

(19)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
* * *

Date of Decision: 16.3.93.

OA 254/86

R.B. MITTAL ... APPLICANT.

Vs.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).
HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant ... SHRI GYAN PRAKASH.

For the Respondents ... NONE.

JUDGEMENT

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

The applicant Shri R.B. Mittal, retired LDC/Junior Checker, Overseas Communications Service, worked as a Telegraphist/ Wireless Operator during the Second World War and was thereafter absorbed in the Govt. service as a LDC in the Overseas Communications Service being an ex-defence service employee on 18.12.48.

The applicant claims that he lodged a protest on the very next day of his appointment, but was told that no post of Junior Telegraphist was vacant and, therefore, he should continue to work as LDC, and was verbally assured that he would be given a post of Telegraphist, whenever it become available. In March, 1949, two outsiders were

appointed as Junior Telegraphist, upon which the applicant protested again, and offered himself for test of Junior Telegraphist, which was held in May, 1952, in which he qualified but he was still not given the post of Junior Telegraphist. He represented again, upon which his superiors became annoyed and sent him for training to Bombay, on completion of which he returned to Delhi and was posted as Junior Checker. The applicant states that this order reducing his rank to the post of Junior Checker without any charge-sheet or enquiry was made with malafide intention to penalise him for representing against the injustice done to him. His promotions were also withheld and in the meantime, persons junior to him were promoted. Thereafter, according to the applicant, false allegations were levelled against him that he was engaged in a private business without informing the respondents, and he was dismissed from service on 19.8.76. The order of removal from service was set aside by the Delhi High Court in Civil Writ Petition 577/77, and the applicant was ultimately reinstated in service on 17.11.80. The increments and other benefits for the intervening period were paid to him on 29.3.85, but he was neither considered nor given promotion to higher post. Meanwhile, he suffered a heart attack and remained on leave from 2.10.81 to 24.12.81. On recovery from his ailment, he reported for duty and was assigned light work, but on 4.11.83 a new Traffic Manager joined duty, who was a friend of the former Administrative

Officer, Overseas Communications, New Delhi, who bore animus towards the applicant and the new Traffic Manager abruptly change the applicant's duty hours from 14.00 hours - 21.00 hours to 7.00 hours - 14.00 hours w.e.f. 13.11.83. The applicant protested against this, upon which he was directed to obtain a fresh medical certificate, but the medical certificate submitted by him was not accepted on one pretext or the other. The result was that he was not allowed to attend his normal duty from 13.11.83 to 9.1.84 and again from 5.4.84 to 28.6.84. The applicant has, therefore, claimed pay and allowances for the above two periods amounting to Rs.7,000/- plus damages and compensation for withholding of his promotion, as well as for the alleged torture and humiliation that he suffered amounting to Rs.5 lakhs, i.e. Rs.5 lakhs 7 thousand in all.

On behalf of the respondents, it has been stated that the applicant did not perform his duties for the above two periods and, therefore, the two periods were regularised by the Competent Authority by granting the applicant leave as admissible to him, prior to his retirement. Regarding the first period, i.e. 13.11.83 to 9.1.84, respondents have stated that on 10.11.83 the applicant was listed for duty to P&T point for the week ending 19.11.83 from 7.00 - 14.00 hours by the Incharge concerned. The applicant, however, reported at about 10.30

hours on 13.11.83 though he was well advised by the superior concerned that he had been listed for duty from 7.00 - 14.00 hours. Instead, the petitioner insisted to perform duty from 14.00 - 21.00 hours. He also showed a medical certificate dated 19.6.82 from Safdarjung Hospital, but as the same was more than 6 months old, he was advised to obtain a fresh one. Moreover, on that certificate nowhere stated that the petitioner could perform duties only from 14.00 - 21.00 hours. The Doctor's certificate only advised as follows; "This is to certify that Shri R.B. Mittal is a case of Ischimic Heart disease and is under treatment from October, 1981. He should avoid exertion and is advised only on light duty and work". In consideration of this medical advice the applicant was never put on night duty and heavy work for this relevant period, but was always preferred to perform day duty from 7.00 - 14.00 hours. However, the applicant wanted to perform duty only between 14.00 - 21.00 hours, and even went so far as to threatened the officials to implicate them in criminal cases if he did not get his way. The respondents have pointed out that as per rules, the duties of Junior Checker are rotatory in nature, and the applicant's demand to be put permanently on 14.00 - 21.00 hours shift duty could not in the public interest be acceded to. His representation was, therefore, turned down at all levels. As far as the period 5.4.84 to 28.6.84 is concerned, the respondents have pointed out that the

applicant was listed for duty at the P&T point and not on TMC job as claimed by him. He was required to perform the duties for which he was assigned, but the applicant insisted on working at the TMC job alone, which was not acceptable to his superiors, as a result of which he did not perform his duties for this period also.

In so far as allegations of humiliation, torture etc. are concerned, the respondents have totally denied the same.

We have heard Shri Gyan Prakash, learned counsel for the applicant. None appeared for the respondents.

As regards the question of pay and allowances etc. for the period from 13.11.83 to 9.1.84 and 5.4.84 to 28.6.84, Shri Gyan Prakash has failed to refer to a single document to disprove the averments made by the respondents. It is clear that the shift duty from 7.00 hours to 14.00 hours to which the applicant was subsequently assigned, took cognizance of his medical condition, and he was not assigned night duty or heavy duty. No Govt. servant can insist that he will work on a particular shift and none other, particularly when his duties are rotatory in nature. Nor can any Govt. servant insist that he will work on one type of job alone and none other. Hence when the applicant did not perform his duties from 13.11.84 to 9.1.84 and

- 6 -

again from 5.4.84 to 28.6.84, the respondents could have taken disciplinary action against him, but having regard to the fact that he was going to retire soon they chose to regularise the period by granting him admissible leave as per rules, prior to his retirement. Hence, the prayer for payment of salary and allowances for these two periods has no merit whatsoever.

As regards the prayer for damages and compensation for withholding promotion, alleged torture and humiliation etc., this Tribunal has no jurisdiction in the matter of tortious liabilities, which are in the nature of civil wrongs, and the applicant may seek his remedies elsewhere, if so advised.

In the result, this application is dismissed. No costs.

Adigal
(S.R. ADIGL))

MEMBER (A)

J.P. Sharma
(J.P. SHARMA) 16. 2. 72
MEMBER (J)