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CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 6th DAY OF MARCH, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/01270/2015

D. Ramalingam
No.1/2, Kannappar Street
Ganapathyupuram
Chromepet, Chennai – 600 044.

...Applicant

-versus-

1. Union of India
Rep. by the Chief Postmaster General
Tamil Nadu Circle
Anna Salai, Chennai – 600 002.
2. The Postmaster General
Chennai City Region
Chennai – 600 002.
3. Senior Superintendent of Post Offices
Chennai City North Division
Chennai – 600 008.
4. Assistant Superintendent of Post Offices
Sub-Division II
Chennai City North Division
Chennai – 600 008.
5. Sub-Postmaster HSG – I
Fort St. George P.O.,
Chennai – 600 009. ...Respondents

By Advocates:

M/s. R. Malaichamy, for the applicant.

Mr. S. Padmanabhan, for the respondents.



ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "i. To call for the records of the 3rd respondent pertaining to his show-cause notice which is made in (1) No. B5/PM/Misc/A/dlgs 2014 dated 26.05.2014 and the order made in (2) No. B5/PM/Misc/A/dlgs 2014 dated 15.06.2015 and (3) the order made in Memo No. B5/PM/Misc/A/dlgs/2014 dated 04.08.2015 and set aside the same; consequent to,
- ii. direct the respondents to pay salary to the applicant for the period from 11.02.2015 to 23.04.2015 with interest and cost..."

2. The brief facts of the case, as stated by the applicant, are as follows:-

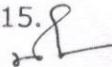
The applicant initially joined the Department as Extra Departmental Delivery Agent (EDDA) now redesignated as Gramin Dak Sevak (GDS) at Nannadu BO. He was promoted as Postman on 5.8.1996 and posted at Aminjikarai. Later on he worked at different places from time to time ie., from 3.4.1997 to 6.1.2002 at Park Town PO, from 7.1.2002 to 12.3.2006 at Chetpet and from 13.3.2006 at Fort St. George Post Office. While working as such, he was transferred to Perambur Barracks SO by a relieving order dated 28.01.2015. Aggrieved by the order of transfer, the applicant filed OA.153/2015 and this Tribunal granted interim stay on 5.2.2015 staying the order of transfer dated 28.1.2015. But the respondents did not comply with the above interim order till disposal of the OA on 10.4.2015. He made several representations requesting the respondents to permit him to join duty at Fort St. George Post Office by virtue of the interim order granted by this Tribunal on 5.2.2015 but the respondents did not permit



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him to join duty on the ground that he did not submit any leave application for the period from 11.02.2015 to 23.04.2015. The grievance of the applicant in this OA is that the respondents are liable to pay salary to him from the date of interim order till he joined duty at the new place of posting at Tondiarpet SO ie., from 11.2.2015 to 23.4.2015 with interest and cost.

3. Per contra, the respondents have filed a detailed reply statement stating that the applicant while working as Postman in the Fort St. George Post Office used to give various complaints against various co-officials directly to the Chief PMGs, TN Circle and PMG, CCR without even endorsing the copies to the SPOs, Chennai City North Division, who is the controlling authority for the applicant. Enquiries revealed that all the allegations raised against the officials are false and the applicant is of the habit of lodging complaints against his co-workers and communicating directly with higher authorities overlooking the channel of communication thus causing inconvenience to the administration. He was also proceeded under Rule 16 of CCS (CCA) Rules, 1965 for the act of sending complaints directly to the Chief PMG and awarded with the penalty of reduction of pay for a period of one year vide Memo dted 20.6.2013 which was subsequently modified as six months on appeal vide Memo dated 15.10.2013. Even after this, the applicant continued with the act of preferring false and frivolous allegations on others. Hence the applicant was transferred to Perambur Barracks S.O. vide Memo dated 27.1.2015. On receipt of the transfer order on 28.1.2015, the 5th respondent made an order book entry and relieving order enabling the applicant to join Perambur Barracks S.O but the applicant refused to sign in the order book and left the office abruptly on 28.1.2015.



Thereafter the applicant submitted leave application through speed post for the period from 19.1.2015 to 10.2.2015 and thereafter from 24.4.2015 to 30.4.2015. He remained unauthorisedly absent from 11.2.2015 to 23.4.2015. As the applicant did not perform any duty either at Fort St. George S.O., or at Perambur Barracks S.O., after issue of Show Cause Notice, the period was treated as Dies Non as per provisions of Rule 62 of the Postal Manual Vol.III under the principles of 'No Work, No Pay' vide Memo dated 4.8.2015. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. The short point for consideration in this OA is whether the applicant is entitled for salary for the 'dies non' period from 11.02.2015 to 23.04.2015.

