

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(10)

OA No.3084/2002

New Delhi this the 23rd day of June, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri R. K. Upadhyaya, Member (A)

Shri R.C.Khurana,
S/O Late Shri D.D.Khurana,
R/O B-1/216, Lajpat Nagar,
New Delhi.

..Applicant

(By Advocate Shri S.P.Chadha)

VERSUS

1. Union of India through
Secretary, Department of Telecom,
Ministry of Communication,
Samachar Bhawan, 20-Ashoka Road,
New Delhi.
2. The Deputy Secretary,
To the Govt.of India,
Dept. of Telecom.,
20, Ashoka Road, New Delhi
3. The Chief Engineer Civil (C),
Dept. of Telecom.,
(Now Bharat Sanchar Nigam Ltd.),
T.R.A. Building, New Delhi.
4. The Supdt. Engineer (P&D) C-II,
Dept. of Telecom,
(Now Bharat Sanchar Nigam Ltd.),
6th Floor, Mohan Singh Place,
New Delhi.

.. Respondents

(By Advocate Shri B.S. Jain)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

This is the second round of litigation filed by the applicant. He had earlier filed an Original Application (OA 1561/2002) which was disposed of by Tribunal's order dated 6.6.2002.

2. In pursuance of the aforesaid order of the Tribunal dated 6.6.2002, the respondents have passed the

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order dated 5.9.2002 which has been impugned in the present application.

3. The brief relevant facts of the case are that the applicant joined service with the respondents as Draftsman Grade-III (Civil) with effect from 10.7.1972. He remained absent from duty unauthorisedly since 10.12.1984. In the earlier OA filed by him it has been noted, inter alia, that he had in terms of the Govt. of India's instructions dated 5.10.1975 sought a direction to the respondents to take him back on duty or in the ^Y alternative to place him under suspension. That OA was disposed of noting the facts that the applicant had filed a number of representations by directing the respondents to consider the same and pass a speaking order, which they have done by the impugned order dated 5.9.2002. The respondents have also annexed the dismissal order dated 5.12.2002 to their counter affidavit, the relevant portion of which reads as follows:-

" It is therefore ordered that as per provisions of Rule 11 of CCS(CCA) rules (Sub Rule ix) Shri R.C.Khurana is hereby dismissed from Service which shall ordinarily be the disqualification for future employment under the Government. The said dismissal order will take effect from the date of issue of this order ".

4. One of the main contentions of Shri S.P.Chadha, learned counsel for the applicant is that the respondents having initiated Departmental proceedings against the applicant by Memo.dated 19.3.2001, could have done so

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either after taking him back on duty when he reported for duty on 25.1.1999 or in the alternative he should have been placed under suspension. In either case, learned counsel has submitted that the applicant is entitled to the pay and allowances or the suspension allowance for the relevant period. He has contended that the respondents have neither taken back the applicant on duty when he had submitted his joining report nor placed him under suspension which is, therefore, illegal. He has relied on the Govt. of India's instructions, para (5) below Rule 11 of the Central Civil Services (Classification, Control and Appeal) (CCS(CCA) Rules, 1965 i.e. the Director General P&T's letter dated 5.10.1975. It is, however, not the case of the applicant that he has remained unauthorisedly absent from service w.e.f. 10.12.1984 to 25.1.1999, as he states that he had reported for duty but was not taken back on duty. Thereafter, Departmental proceedings have been initiated against him which have now concluded, resulting in the order of dismissal from service. Learned counsel submits that the applicant has filed an appeal, although he could not give the details of the same or they are available in the file. It is an admitted position that the applicant has not challenged the dismissal order passed by the respondents but his main claim is for payment of pay and allowances or at least suspension allowance as per the rules after the Departmental proceedings were initiated against him.

5. Learned counsel for the respondents has submitted that there was no specific direction by the Tribunal while disposing OA 1561/2002 to either take the applicant back on

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duty or to place him under suspension. He has submitted that the applicant himself has admitted that he had remained absent unauthorisedly from service w.e.f. 10.12.1984 and he had neither given any intimation or sought permission for the absence. Learned counsel has, however, submitted that the applicant had reported for duty on 25.1.1999, only merely stating that due to unavoidable circumstances he could not attend office since 1985 but again he did not report for duty thereafter. Learned counsel has further submitted that there was nothing illegal in initiating the Departmental proceedings or passing the order of dismissal against the applicant. In the order dated 5.12.2002, they have also categorically stated that the applicant had admitted charge No.1 i.e. that he remained unauthorisedly absent from duty without any prior permission/intimation since 10.12.1984 and failed even to submit the leave application in the prescribed format. Shri B.S.Jain, learned counsel has submitted that the applicant had also failed to submit medical certificates in case he was unwell during this period. He has, therefore, contended that the OA is not maintainable and should be dismissed on merits.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for both the parties and perused the relevant documents on record.

