

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

T.A.No.260/8/2011
Cuttack this the 24th day of May, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri Satyabrata Patnaik, aged about 57 years, S/o. Narahari Patnaik, at present working as General Manager, P&D, S&P, Complex, NALCO, Angul previously working as G.M.(Mines) at Damajodi

...Petitioner

By the Advocate(s)-M/s.Bidhyak Patnaik
M.K.Badu
P.S.Das
P.K.Panda
B.K.Patnaik
M.R.Das
S.K.Swain

-VERSUS-

1. Chairman-cum-Managing Director, National Aluminum Company Ltd., NALCO Bhavan, Nayapalli, Bhubaneswar, Dist-Khurda
2. Dy.General Manager (HRD), NALCO Bhavan, Nayapalli, Bhubaneswar, Dist-Khurda

...Opp. Parties

By the Advocate(s)-M/s.R.K.Rath
N.R.Rout

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as General Manager (P&D), NALCO at the time of filing a Writ Petition © No.4973 of 2003 on 13.5.2003 praying for the following reliefs:

- i) To issue a Rule Nisi in the nature of writ of Mandamus and/or certiorari and/or any

other appropriate writ/writs, order/orders, direction/directions to quash order/letter dated 7.2.2003 and 2.5.2003 as per Annexure-2 and 4 respectively with direction to the opposite parties to treat the periods from 3.1.2003 to 16.1.2003 and from 31.1.2003 to 20.2.2003 as on duty and for releasing his salaries.

- ii) If the Opposite party fails to show cause and/or shows insufficient and/or false cause, make the said Rule Nisi absolute.
- iii) Grant any other relief/reliefs to which the petitioner is entitled.
- iv) Allow this writ application with costs.

The Writ Petition was transferred to this Tribunal as per the Court's Order No.6 dated 12.1.2011.

2. The brief facts of the case, as they appear from the T.A., are as follows:

The applicant was working as General Manager (Mines) in NALCO at Damanjodi and was transferred to Angul. He filed the Writ Petition © No.5180 of 2002 before the Hon'ble High Court of Orissa challenging the order of transfer. The Hon'ble High Court of Orissa disposed of the said Writ Petition in November, 2002 directing that pending disposal of the representation of the petitioner by a reasoned order, the petitioner shall continue to work as General Manager (Mines), NALCO at M & R Complex, Damanjodi. The petitioner continued in that post by virtue of Hon'ble HighCourt's order. However, the Chairman-cum-Managing Director, NALCO (Res.No.1) vide his order dated 21.12.2002 rejected his representation and

directed that he should take up his responsibility as General Manager (P&D) at S&P Complex, Angul and he should be relieved immediately to take up the new assignment. The said order was challenged by the applicant in the Hon'ble High Court of Orissa in W.P.(C) No.19 of 2003 and simultaneously a Contempt Case bearing No.CONTC No.27 of 2003 was filed. The order of the CMD was served on the applicant on 2.1.2003, but he claims that he continued in his post and discharged his official functions. When the Writ Petition was heard in the Hon'ble High Court, the respondents produced an official order passed by the Deputy General Manager dated 15.2.2003 reposting him as General Manager (OSD) at Alumina Plant, Damanjodi till 31.3.2003. He made a representation to the NALCO authorities for regularization of the period of service from 3.1.2003 to 16.1.2003 and from 31.1.2003 to 20.2.2003 since he availed leave from 17.1.2003 to 30.1.2003 when he was sick. On 2.1.2003 the NALCO authorities relieved the petitioner from the post of General Manager (Mines), Damanjodi by a fax intimation. On 7.3.2003, the NALCO authorities directed the applicant to submit an application for leave with the following order:

"Please refer to your representation dated 21.2.2003 addressed to CMD on the above mentioned subject.

I am directed to state that the contention in your above referred letter are not correct and tenable.

As regards your application dated 17.1.2003 and 24.1.2003 for leave from 17.1.2003 to 31.1.2003 on the ground of sickness, the same can be considered by the competent authority on submission of application supported by requisite medical certificate. As regards the request for treating the period of your absence from 01.01.2003 to 16.1.2003 and 21.1.2003 to 20.2.2003 on duty, the same is not tenable as per Rules and will constitute unauthorized absence with necessary consequence including break in service unless regularized. At best the period can be regularized against the leave at your credit. Therefore, you may apply for leave for the above period to the Competent Authority for consideration”

On 28.3.2003 the applicant submitted further representation (A/3) for regularization of his service for the period from 3.1.2003 to 16.1.2003 and 31.01.2003 to 20.02.2003. On 2.5.2003 he received a reply (A/4) informing him that the period of absence constitutes unauthorized absence with necessary consequences including break in service. The applicant has challenged these two orders dated 7.3.2003 and 2.5.2003 in the Writ Petition before the Hon'ble High Court of Orissa. The Writ Petition has been transferred to this Tribunal and renumbered as T.A.No.8 of 2011.

