
(2013) 08 DEL CK 0414
In the Delhi High Court
Case No : Writ Petition (C) 1743 of 2013

Ravinder Kumar

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0414

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Aditya Dhawan, Advocate for R-1, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in the writ petition is to the order dated January 13, 2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No. 385/2011 whereby the Original Application filed by the petitioner was dismissed. The short question that arises for our consideration in this writ petition is whether the petitioner is entitled to the deputation (duty) allowance @ 5% or 10% of the basic pay on being posted on deputation as DIG (V&S) Himachal Pradesh State Electricity Board, Shimla between the period August 17, 1998 to April 22, 2000.

2. The petitioner was an Indian Police Service Officer borne on the Himachal Pradesh (HP) cadre. At the relevant point of time when he was posted as Deputy Inspector General of Police, (Police Training College), Daroh, District Kangra, he was, for misconduct and dereliction of duty, placed under suspension vide order dated July 07, 1997. The headquarters during suspension period was fixed at Police Headquarters, Shimla. The order of suspension dated July 07, 1997 reads as under:-

Whereas disciplinary proceedings for major misconduct against Shri Ravinder Kumar, IPS (HP-1977). DIG (PTC) Daroh are contemplated, for willful insubordination and dereliction of duties on his part regarding the passing out

trade held on 2.7.1997 at PTC Daroh.

Now, therefore, the Governor, Himachal Pradesh in exercise of the powers conferred by sub-rule of Rule 3 of All India Services (Discipline & Appeal) Rules, 1969, hereby places the said Shri Ravinder Kumar, IPS, (HP-1977) presently posted as DIG (PTC) Daroh under suspension with immediate effect.

It is further ordered that during the period his order shall remain in force, the Headquarters of Shri Ravinder Kumar, IPS, DIG (PTC) Daroh will be in Shimla and the said Shri Ravinder Kumar, shall not leave the headquarters without obtaining the previous permission of the Director General of Police, Himachal Pradesh.

3. That on June 04, 1998 he was reinstated and posted at Police Headquarters, Shimla. A joining report was submitted by him on June 05, 1998. Vide order Dated August 11, 1998 he was transferred and posted on deputation as Deputy Inspector General (V&S) HPSEB, Shimla. The relevant part of the transfer and posting order of the petitioner dated August 11, 1998 reads as under:-

Shri Ravinder Kumar, IPS (HP-77), DIG (PHQ), Shimla is transferred and posted as DIG (V&S) HPSEB, Shimla on deputation.

4. He joined the deputation post of Deputy Inspector General (V&S) Himachal Pradesh State Electricity Board (HPSEB) on August 17, 1998.

5. An OM dated February 20, 1999 was issued wherein under clause 6 deputation (duty) allowance has been prescribed. The said OM reads as under:

6. Deputation (Duty) Allowance

6.1 The Deputation (Duty) Allowance admissible shall be at the following rates:

- (a) 5% of the basic pay of employee subject to a maximum of Rs. 500/- per month when the transfer is within the same station; and
- (b) 10% of the basic pay of employee subject to a maximum of Rs. 1000/- per month in all other cases.

NOTE 1: The term station for this purpose will be determined with reference to the station where the person was on duty before proceeding on deputation.

NOTE 2: When there is no change in the headquarters with reference to the last post held, the transfer should be treated as within the same station and when there is change in headquarters it would be treated as not in the same station. So far as places falling within the same urban agglomeration of the old headquarters are concerned, they would be treated as transfer within the same station.

6. The petitioner makes a representation for grant of deputation allowance. Since the same was not paid he filed an Original Application No. 746/HP/2003, Chandigarh Bench. The Original Application was allowed with a direction that he be paid deputation allowance at the rate available under the Rules. The said

order of the Tribunal was challenged before the High Court of Himachal Pradesh. The writ petition was dismissed.

7. Pursuant thereto, an order dated August 26, 2009 was passed whereby, it was decided to pay deputation allowance @ 5% of the basic pay for the period August 17, 1998 to April 22, 2000 to the petitioner.

8. The petitioner was not satisfied with the deputation allowance of 5% given to him in terms of order dated August 26, 2009. He has filed the Original Application No. 385/2011 before the Tribunal. The claim of the petitioner for payment of deputation allowance @ 10% is premised on the fact that prior to his posting on deputation as DIG (V&S) Himachal Pradesh State Electricity Board at Shimla he was posted as Deputy Inspector General (Police Training College), Daroh District, Kangra.

9. The Tribunal after considering the aforesaid plea was of the following view:

11. If all the above orders are read together, they clearly demonstrate that the applicant was transferred as DIG (V&S) HPSEB on deputation from the office of DIG (PHQ) Shimla which is the same station, therefore, naturally his case would be covered under para 6.1 (a) of the OM dated 20.2.1999 wherein it is clearly stated that the deputation duty allowance shall be 5% of the basic pay subject to a maximum of Rs. 500/- per month when the transfer is within the same station. Applicant tried to distinguish his posting in Shimla by referring to Note 1 by submitting that he was never given any posting in Shimla. However, Note 1 only refers to the station where the person was on duty before proceeding on deputation. Duty does not mean actual performance of duty. Even if applicant was posted on paper, since his Headquarters were declared at the time of his suspension and he had continued to be in Shimla even at the time when his suspension was revoked and he was posted as DIG (V&S) HPSEB from Shimla, we are satisfied that he was transferred within the same station. Since he had joined from Police Headquarters Shimla to HPSEB at Shimla, respondents have rightly stated that he was transferred in the same station, therefore, he is entitled to only 5% of deputation allowance, which has already been sanctioned, therefore, the relief, as claimed by the applicant, cannot be granted. The same is accordingly rejected.

10. It is seen that the petitioner while under suspension, his headquarters remained at Shimla. He remained under suspension from July 07, 1997 to June 04, 1998. Even after revocation of the suspension he was posted vide order dated June 04, 1998 at Police Headquarters, Shimla. He gave the joining report on June 05, 1998. He was transferred on deputation as Deputy Inspector General (V&S) HPSEB, Shimla on August 11, 1998 and which post he joined on August 17, 1998.

11. The object underlying the OM dated February 20, 1999 to grant 10% of basic pay to an employee subject to Rs. 1000/- per month in so far as those employees who are sent on transfer/deputation to a different station is to

mitigate the hardship because of such transfer. This we say so, in view of Note 2 under OM dated February 20, 1999.

12. In the present case it is seen during suspension the petitioner remained for almost one year in Shimla. He continued to be posted in Shimla from June 04, 1998 till August 11, 1998 or for that matter August 17, 1998. So it is not a case of a hardship. We hold that the grant of deputation (duty allowance) to the respondent @ 5% subject to a maximum of Rs. 500/- per month was rightly given to the petitioner. We for the reasons stated by the Tribunal and for the reasons enumerated by us do not find any merit in the present petition and dismiss the same.