

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT JAMMU)**

...

ORIGINAL APPLICATION NO. 061/1338/2017

Jammu, this the 12th day of July, 2019

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)**

...

Nazir Ahmad Dar,

Aged 52 years,

S/o Haji Ghulam Nabi Dar,

R/o Sonwarbagh District Srinagar Kashmir

(Presently posted as UDC under No. MES 506291 at GE 864 EWS

C/o 56 APO.

(By Advocate: Mr. Pawan Kumar)

....Applicant

VERSUS

1. Union of India through Secretary, Ministry of Defence,
Government of India, New Delhi.
2. HQ Chief Engineer, Northern Command, Pin 914698 C/o 56
APO
3. HQ Chief Engineer, 31 Zone C/o 56 APO.
4. HQ 133 works Engineer C/o 56 APO.
5. Garrison Engineer, 864 EWS C/o APO.

....RESPONDENTS

(By Advocate: Mr. Raghu Mehta)

ORDER (Oral)
SANJEEV KAUSHIK, MEMBER (J)

1. The claim in SWP No.1252/2016 filed in the Hon'ble J&K High Court, and now stands transferred, vide order dated 6.10.2017, as jurisdiction over the issue raised lies with this Court, is to issue an appropriate writ or direction including in the nature of certiorari to quash the impugned order dated 9.5.2016 and to issue a writ of mandamus directing the respondents to treat the applicant on duty for the period from 1.7.2015 to 30.4.2016.

2. The facts of the case are largely not in dispute. The applicant is working as Upper Division Clerk (UDC). He was posted in office of Garrison Engineer, 864 EWS C/o APO, Srinagar and was transferred vide order dated 21.3.2015 to HQ CE (AF), Udhampur Zone. The transfer order was challenged in SWP No. 908 of 2015, which was disposed of with direction to respondents to re-consider the matter, vide order dated 12.5.2015. His claim was, however, rejected vide order dated 17.6.2015 with a direction to the applicant to join place of new posting. This order was challenged in SWP No. 1322/2015 and vide order dated 1.7.2015, the Hon'ble High Court kept order dated 17.6.2015, in abeyance. Despite this order, applicant was not allowed to re-join previous place of posting. C.P. No. 452/2015 was filed and a stand was taken that since applicant stood relieved, he could not be allowed to re-join earlier place. The Court vide orders dated 14.8.2015 and 4.3.2016, directed the respondents to release legitimately earned salary of the applicant. Writ petition No. 133/2015 was dismissed

on 28.4.2016 but with a direction to release the applicant salary before relieving him. However, vide order dated 28.4.2016 his claim for release of salary for the period from 1.7.2016 to 30.4.2016 was declined, hence the petition. The claim of applicant, in short, is that when transfer order was stayed by Hon'ble High Court vide order dated 1.7.2015, then applicant was deemed to be on duty for all intents and purposes and as such he cannot be denied salary from 1.7.2015 to 30.4.2016.

3. The respondents have contesting the claim of the applicant by filing a detailed reply. They submit that since the applicant stood relieved from his duties w.e.f. 30.6.2015, and as such question of payment of any pay and allowances for indicated period does not arise, more so when respondents received stay order dated 1.7.2015 on 9.7.2015. From 1.7.2015, the applicant remained absent from his duties, so he could not be released any salary. They submit that period from 1.7.2015 to 30.4.2016 has been regularized by grant of earned leave. The pay and allowances to the tune of Rs.3,76,010/- for said period has also been paid to him.

4. We have heard the learned counsel for the parties at length and examined the material on the file.

5. It is not in dispute that the respondents had issued transfer order of the applicant and the same was stayed by the Hon'ble High Court vide order dated 1.7.2015. If that be so, the order of the Hon'ble High Court had to be complied with and applicant was to be taken back on duty at previous place from

where he was relieved on 30th June, 2015, as order of transfer itself was kept in abeyance. In other words, it was stayed in toto. So, the relieving of applicant on 30th June, 2015, would not make any difference, unless there was a rider in court order that transfer order is kept in abeyance, unless applicant already stood relieved. There was no such condition in that order. On the one hand the respondents say that applicant was absent from duty and on the other hand they have regularized that period by grant of earned leave. Considering the fact that the order of transfer was stayed, the applicant was deemed to be in service on previous place of posting and the indicated period has to be treated as on duty for all intents and purposes. If respondents had any problem by court order, they could have sought modification or review of that order by appropriate proceedings, which they have not done and apparently the applicant would be entitled to the benefit claimed by him.

6. In the conspectus of aforesaid discussion, this O.A. is allowed. The impugned order is quashed and set aside. The respondents are directed to treat the applicant on duty for indicated period, for all intents and purposes, in view of stay order granted by Hon'ble High Court, within a period of two months from the date of receipt of a certified copy of this order. No costs.

(ARADHANA JOHRI)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)
Dated: 12.07.2019