3. The applicant has based his prayer mainly on the ground that the Hon'ble High Court vide its order No.6 dated 4.2.2003 had reached the conclusion that the respondents having not produced any record to prove the fact that there was urgency in creating a new Department called Planning & Design prior to 31.3.2003, there was no urgency in transferring him from NALCO, Damanjodi to NALCO Angul. The impugned orders

dated 7.3.2003 and 2.5.2003 and the decision of the authorities are therefore mala fide per se and liable to be quashed and set aside. .

4. The Respondents in their counter-reply filed on 14.1.2012 have submitted that the applicant was transferred to NALCO, Angul as General Manager (P&D) vide order dated 13.11.2002 and was entitled to 12 days transit leave which commenced from 3.1.2003. As he was relieved from Damanjodi on 2.1.2003 and the 12 days period terminated on 14.1.2003, he should have reported for duty at Angul on 15.1.2003. The applicant filed certain cases in the Hon'ble High Court and he was allowed to stay at Damanjodi till 31.3.2002. He joined at Damanjodi on 21.2.2003. So effectively, he remained absent from duty from 15.1.2003 to 20.2.2003 without any application for leave. In the final order passed by the Hon'ble High Court on 17.2.2003 in the CONTC. No.27/03 and W.P(C) No.19 of 2003 it was directed that the petitioner may file a representation before the appropriate authority regarding the period of absence and such representation will be considered in accordance with the relevant rules. Vide order dated 7.2.2003, he was directed to submit the necessary leave application supported by the requisite medical certificate. Similarly, in the order dated 2.5.2003, the applicant was informed that his period of absence cannot be treated as on duty since the same

is not tenable as per rules. Therefore, the T.A. filed by the applicant lacks merit and should be dismissed.

5. The applicant filed a rejoinder on 20.11.2012 in which he has contested the claim of the respondents and has reiterated that there was no exigency to transfer him to Angul. He was forced to remain absent from 3.1.2003 to 20.2.2003 till the respondents changed their order of transfer and allowed him to be retained till 31.3.2003. There is no concept of transit leave in NALCO as per the NALCO Employees Leave Rules, 1991.

6. We have heard the learned counsels from both the sides on 2.5.2018 and perused the documents submitted by them. During the argument, the applicant has cited the decisions of the Hon'ble Supreme Court in *Kasinka Trading & Ors. vs. Union of India & Ors.* [(1995) 1 SCC 274] and of the Hon'ble High Court of Orissa in *W.P.(C) No.11813 & 11814 of 2000 decided on 31.1.2005* to support his argument that during the period in which the litigation was pending and the applicant was pursuing the litigation on a bona fide faith on judiciary the period of absence should be considered as on duty and the decision to ask him to apply for leave for that period is hit by the principle of promissory estoppel. He has also cited the decision of Hon'ble High Court at New Delhi in *W.P.(C) No.5086 of 2005 and CM No.9335/2005 (C.Venkataramana vs.UOI and Ors.)* wherein it was decided that since the petitioner in that

case was not placed under suspension and was never asked to proceed on leave pending inquiry, the amount payable towards salary, allowance and other benefits should be released to him.

7. The issue to be decided in the present T.A. is whether the period of absence from 3.1.2003 to 16.1.2003 and 31.1.2003 to 20.2.2003 is to be treated as duty under the extant rules and position of law. It is seen from the records that in the order 04.02.2003 passed in CONTC. No.27/03 dated 17.02.2003 passed in CONTC No.27/03 and W.P.(C) No.27/03, the Hon'ble High Court had made the following observations:

CONTC.No.27/03

"Heard Mr.Patnaik, learned counsel for the petitioner and Mr.Rath, learned counsel for NALCO. The records have been produced before us. The proposal dated 12.11.2002 passed by the Director (P&T) to the following effect appears to be in the file:

"In order to streamline the Planning and Design activities, a new Department called Planning & Design may be created in S&P Complex, Angul. Shri S.B.Patnaik, personal No:00215, General Manager (Mines) M&R Complex, Damanjodi may be transferred and posted to S&P Complex, Angul as General Manager (Planning & Design)".

The aforesaid post of General Manager (Planning & Design) along with the Department (Planning & Design) appears to have been newly created. We are unable to see as to what urgency is there in posting the petitioner in the aforesaid new Department and Post before 31.3.2003. This urgency has not been indicated anywhere. This Court had passed orders on 21.11.2002 in W.P. (C) No.5180 of 2002, inter alia, directing the Chairman-cum-Managing Director, NALCO Ltd. to consider to retain the petitioner at Damanjodi at least till 31st March, 2003 so that the petitioner's son can complete his final year examination in +2 Course

and the petitioner will be able to complete the work given to him under the MOU upto 31.3.2003. We would have appreciated if posting of the petitioner at the aforesaid new post and Department was necessary immediately prior to 31.3.2002. But there is no such indication in the records produced before us.

Mr.R.K.Rath, learned counsel for the NALCO wants to obtain instruction.

List this matter on 11.2.2003.

A copy of this order will be furnished to Mr.R.K.Rath, learned counsel for the NALCO by 5 P.M.”.

W.P(C) No.19 of 2003 &W.P.C.No.19 of 2003

Heard Mr.B.Patnaik, learned counsel for the petitioner and Mr.R.K.Rath, learned counsel for the Opp.Parties.