6. Admittedly this is the 5th round of litigation by the applicant before this Tribunal. Earlier the applicant has filed OA.1270/2015, OA.1280/2015, OA.1402/2015, 153/2015 and presently OA.1270/2015. There is no dispute from either side with regard to the facts of the case. The dispute arises only with regard to the period of absence of the applicant from service during the period when he filed OA.153/2015. Admittedly, the applicant was transferred from Fort St. George to Perambur Barracks Post Office by order dated 27.1.2015 but the procedure was not followed correctly while serving the order of transfer to the applicant and relieved the applicant of his duties from Fort St. George vide order dated 28.1.2015 to join at Perambur Barracks Post Office and remained absent from duty under the shadow of the interim stay granted by this Tribunal on 5.2.2015 till disposal of the OA on 10.4.2015. The

contention of the respondents is that neither the applicant submitted any leave application for the period of absence nor joined the post at Fort St. George. The applicant has himself admitted that since there was an interim order, he did not avail leave on the hope that he will be permitted to join duty at Fort St. George. However, the Tribunal by order dated 10.4.2015 while setting aside the impugned order on the ground of procedural flaw in not serving the order of transfer, made it clear that the order of the Tribunal will not preclude the respondents department from effecting further transfer of the applicant in accordance with regulations/instructions in force. Thereafter the applicant did not make any attempt to join duty at Fort St. George or Perambur Barracks S.O. and remained absent unauthorisedly. The respondents thereafter transferred the applicant from Fort St. George S.O., to Tondiarpet SO by order dated 23.4.2015. The applicant is now seeking the relief of payment of salary for the period from 11.02.2015 to 23.04.2015 during the period when he filed OA.153/2015 before this Tribunal which period has been treated as 'dies non; by issue of show cause notice as per the provision of Rule 62 of Postal Manual volume III under the principles of 'No Work No Pay" vide Memo dated 4.8.2015 of the 3rd respondent. On perusal of the record, it is clear that the applicant was aware of his transfer from Fort St. George to Perambur Barracks S.O., but due to procedural lapse in serving the order of transfer to him, refused to sign the order book and charge report and based on the relieving order dated 28.1.2015 filed OA.153/2015 and got an order in his favour, however, with the observation that the order will not preclude the respondents department from effecting further transfer of the applicant in

accordance with regulations/instructions in force. The learned counsel for the respondents strenuously argued that the applicant without exhausting the appeal remedy before the appellate authority available to him under law, has filed this OA seeking payment of salary for the period from 11.02.2015 to 23.04.2015.

7. Transfer is an incidence of service and is made in administrative exigencies. Normally, it is not to be interfered with by the Courts. The Hon'ble Supreme Court consistently has been taking a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner. The Hon'ble Supreme Court in the case of *S.C.Saxena v. Union of India and Ors* reported in 2006 (9) SCC 583 observing as under:

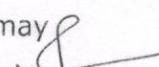
“.....It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting from work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct unauthorisedly remaining absent from duty.”

8. The applicant did not join his posting at Perambur Barracks Road although



the order of stay was passed by the Tribunal after he was relieved of his duties from Fort St. George vide order dated 28.01.2015. The applicant could have joined at his transferred post, he did not do so as a result thereof he might have committed a misconduct. It is not in dispute that after getting interim order from the Hon'ble Tribunal the applicant made several representations to join duty at Fort St. George, SO. But while invoking the doctrine of 'No work No pay' a balance has to be struck. With a view to do justice to both the parties, it is required to consider the conduct of both the parties. The applicant has applied for leave upto 10.2.2015 and he was fully aware that the interim order could not be complied with as he was relieved much before the date of interim order. This fact was also brought to the notice of the Hon'ble Tribunal in the reply filed by the respondents and the applicant was also very much aware of this. Therefore, the applicant could have informed respondents in time his intention to continue to avail leave subject to the outcome of the O.A. 153/2015 filed by him. Since the applicant has failed to apply for leave, his absence could only be construed as unauthorised one contravening rules 62 and 63 of Postal Manual Vol. III. Mechanical application of the normal rule, 'No work No pay' may in a case of this nature be found to be wholly unjust. The Hon'ble Apex Court in *Commissioner, Karnataka Housing Board v. C. Muddaiah* [(2007) 7 SCC 6890] laid down the law, thus:

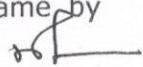
"32. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may



issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged."

Further on perusal of the documents it has been noticed that the applicant filed OA No. 1280/2015 to repost him from Tondiarpet to his original place at Fort St. George SO, Chennai 600 009 and it was ordered accordingly and thus he has been posted at Fort St. George SO, Chennai 600 009, thereby the applicant joined duty on 22.10.2016. Now he is continuously working as such.

9. In that view of the matter, this Tribunal feels it appropriate to direct the applicant to submit a comprehensive representation before the competent authority within a period of two weeks from the date of receipt of a copy of this order and the respondents after receipt of such representation from the applicant shall take a decision on the matter and dispose of the same by



passing a reasoned and speaking order within a period of two months thereafter. The OA is disposed of accordingly. No costs