

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.1604/1996

New Delhi this the 18th day of February, 2000. (b)

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

Anil Kumar Pancholi S/o Laxmi Kant Sharma,  
working as Junior Telecom Officer  
under Chief General Manager, M.T.N.L., ....Applicant  
New Delhi.

(By Advocate Shri Sant Lal)

-Versus-

1. The Union, through the Secretary,  
Ministry of Communications,  
Dept. of Telecom.,  
Sanchar Bhawan,  
New Delhi-110001.
2. The Chief General Manager Maintenance (NTR)  
Dept. of Telecom, Kidwai Bhawan,  
New Delhi-110050.
3. The General Manager Maintenance (NTR)  
O/O the C.G.M.M. (NTR) Deptt. of Telecom,  
Kidwai Bhawan,  
New Delhi-110050
4. The Director (N.O.C.C)  
Network Operations Control Centre,  
Dept. of Telecom,  
2nd floor, Eastern Court  
New Delhi-110050.
5. The Divisional Engineer Telecom  
Network Operations Control Centre (NOCC)  
Dept. of Telecom  
2nd Floor, Eastern Court,  
New Delhi-110050. .... Respondents

( By Advocate Shri Rajinder Nischal)

O R D E R (ORAL)

Smt. Shanta Shastry, AM:

The applicant was officiating as Sub Divisional Engineer, (for short, SDE) Technical-V with effect from 1.11.1994. The applicant has impugned orders dated 18.1.1995, 13.2.1995 and the order of rejection

of his appeal dated 24.7.1995. He seeks to quash the impugned orders and to direct the respondents to grant him casual leave for one day on 20.12.1994 and half day on 23.12.1994 and to grant him leave due and admissible on medical certificate for the period from 14.1.1995 to 23.1.1995 and to treat the period from 24.1.1995 to 30.1.1995 as period spent on duty with consequential benefits.

2. The learned counsel for the applicant states that the applicant remained absent on 20.12.1994 and for half day on 23.12.1994 as he was not well and he had submitted the requisite medical certificates. However, the respondents have treated the two days as dies non without any break in service. Further he remained absent from 14.1.1995 to 23.1.1995 due to pain in his back and leg. He produced medical certificate from the Central Government Health Scheme Medical Officer on 20.1.1995. He also informed the D.E. on 14.1.1995 on telephone in the morning about his inability to come to the office. After obtaining the fitness certificate from the C.G.H.S. he resumed duty on 24.1.1995 and kept going to the office regularly since then. His grievance is that in spite of the medical certificates and due intimation, the whole period from 14.1.1995 to 30.1.1995 has been treated as dies non.

3. He contends that he was not given a show cause notice. He was allowed to attend the office only on 30.1.1995. He was not given a chance to be heard in person or to explain in writing about his

absence. Further, according to him, the conditions for treating such absence as dies non are not fulfilled in his case. According to him, on 23.12.1994, he did come to the office after lunch. Yet the entire day has been treated as dies non. Similarly, he did resume duty on 24.1.1995 but the entire period from that day upto 30.1.1995 has been treated as dies non. According to him, there has been no application of mind and all this has been done in haste. The learned counsel submits that he had taken every precaution to inform the respondents from time to time about his inability to come to the office because he was not well. In fact, he claims to have sent letters from 16.1.1995 to 21.1.1995 every day about his medical treatment. Yet the respondents have not given him any notice before treating the period of absence as dies non nor have they given him an opportunity to be heard. He also avers that according to rules late coming could not be treated as dies non and yet the respondents have treated the same as dies not which is also not proper. The learned counsel argues that if according to the respondents he was not present on 24.1.1995, respondents could not have ordered him to proceed on tour. In short, it is the applicant's case that treating the period of absence as dies non is not justified even according to the conditions for treating period of absence as dies non and also according to paras 62 and 162 of the Post & Telegraph Manual, Volume-III. He was on leave on medical grounds and the same should have been shown due consideration. The learned counsel has also submitted a statement showing that he was attending to

(9)

his duties from 24.1.1995 to 30.1.1995. He has further cited in support the judgment of the Hyderabad Bench of the Tribunal in the case of B. E. Reddy vs. Superintending Surveyor I/C, Hyderabad, 1992 (1) SLJ 213 CAT wherein it was held that "the basic principle of natural justice requires that before deciding how to treat the absence a notice should be given to the applicant, his explanation obtained and a decision should have been taken only after consideration of his representation." The applicant is aggrieved that the principle of natural justice has been ignored in his case.

