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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.853/2001

New Delhi this the 23rd day of January, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (ADNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Ashok Kumar Rai,
S/o Sh. Ramji Rai,
R/o C-30 & 32, Saurabh Vihar,
Badapur, New Delhi-110044.

-Applicant

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. Union of India, Deptt. of Telecommunication,
Now Bharat Sanchar Nigam Ltd.,
Ministry of Communications,
Sanchar Bhawan, New Delhi through
its Secretary.
2. Mahanagar Telephone Nigam Ltd.
Office of Chief General Manager,
Khurshid Lal Bhawan,
Eastern Court, New Delhi
through its Chairman.
3. S.D.O. (Phones-I),
Nehru Place Exchange,
New Delhi-110019.
4. Telecom District Engineer,
Raichur, Office of the
Chief General Manager,
Karnataka Circle,
Bangalore (Karnataka)-584101.
5. Telecom District Manager,
Bellary-583101 (Karnataka).
6. General Manager Telecom,
Distt. Gautam Budh Nagar,
U.P.-201301.

-Respondents

(By Advocates Shri V.K. Rao (R-2 & 3) and Sh. K.R. Sachdeva
(R-1,4,5&6)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant has sought a direction to treat the period of service from 13.8.94 to 12.8.99 as continuous and spent on duty with pay and allowances and other benefits like increments, promotion, etc. along with interest at the rate of 24% p.a.

(2)

2. Applicant a regular mazdoor was earlier placed under suspension w.e.f. 28.4.93. Vide order dated 14.7.94 he was transferred to Raichur, Karnataka Circle and the suspension was revoked w.e.f. 12.8.94.

3. On reporting to Raichur a communication dated 27.6.94 was addressed to the respondents for non-availability of vacancies at Raichur. Applicant subsequently on 10.9.94 served upon respondents his new address at Prahalad Pur, New Delhi. Thereafter a communication has been made between the Department of Telecommunication of Karnataka Telecom Circle and as a result of which vide communication dated 20.5.96 applicant's posting was modified to Bellary and on service at the available address it was received undelivered in January, 1997. Subsequently, applicant was transferred to New Delhi and was given further posting to Ghaziabad Telecom.

4. Learned counsel for applicant Sh. Bhardwaj contends that despite availability of the address the modified transfer order had never been communicated and from 1994 to 1999 without any posting applicant could not join at the transferred place and despite he has reported for duty to the respondents he was not allowed to join. As such, non-performance of duty during the aforesaid period is directly attributable to the respondents and as such he is entitled for the pay and allowances. In this backdrop it is stated that though he has been paid upto 30.5.95 but subsequently on the pretext of wrong payment the same was recovered.

(3)

5. On the other hand, learned counsel for respondents Sh. V.K. Rao, produced the record and stated that applicant had not acknowledged deliberately the modified order which was within his knowledge and neither reported at New Delhi nor at Bellary. As such the aforesaid period, without performance of duty, is to be treated without pay and allowances on the principle of no work no pay.

6. On our specific query to the respondents' counsel as to receipt of any modified order of transfer upon applicant it is stated that on the available address communication was sent and as no new address was available applicant had deliberately avoided joining for which he is not entitled to the pay and allowances.

7. Having regard to the communication sent by applicant on 10.9.94 a registered AD addressed to the SDO (Phones) Nehru Place, New Delhi, new address of applicant was very much in the knowledge of respondents. Moreover, on his further changed address his posting order at Ghaziabad and New Delhi were issued. As such, we are of the considered view that the service of the modified order of transfer has not been validly effected upon, as a result of which for want of posting applicant had been prevented from joining duty. Non-payment of pay and allowances cannot be attributable to applicant.

8. In this view of the matter, OA is the disposed of with a direction to the respondents to re-examine the claim of applicant for pay and allowances having regard to the aforesaid direction by a detailed and speaking order to

(4)

be passed within two months from the date of receipt of a copy of this order. If applicant is found entitled he be paid benefits in terms of the prayer contained in paragraph-8. No costs.

S. Raju

(Shanker Raju)
Member (J)

'San.'

V.K. Majotra

(V.K. Majotra)
Vice-Chairman (A)

23.1.04

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