Central Administrative Tribunal would be at

liberty to modify, set aside or confirm the order dated 16.09.2016 in the course of hearing of the said OA by way of an interim order or a final order.

The interim order dated 16.01.2016 shall continue to operate till the Central Administrative Tribunal, as noted above, takes a view in the matter. It is clarified that the Central Administrative Tribunal shall be at liberty to consider the Original Application without being influenced by anything stated in this order.”

2.11 The W.P.(C) No.5928/2016 was finally dismissed by the Hon’ble High Court and so also all the interims order passed by it, vide order dated 12.12.2017. The operative part of the order is extracted below:-

“28. The petitioner had also filed an application (CM No. 33866/2016) staying the operation of the decision of the Secretary (WCD) cum Vice-Chairperson of the Institute dated 09.09.2016 transferring the petitioner out of Delhi to the Regional Centre at Indore. The petitioner has contended that the said decision has been taken to frustrate the interim orders passed by this Court on 18.07.2016, whereby the respondents were restrained from changing the constitution of the ICC. The petitioner has also sought to challenge her transfer orders on various other grounds. Clearly, the petitioner cannot claim any right to continue in Delhi only because the complaint of Ms X was not referred to the ICC. Even if, it is assumed that the Institute has not been following the provisions of the Act in its letter and spirit, the petitioner cannot insist on being continued to be posted in Delhi. This Court is refraining from making any further observations with regard to the averments made by the petitioner in this regard and it would be open for the petitioner to pursue her remedies with regard to the service matter with the Central Administrative Tribunal.

29. The petition is accordingly dismissed. All interim orders are vacated and the pending applications are disposed of. The parties are left to bear their own costs.”

2.12 The respondent No.2, vide its Annexure A-3 memorandum dated 24.05.2017, called for explanation of the applicant as to how she was having a copy of the official notings of Secretary, Ministry of Women & Child Development, to which she was not authorized. She was also directed to explain as to why the disciplinary action against her under CCS (CCA) Rules, 1965 as well as under Rule 3 (i) of CCS (Conduct) Rules, 1964 should not be initiated against her for having copy of official documents without permission of the competent authority.

2.13 The respondent No.2 issued another Annexure A-2 memorandum dated 24.05.2017 for her unauthorized absence to the applicant, which reads as under:-

“Dr. Tejinder Kaur was relieved from the Headquarters, New Delhi vide Office Order No.235/2016 (bearing file No.NI/V/3/2011-Pers.) dated 09.09.2016 with a direction to report for duty at Regional Centre, Indore, Dr. Tajinder Kaur willfully defied the said order of the Competent Authority and neither she joined the Regional Centre, Indore nor apprise Headquarters about the compliance of the transfer order.

2. As per office record, Dr. Tejinder Kaur appears to be an unauthorized absence till date since 10.09.2016.

3. Dr. Tejinder Kaur is directed to explain as to why she may not be treated on unauthorized absence for the period commencing from 10.09.2016 till disposal of the matter. She may also explain as to why disciplinary action may not be taken against her.

4. Her explanation on the above matter should reach to the undersigned on or before 08.06.2017 till date since 10.09.2016.

3. Dr. Tejinder Kaur is directed to explain as to why she may not be treated on unauthorized absence for the period commencing from 10.09.2016 till disposal of the matter. She may also explain as to why disciplinary action may not be taken against her.

4. Her explanation on the above matter should reach to the undersigned on or before 08.06.2017.”

2.14 The respondent No.2 issued a direction to the Regional Director, Regional Centre, Indore, vide letter dated 25/26.05.2017 (Annexure A-1 (colly.), directing that the applicant should not be paid salary, as she has been unauthorisedly absent from duty since 10.09.2016. The contents of this letter would read as under:-

“With reference to Regional Centre, Indore Note No.NI/RC(I)/Accts./X/19/2017-18/239 dated 07.04.2017, it is informed that Dr. Tejinder Kaur was relieved from the Headquarter, New Delhi vide Office Order No.223/2016 dated 09.09.2016 (A/N) with a direction to report for duty at Regional Centre, Indore. Dr. Tejinder Kaur willfully defied the said order of the Competent Authority and neither she joined the Regional Centre, Indore nor apprise Headquarters about the compliance of the transfer order. As per office record, Dr. Tejinder Kaur appears to be on unauthorized absence till date since 10.09.2016.

2. In view of the above, Regional Centre, Indore is hereby advised not to release her salary w.e.f. May, 2017 till further orders.

3. This issues with the approval of competent authority.”

Aggrieved by Annexure A-1 (colly.) memorandum dated 25/26.05.2017, the applicant has approached this Tribunal in the instant O.A. praying for the relief as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents have filed their reply, to which the applicant has filed rejoinder.

4. On completion of pleadings, the case was taken up for hearing the arguments of the applicant, who appears in person, and learned counsel for respective respondents on 13.07.2018.

