

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 597 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Jitendra Kumar Das, aged about 58 years, S/o Late Prabhu Charan Das, At- Qr. No. MIG (II), 64/16, Chandrasekharpur, Bhubaneswar – 751016, Ex- Office Superintendent, O/o national Commission for Scheduled Tribes, Regional Office, Bhubaneswar.

.....Applicant

VERSUS

1. Union of India represented through its Secretary to the Govt. of India, National Commission for Scheduled Tribes, 6th Floor, Loknayak Bhawan, Khan market, New Delhi – 110003.
2. The Director, National Commission for Scheduled Tribes, 6th Floor, Loknayak Bhawan, Khan market, New Delhi – 110003.
3. The Deputy Secretary, Regional Office, National Commission for Scheduled Tribes, Plot No. N/1-297, IRC Village, Bhubaneswar – 751015.
4. The Pay & Accounts Officer, Ministry of Social Justice and Empowerment, Room No.626-A, Shastri Bhawan, new Delhi – 110001.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.C.M.Singh, counsel

Heard & reserved on : 20.2.2019 Order on : 12.3.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"(i) To quash the order dt. 7.8.2018 under Annexure A/13.

(ii) To direct the respondents to disburse the salary from June, 2017 to August, 2017 in the interest of justice & equity.

(iii) to pass any other order/orders as deemed fit and proper."

2. The applicant is aggrieved by the order dated 7.8.2018 (Annexure A/13) by which the respondents have sanctioned the EL from 1.6.2017 to 30.6.2017 and have asked the applicant to submit the application for leave as due for regularising the period of absence from 1.7.2017 to 29.8.2017.

3. The case of the applicant is that he is entitled to full salary during the period of absence from 1.6.2017 till 29.8.2017 as duty because of the following reasons :

(i) The applicant was duly selected through a departmental examination for the post of LDC and joined duty as LDC on 5.12.1984. Thereafter he was promoted to UDC and retired from service on 30.9.2018. He was transferred to Bhubaneswar office as Office Superintendent on 30.1.2012 where he continued till retirement.

(ii) Just before his retirement a transfer order was issued by the respondents vide order dated 30.5.2017 (Annexure A/2) and the relieving order was issued on 31.5.2017 relieving him. The applicant submitted a representation dated 1.6.2017 (Annexure A/4) and when no action was taken he filed OA No. 370/2017.

(iii) Respondent No.1 rejected the representation without assigning any reason, for which the applicant filed another OA No. 449/2017 in which interim order was passed dated 26.7.2017 directing the respondents to allow the applicant to continue to work against the said post if the post is vacant and nobody has been posted there. Thereafter, the applicant was allowed to continue at Bhubaneswar.

(iv) The Tribunal vide order dated 30.10.2017 (Annexure A/9) in OA No. 449/2017 quashed the transfer order. Challenging the said order the respondents filed a writ petition before the Hon'ble High Court. The said writ petition was dismissed vide order dated 12.1.2018 (Annexure A/10). Thereafter, the respondents released the salary of the applicant from September 2017 without paying the salary from 1.6.2017 to 31.8.2017.

(v) It was submitted that in view of the order of the Tribunal dated 30.10.2017 quashing the transfer order the applicant is entitled for salary from 1.6.2017.

4. The respondents have filed a short reply stating that the competent authority has decided to regularize the period of absence by sanctioning the leave as due to regularise the period of absence from 1.6.2017 to 31.8.2017.

5. Heard learned counsel for both the applicant and the respondents and considered the pleadings on record. The question to be decided is whether the claim of the applicant to treat this entire period as on duty has any merit. The order dated 30.10.2017 of the Tribunal (Annexure A/9) in which the transfer order of the applicant was quashed stated as under :

"11. The scope of judicial inference in the matter of transfer has been dealt with by the Hon'ble Supreme Court in a number of cases. We have taken into account the decisions of the Hon'ble Supreme Court in Union of India -vs- S.L.Abbas reported in (1993) 4 SCC 357, Kendriya Vidyalaya Sangathan -vs- Damodar Prasad pandey (2004) 12 SCC 299 and Abani kanta Ray -vs- State of Orissa 1995 Supl (4) SCC 169. We have also considered the respondents' citation of the judgments in Rajendra Singh & Ors. -vs- State of U.P. & Ors. reported in (2009) 15 SCC 178, Shilpi Bose & Ors. -vs- State of Bihar & Ors. in AIR 1991 SC 532 and N.K.Singh -vs- Union of India & Ors. (1994) 6 SCC 1998.

12. Although the judicial pronouncements are overwhelmingly clear that the Courts and Tribunal should not interfere with the orders of transfer unless the transfer orders have been made in violation of mandatory statutory rules or on the ground of malafide, in the present case, we find that the applicant has only less than one year of service before he retires. The applicant has alleged certain degree of mala fide and arbitrariness regarding retention of Shri S.J.Jena at Bhubaneswar Office. We are not inclined to go into the merits of the retention of Shri Jena at this stage. It is for the respondents to arrange the posting of Office Superintendents at their different field offices. But the transfer guidelines (A/1) very clearly state that officers and staff retiring within three years may be considered for posting to the stations of their choice. The applicant being very close to his retirement, his dislocation to Ranchi will be an act of gross inhumanity. It will also create difficulties in processing the necessary documents for his pensionary benefits. Only on this ground, we allow the OA filed by the applicant. Transfer order dated 30.5.2017 (A/5), relieving order dated 31.5.2017 (A/6) and the speaking order dated 12.7.2017 (A/10) are quashed. The respondents are directed to retain the applicant in his present place of posting till his superannuation."

6. The interim order dated 26.7.2017 was issued directing the respondents to allow the applicant to continue to work against the post if it is vacant and not filled up otherwise. Accordingly the applicant was allowed to continue at Bhubaneswar and his posting was regularised from September 2017 after the writ petition filed by the respondents challenging the order of the Tribunal was dismissed by Hon'ble High Court.

7. From the facts above it is clear that the applicant vide order dated 26.7.2017 (as stated in para 4.7 of the OA) of the order of the Tribunal, the applicant deserves to be adjusted against the post w.e.f. 26.7.2017. Hence, he is entitled for salary as duty from 26.7.2017 by virtue of the Tribunal's order. It is seen that the reason for which this period from 26.7.2017 till 31.8.2017 was not treated as on duty has not been properly explained by the respondents in the impugned order or in the short reply filed by them.

8. It is also noticed that in the order dated 30.10.2017 (Annexure A/9) and in the order of the Hon'ble High Court dated 12.1.2018, no specific direction was there as to how the period of absence between the date when the applicant was relieved in pursuance to the transfer order and the date of his joining after quashing of the transfer order (i.e. from June, 2017 to August, 2017) will be treated. From the order dated 30.10.2017, it is seen that the order dated 31.5.2017 by which the applicant was relieved, was quashed along with the transfer order. Since the relieving order has been quashed, the applicant's absence from duty from 1.6.2017 till 26.7.2017 cannot be treated as due to his fault. In the interest of justice, the applicant should be deemed to be on duty from 1.6.2017 till 25.6.2017 and since after 26.6.2017 till 31.8.2017 there is an interim order of this Tribunal, the period should also be deemed as duty.

9. In view of the above, we allow the OA directing the respondents to treat this period of absence from 1.6.2017 till 31.8.2017 as duty and release the arrear salary and other consequential benefits to the applicant as per law within three months from the date of receipt of the copy of this order.

10. The OA is accordingly allowed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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