The petitioner was working as General Manager, NALCO (Mines) M & R Complex, Damanjodi. By order dated 13.11.2002 passed by the General Manager (HRD) he was transferred and posted to S & P Complex, Angul as General Manager (Planning & Design) with immediate effect. Aggrieved, the petitioner filed W.P. (C) No.5180 of 2002 which was disposed of by order dated 11.11.2002 of this Court with direction that the Chairman-cum-Managing Director, NALCO Ltd. will consider the representation of the petitioner against the transfer and, in particular, consider to retain him at Damanjodi till 31.3.2003 so that the petitioner's son may complete his final year examination in +2 Course and the petitioner will be able to complete the work given to him under MOU upto 31.3.2003. Pursuant to the said order, the Chairman-cum-Managing Director by his order dated 21.12.2002 disposed of the representation of the petitioner giving detailed reasons. By the said order, however, the petitioner was permitted to retain his family at Damanjodi till 31.3.2003 if he so desired in the official residence. Aggrieved by the aforesaid order dated 21.12.2002 passed by the Chairman-cum-Managing Director, the petitioner has filed the contempt petition (CONTC No.27 of 2003 and the writ petition (W.P.(C) No.19 of 2003.

An office order dated 15.2.2003 passed by the Deputy General Manager (HRD) has been produced before us by which the petitioner has been re-posted as General manager (OSD) at Alumina Plant at Damanjodi till 31.3.2003. Hence, the petitioner has been retained at Dam,anjodi till 31.1.2003 till the examination of the son of the petitioner is over. Since the petitioner has been re-posted at Damanjodi till 31.3.2003, we do not find any reason to hold the Opp.Particles guilty of contempt or to interfere with the impugned order dated 21.12.2002.

Mr.patnaik submitted that since the petitioner has been re-posted at Damanjodi as General Manager (OSD) and not as General manager (Mines) all the work that he has done as General Manager(Mines) may not be taken into consideration for his career. We are sure that NALCO will give credit to the petitioner for any work that he has himself done and the change of posting of the petitioner by the order of re-posting dated 15.2.2003 does not adversely affect his career.

Mr.Patnaik further submitted that the petitioner was on leave for some period and was absent for some period and the aforesaid periods be regularized. The petitioner may file a representation before the appropriate authority who will consider the same in accordance with the relevant rules.

The petitioner will forthwith comply with the order of his re-posting.

The Contempt Petition and the writ petition accordingly stand disposed of.

Urgent certified copy of this order be granted as per the rules”.

8. It is quite clear that the period for which the applicant has prayed to be treated as duty falls within the timeframe captured in the above two orders. The Hon'ble High Court in their order dated 21.11.2002 had directed the CMD, NALCO to consider the representation of the applicant against his

transfer. Subsequently, while disposing of the Contempt Petition, the Hon'ble High Court took note of the fact that by order dated 15.2.2003, the applicant was allowed to be retained till 31.3.2003. This effectively means that during interregnum between 13.11.2002 till 15.2.2003, the applicant was knocking at the door of the Hon'ble High Court of Orissa through W.P.(C) No.5180/2002, CONTC No.27/2003 and W.P.(C) No.19/2003. The applicant while pursuing his case and while waiting for the order of the Hon'ble High Court he did not join at Angul. That being the case not regularizing the period of absence from 3.1.2003 to 16.1.2003 and 31.1.2003 to 20.2.2003 amounts to persecution of the applicant for filing cases in the Hon'ble High Court of Orissa and following it up for his retention at Damanjodi. The Hon'ble High Court had also observed that the applicant wanted to stay at Damanjodi for the completion of his son's education and completion of his work given to him under MOU. It was therefore a reasonable expectation on the part of the applicant that till disposal of the CONTC.No.27 of 2003 and Writ Petition© No.19 of 2003 his not joining at Angul is justified. This presumption has been confirmed by the order dated 15.2.2003 for his continuation at Damanjodi till 31.3.2003. Following the order of the Hon'ble High Court on CONTC.No.27 of 2003 along with WP© No.19 of 2003 dated 17.2.2003, Respondent No.1 should have in all fairness regularized the service of the applicant by granting him leave as

available in his account and the matter should have been given a decent closure. Instead of that this has been allowed to prolong for so many years despite the fact that on this frivolous matter the applicant has been subjected to persecution when he has approached the Hon'ble High Court for relief. We do not go into the issue of promissory estoppel as pleaded by the applicant in the case law cited by him, simply because, in the present case the applicant awaited the orders of the Hon'ble High Court for the redressal of his grievance.

9. In view of above, the T.A. is allowed. The impugned orders dated 7.3.2003 (A/2) and dated 2.5.2003(A/4) are quashed and set aside. The applicant is entitled for regularization of the period from 3.1.2003 to 16.1.2003 and 31.1.2003 to 20.2.2003. Respondents are directed to pass orders to this effect by regularizing the said period as duty within a period of 90 days from the date of receipt of this order.

No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

BKS

Pre-delivery order in T.A.No.8 of 2011 is placed below for kind perusal and concurrence.

MEMBER(A)

HON'BLE MEMBER(J)