5. The main contention of the applicant was that on the basis of judicial orders dated 16.09.2016 in C.M.No.33866/2016 in W.P. (C) No.5928/2016 and dated 22.12.2016 in the said W.P., she was not required to report for duty at New Delhi or office at Indore, Regional Centre, but she was entitled to getting her salary. She further submitted that since she had not reported at the Regional Centre, Indore in pursuance of Annexure A-5 office order No.235/2016 dated 09.09.2016, she was entitled to get her salary from Headquarter Office, New Delhi, as though she was continuing to work at New Delhi. She submitted that the respondents although have paid salary to her up to April, 2017, but they have computed HRA @ 20%, as applicable to Indore and not @ 30% as applicable to New Delhi. She further submitted

that erroneously the respondents have deducted Professional Tax from her salary in accordance with Madhya Pradesh Professional Tax Act, 1995. Her contention was that she never reported at Indore Office and, therefore, no deduction under the said Act should have been made from her salary.

6. *Per contra*, Mr. Gyanendra Singh, learned counsel for respondent No.1 submitted that the Hon'ble High Court has since dismissed the W.P. (C) No.5928/2016 filed by the applicant vide judgment dated 12.12.2017, together with all the interim orders passed in the *ibid* W.P. He vehemently argued that the applicant has violated the official directions and has not obeyed the transfer order dated 09.09.2016 (Annexure A-5), through which she has been transferred and posted at Indore. He submitted that for her unauthorized absence, the respondents were well within their rights in issuing Annexure A-2 order dated 24.5.2017 seeking explanation of the applicant for her unauthorized absence as well as Annexure A-1 (colly.) direction dated 25/26.05.2017 to the Regional Centre, Indore not to pay salary to the applicant, as she has indulged into unauthorized absence.

7. We have considered the arguments of both the parties and perused the materials placed on record.

8. From the records, it is clear that the Hon'ble High Court, vide its orders dated 16.09.2016 in C.M.No.33866/2016 in W.P. (C) No.5928/2016 and 22.12.2016 in the said W.P., had granted interim protection to the applicant from joining at Indore pursuant to Annexure A-5 transfer order dated 09.09.2016. As a matter of fact, the order dated 16.09.2016 leaves no room for any ambiguity that the applicant was granted unique privilege of getting salary without work. The order, in no uncertain terms, states that the applicant was neither required to report at Delhi Office nor at Indore Office and she will not be declared unauthorisedly absent either. Undoubtedly, this order was of unprecedented nature. In compliance of this interim order, the respondents have paid salary to the applicant up to April, 2017 without work. We also note that the applicant has been paid salary from 10.09.2016 to April 2017, as payable to her, as though she was posted at Indore. This is evident from the fact that she has been paid HRA @ 20% and Professional Tax has also been deducted from salary under the Madhya Pradesh Professional Tax Act, 1995. We do not find any fault in the action of the respondents in paying her Indore salary and not New Delhi salary. After all, it is on record that she was relieved from New Delhi Office on 09.09.2016 itself, and hence she could have been paid salary of Indore only. The interim direction dated 16.09.2016 in C.M.No.33866/2016 in W.P. (C)

No.5928/2016 of Hon'ble High Court only entitles for her salary; it does not stipulate as to whether she has to be paid salary of Indore or New Delhi. In our view, she has been correctly paid Indore salary, as she was relieved from New Delhi Office on 09.09.2016 itself.

9. The Hon'ble High Court finally dismissed the W.P. (C) No.5928/2016 filed by the applicant vide judgment dated 12.12.2017, together with all the interim orders passed in the *ibid* W.P. Hence, we are of the view that the interim order dated 16.09.2016 in C.M.No.33866/2016 in W.P. (C) No.5928/2016 continued to operate in favour of the applicant till the disposal of the W.P. We, therefore, hold that the applicant was entitled for receiving salary up to 12.12.2017 even though she may not have actually worked. After the dismissal of the *ibid* W.P. by the Hon'ble High Court on 12.12.2017, the applicant was required to report at Regional Centre, Indore in compliance of the transfer order dated 09.09.2016. Any period of absence thereafter has to be treated as unauthorized absence.

10. In the conspectus of discussions in the foregoing paragraphs, this O.A. is disposed of with the following directions:-

a) The applicant is entitled for receiving salary, even though she has not worked, from 10.09.2016 to 12.12.2017. She is entitled to get the salary for

this period as if she has worked at the Regional Centre, Indore. Since she has been paid salary up to April, 2017, she is entitled for getting salary from 01.05.2017 to 12.12.2017.

- b) The respondent No.2 shall ensure that the direction at (a) *supra* is complied with within four weeks from the date of receipt of a copy of this order.
- c) As noticed hereinabove, since the applicant has already challenged her transfer to Regional Centre, Indore in a separate O.A. No.3582/2016 before this Tribunal, we refrain from making any comment on the issue of transfer as such.
- d) Any period of absence of the applicant from 12.12.2017 shall be treated as unauthorized absence and the respondents are at liberty to deal with it in accordance with law.

There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

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(Justice Dinesh Gupta)
Member (J)