3. The learned counsel for the respondents submits that there is a history to this case. On 13.1.1995 the applicant was asked to proceed to Guwahati on tour to hand over some important communication equipment so as to reach there before 20.1.1995. The applicant received the order as well as the equipment and thereafter abstained from duty without intimation. The respondents received a letter from the applicant on 17.1.1995 about his sickness. However, the equipment was not received along with the letter. Respondents despatched a letter to the applicant through one Beer Chand Ramola on 18.1.1995 to collect the equipment. Applicant refused to accept the letter. He came to office on 24.1.1995 but did not give any assumption report. On that very day he was also ordered to proceed to Guwahati on tour again but he did not accept the order and went away without intimation. Initially he applied for medical leave from 14.1.1995 for 10 days. After 24.1.1995 he came

to office only on 30.1.1995. The applicant has been in the habit of absenting himself without intimation even while he was working in the lower post as Junior Telecome Officer. The respondents aver that the applicant never informed on telephone to D.E. on 14.1.1995 about his inability to come. The applicant, according to the respondents, is also in the habit of giving false statement. No doubt on 23.12.1994, the applicant attended the office after lunch time but he had remained absent earlier without prior intimation. The applicant was also asked to explain his absence. He has a telephone at his residence but he did not keep the respondents informed even when he was entrusted with an important responsibility. According to the respondents, the applicant has been warned in the past also about his habit of remaining absent without prior intimation or proper santon. Considering these facts the respondents treated the period as dies non. The respondents have also controverted the statement of the applicant that he had actually worked from 24.1.1995 to 30.1.1995 because he had not given charge assumption report.

4. According to the learned counsel if the applicant had resumed charge on 24.1.1995 then he should not have refused to accept the order asking him to go to Guwahati. He not only refused but left office without intimation thereafter.

5. We have heard the learned counsel for the parties and have perused the relevant record. We find that the applicant has remained absent without prior

intimation and without proper sanction. Though the applicant claims to have informed the respondents the intimation is a belated intimation and there have been discrepancies even in the medical certificates submitted by him. In the first prescription slip dated 14.1.1995 submitted by the applicant of the CGHS Dispensary no disease is mentioned and in the later prescription given by the same C.G.H.S. Dispensary, the name of the disease is mentioned. Further the applicant has disobeyed the orders of the higher authorities. Therefore, it is not only the mere absence or intimation of the absence but the applicant has also flouted the orders of the respondents. Considering these two aspects the respondents have rightly treated the period of absence of the applicant as dies non.

6. The learned counsel for the applicant has pointed out that the conditions of dies non are not fulfilled in his case. We find, there are three conditions for treating the period as dies non:-

(i) When one remained absent from duty without information.

(ii) When on duty in office and leaving the same without prior permission.

(iii) While remaining in office and refusing to perform duty assigned to him.

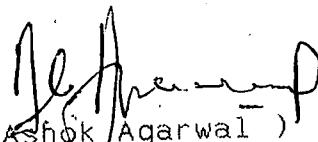
(2)

7. In our view, in the case of the applicant, the condition about remaining absent without prior information as well as remaining in office but refusing to perform the duty assigned to him are applicable. The applicant has not intimated in advance about his absence. Secondly even when in office he had refused to accept the letter asking him to proceed to Guwahati and left office without intimation. We also find that the action of the respondents is as per paras 62 and 162 of the Post & Telegraph Manual.

8. Dies non is not a punishment. It is an administrative action. As such no notice is required to be given. Even then the respondents have called for his explanation before treating the leave on 20.12.1994 and 23.12.1994 as dies non. However, for the period 14.1.1995 to 30.1.1995 no formal notice was given for treating the said period as dies non, all the same a letter was sent to the applicant on 18.1.1995, warning him of disciplinary action. The applicant submitted an appeal and the same has also been considered by the respondents and it is only thereafter that the period of absence has been treated as dies non. In our view ~~this~~ <sup>the letter of 18.1.95</sup> would serve the purpose of a show cause notice. It is not that the applicant was not given any opportunity at all to explain his absence. He was told specifically to produce medical certificate within a stipulated period. It is only thereafter that the applicant submitted the medical certificate. Even thereafter he remained absent.

(12)

9. In the light of this discussion, we do not consider it necessary to interfere with the orders of the respondents. However, we do find that in the order treating the period from 14.1.1995 to 31.1.1995 even the last day, i.e., 30.1.1995 has been treated as dies non. At the same time it has also been treated as half day leave. To that extent we would direct the respondents not to treat the last day, i.e., 30.1.1995 as dies non at least for which half day casual leave has been sanctioned for that day. Accordingly the OA is dismissed without any order as to costs.

  
(Ashok Agarwal )  
Chairman

  
( Shanta Shastri )  
Member (A)

/sns/