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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 425/2017 & CM No.1988/2017**

Date of Decision : 18th January, 2017

PRAVIN KUMAR KULSHRESTHA

..... Petitioner

Through: **Mr. Arun Kumar Verma, Advocate**

versus

UNION OF INDIA AND ANR

..... Respondents

Through: **Mr. Abhay Prakash, CGSC**

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

1. Pravin Kumar Kulshrestha, in this writ petition, impugns the order dated 2.8.2010, whereby his OA No.425/2015, praying for grant of full salary for the period 29.5.2013 to 19.1.2014 has been dismissed by the Principal Bench of the Central Administrative Tribunal ('Tribunal' for short).
2. The petitioner had earlier filed OA No.3990/2013, challenging his transfer vide Office Order No.1128/5/13 posting him as Superintending Engineer (TRG.3) in the Office of Chief Engineer (Trg.cum R&D), Delhi.

3. It appears that the said office was operating from Ghaziabad, which is in the State of Uttar Pradesh. The petitioner did not join the said posting, stating that he should be asked to work in an office only in Delhi. The aforesaid OA was disposed of vide order dated 15.1.2014 recording as under:

“5. I have heard the learned counsel for the applicant along with the applicant and the learned counsel for the respondents. I have also perused the record. In my considered view, this is not a fit case for this Tribunal to interfere. According to the Office order dated 28.05.2013, the applicant was posted as SE (Trg.3) in the office of CE (Trg. Cum R&D) Delhi. The said office is admittedly operating from Ghaziabad. Therefore, just because the word “Delhi” has been used with the said post and in the Office Order dated 28.05.2013, the applicant cannot claim that he should be posted in Delhi and not in Ghaziabad. I, therefore, do not find any merit in the claim of the applicant as far as his transfer is concerned. However, I do not find any valid reasons for the Respondents for not releasing salary of the Applicant from 01.04.2013.

6. At this stage, the applicant who is present in court, has submitted that he will report for duty at Ghaziabad by 20.01.2014. Learned counsel for the respondents has also very fairly submitted that as and when the applicant joins duty at Ghaziabad, his salary will be released within a period of four weeks from that

date, as per rules.

7. In the above circumstances, I direct that the respondents shall pay the applicant up-to-date salary as admissible under the rules, within a period of one month from the date of receipt of a copy of this order. Accordingly this OA is disposed of. There shall be no order as to costs.”

4. In para 5 of the aforesaid order, the petitioner was reprimanded and it was affirmatively held that the petitioner was wrong in not joining the Office at Ghaziabad, which is located in the National Capital Region. The petitioner, it was observed, could not claim that he should be posted only in Delhi and should not be asked to report to the Office under the control of Chief Engineer (Trg.cum R&D), Delhi of the CPWD, operating from Ghaziabad. On the question of backwages for the period from 1.4.2013, i.e., the date from which the petitioner was not reporting for duty, para 7 of the said order makes it clear that the salary would be admissible as per rules.

5. Thereafter, the petitioner filed a contempt petition, CP No.161/2014, which was disposed of by the Tribunal vide order dated 20.5.2014, recording that the authorities had filed a reply, stating that the petitioner had remained absent from duty from 29.5.2013 to 19.1.2014, and in case he wants payment of salary for the said period, the petitioner was required to

apply for sanction of any kind of leave, which was due and admissible to him. As the petitioner had not made any such application, the contempt petition was dismissed and closed.

6. Thereafter, the petitioner filed an application for half-pay leave ('HPL'), which was granted and paid to him. The petitioner apparently did not have sufficient leave to get full pay.

7. The petitioner thereupon once again approached the Tribunal vide OA No.425/2015, praying for grant and payment of full salary.

8. The petitioner cannot make the said prayer, in view of the order dated 15.1.2014, deciding OA No.3990/2013 and the order dated 20.5.2014, disposing of CP No.161/2014. The earlier orders would operate as *res judicata/constructive res judicata*. The petitioner would have been entitled to full salary from 29.5.2013 to 19.1.2014 only if he had sufficient and appropriate leave to his credit. The petitioner did not have the said leave and accordingly has been paid half salary.

9. Learned counsel for the petitioner submits that the petitioner retired from services on 31.10.2014. The petitioner, it is submitted, had perceived that he was wrongly denied the full salary from 29.5.2013 to 19.1.2014 and, therefore, had filed OA No.425/2015. The Tribunal, while dismissing the

said OA, imposed costs of Rs.25,000/-, which the petitioner would find difficult to pay. In view the aforesaid explanation, we waive the costs.

10. The writ petition is accordingly disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 18, 2017
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