

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 9957 of 2016

DATE OF DECISION : 03.11.2016

Sidheshwar Upadhyay

.... PETITIONER

Versus

Union of India and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Petitioner in person.

Mr.Pankaj Gupta, Senior Panel Counsel for Union of India, and
Mr. Brijeshwar Singh Kanwar, Advocate,
for the respondents – Union of India.

* * *

RAMENDRA JAIN , J.

1. The petitioner was originally posted at 750 (I) TPT PLASC (CIVIGT) which was in J&K and the same is now in State of Uttar Pradesh. Thereafter, being surplus, he was transferred in the year 2002 and posted in Unit 762 TPT Coy ASC (CIVIGT) C/o 56 APO. His rank is CMD – II and number is 13893807N. His post with the respondents is civil in nature. The petitioner submitted an application dated 22.05.2014 to respondent No.3 raising various allegations of harassment to him and his family members at the hands of his neighbours Shri Surjit Singh Clerk and Shri Manjit Singh, Electrician. This application was followed by representations dated 05.01.2015, 23.02.2015, 27.02.2015, 20.04.2015 and 25.04.2015 addressed to respondent Nos. 2 to 4. Since the said harassment did not stop, the petitioner continued to make representations to the respondents for not

taking any action against the erring respondents. As a consequence, the petitioner, without being issued any transfer order, was directly issued movement order dated 20.04.2015, whereby he was to proceed on permanent posting to 5121 ASC Bn (MT) C/o 56 APO (Pathankot) under the garb of a letter dated 11.11.2014 issued by respondent No.6 on the very next day i.e. 21.04.2015. However, copy of the said letter issued by respondent No.6 was never supplied to the petitioner. Thereafter, another letter dated 27.04.2015 was issued by respondent No.5 ordering the petitioner to vacate his residential premises by 31.05.2015, failing which market rent was to be charged and necessary action could be taken against him. The said movement order dated 20.04.2015 was challenged by the petitioner by filing civil suit. However, realising the fact that the civil court does not have jurisdiction in the matter, the civil suit was withdrawn by the petitioner on 27.01.2016 to contest his claim before the appropriate court of jurisdiction. Thereafter, he filed OA No. 060/00142/2016 before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, which was also withdrawn by him on 19.02.2016. The miscellaneous application filed by the petitioner for deciding the aforesaid OA on merits was also dismissed by the Tribunal vide order dated 10.03.2016. Thereafter, the petitioner approached this court by way of CWP No. 6180 of 2016, challenging the aforesaid movement order dated 20.04.2015, which was disposed of vide order dated 01.04.2016, directing the respondents to reconsider the case of the petitioner sympathetically for retaining him at a nearby place, within the policy framework by giving an opportunity of hearing to him within a period of one week. It was further directed that if there is no legal

impediment, let the salary of the petitioner be released as denying the salary must be causing hardship to his wife and children. Accordingly, the petitioner approached the respondents. However, vide order dated 22.04.2016, the respondent authorities rejected his claim to be retained at Bathinda or at a nearby place as also rejected his claim for release of his salary. The only reason for transfer of the petitioner was stated to be that he had served for more than 14 years at Bathinda and hence, was liable to be transferred on permanent posting to 5121 ASC Bn (MT) C/o 56 APO. Regarding the release of his salary, it was observed that technically as per rules on the subject of pay, salary can only be processed by the new unit i.e. on permanent post to 5121 ASC Bn (MT) C/o 56 APO after he has physically reported to the unit. Aggrieved by the said order dated 22.04.2016, the petitioner filed OA No. 060/00390/2016 before the Tribunal, which was dismissed vide order dated 10.05.2016 (Annexure P-1).

2. Hence, the petitioner has filed this writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the aforesaid orders dated 22.04.2016, 20.04.2015, and 27.04.2015; as well as the order dated 10.05.2016 (Annexure P-1). Further prayer has been made to issue a writ in the nature of mandamus directing the respondents to release his salary which has not been paid to him since May, 2015, and has been declined vide order dated 22.04.2016.

3. On May 19, 2016, while issuing notice of motion, the respondent authorities were directed to allow the petitioner to join the new place of posting. It was further observed that immediately after joining, the petitioner may represent to the competent authority for regularisation of absence period and for other service benefits, in accordance with Rules. The

authorities were directed to pass an appropriate order on such representation.

4. In compliance with the aforesaid order, the respondent authorities allowed the petitioner to join at Pathankot on 30.05.2016, and on his representation, the order dated 14.07.2016 (Annexure R-1) was passed, whereby the period of absence i.e. from 02.05.2015 to 29.05.2016 (394 days) was treated as 'Dies Non'.

5. From the above, it is apparent that relations of the petitioner with his colleagues and others at Bathinda were not very cordial. Time and again his claim has been considered sympathetically. Still he continued to agitate the matter, which is an abuse of process of law. Now, since the petitioner has joined the new place of posting in terms of the order dated 20.04.2015, and the period of his absence from duty has been treated as 'Dies Non', he would be able to draw his salary. Thus, we do not find any ground to interfere with the impugned order dated 10.05.2016 passed by the Tribunal, upholding the order dated 22.04.2016.

6. Petition is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

November 03, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No