7. From the facts mentioned above, it is evident that the respondents have inordinately delayed taking proper action under the provisions of the CCS(CCA) Rules for the

admitted unauthorised absent from duty by the applicant for over 15 years i.e. w.e.f. 10.12.1984. Apparently, the applicant had submitted joining report on 25.1.1999 but the respondents have refused to take him back in service as according to them, he did not report for duty thereafter. However, it is noted that it took another almost two years for them to initiate the Departmental proceedings against the applicant under Rule 14 of the CCS(CCA) Rules by Memo.dated 19.3.2001.

8. As mentioned above, the main contention of the learned counsel for the applicant is that in terms of the DGP&T instructions dated 5.10.1975, the applicant should have been either allowed to join duty before the disciplinary proceedings were initiated against him or be placed under suspension under the Rules. The Govt.of India Instructions, para (5) below Rule 11 of the CCS(CCA) Rules, 1965, provides inter alia as follows:-

"If the Government servant does not join duty by the stipulated date it would be open to the disciplinary authority to institute disciplinary proceedings against him. If during the course of disciplinary proceedings he comes for rejoining duty, he should be allowed to do so without prejudice to the disciplinary action already initiated against him (unless he is placed under suspension) and the disciplinary action concluded as quickly as possible. The question of regularization for the period of overstay of leave be left over for consideration till the finalization of the disciplinary proceedings".

Sub Para (iii) of these Rules further provides that // if a Government servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences viz., that the entire period of absence would be treated as unauthorised, entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. If,

however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he has not been placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorized resulting in loss in pay and allowances for the period of absence under proviso to FR 17(1) and thus a break in service. The question whether the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard".

9. In the present case, as also observed above, the respondents have not acted promptly for taking any appropriate action in accordance with the aforesaid Rules and Instructions, while initiating the disciplinary proceedings against the applicant. No reasons have been given for the inordinate delay on the part of the respondents in not realising that the applicant was unauthorisedly absent for more than 5 years which is the period stipulated under the CCS (Leave) Rules, 1972. It appears from the facts that the respondents have become aware that the applicant was absent unauthorisedly from duty for more than 15 years, only when he himself turned up in the office suddenly and submitted his joining report on 25.1.1999, after which the respondents seem to have initiated action in accordance with the Rules. This is very sad state of affairs and does not at all speak well of the Department or its senior officials in particular, who have not cared to follow the relevant provisions of law and rules, which should be at least ^{be 1st} strictly followed in future in all cases.

10. We also find merit in the submissions made by the learned counsel for the applicant that when the Departmental

proceedings were initiated against the applicant which no doubt the competent authority had power to do, he should have also taken an appropriate decision whether the applicant should be taken back on duty or placed under suspension, which action has also not been done. This is a failure on the part of the respondents. No doubt the respondents have power to take a decision in the matter regarding the intervening period, i.e. from the date of suspension if such an order had been passed to the date of his dismissal from service and to treat the period as dies non or period spent on duty or otherwise in accordance with the relevant rules, which action has not been done in the present case.

11. Learned counsel for applicant has submitted that the respondents have not allowed the applicant to perform any duty after his joining. However, he has also stated that the applicant did not perform any duty for the period from 10.12.1984 till the date of his dismissal. His contention is that the applicant had requested the respondents repeatedly to take him back on duty, on which the learned counsel for the respondents submits that he has not been taken back in service as he had disappeared again after submitting the joining report on 25.1.1999. Even then, the respondents ought to have passed the necessary orders in accordance with the relevant Rules, including if need be a suspension order, taking into account the facts and circumstances of the case. Thereafter, after conclusion of the Departmental proceedings, the competent authority ought

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to have taken an appropriate decision regarding the period of absence from duty as to whether the same should be treated as unauthorised, resulting in loss of pay and allowances for the period of absence under the proviso to FR 17 or it should be condoned by passing an order as deemed fit in accordance with the relevant rules and instructions. We note that no such procedure has been followed by the respondents. We also note that an appeal is stated to be pending against the disciplinary authority's order.

12. In view of what has been stated above, the case is remitted to the appellate authority to pass appropriate orders in accordance with law and rules and keeping in view the observations made above. This shall be done within three months from the date of receipt of a copy of this order with intimation to the applicant. No order as to costs.

U.Padhyaya
(R.K.Upadhyaya)
Member (A)

Lakshmi
(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

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