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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 714/87
T.A. No.

1987

DATE OF DECISION 30.5.1988

Shri Parma Nand Lal

Petitioner

Applicant in person

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial)

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

S.P.M.
(S.P. Mukerji)
Adm. Member

Partha
(P.K. Kartha)
Vice-Chairman (Judl.)

30.5.88

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-714/87

Date: 30.5.1988.

Shri Parma Nand Lal Applicant

Versus

Union of India & Ors. Respondents

For the Applicant The applicant in person

For the Respondents Shri P.P. Khurana, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judicial)
Hon'ble Shri S.P. Mukerji, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who is presently working as Assistant Engineer in the Department of Telecommunications, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that he should be paid salary and allowances for the period from February, 1984 to October, 1986 when he worked as Assistant Engineer at Lucknow. According to him, a sum of Rs. 60,045.75 is due to him on this account.

2. The facts in brief are as follows. The applicant was appointed as Junior Engineer in 1968. He went to the U.P. Circle on his own request in 1977. He, along with another officer, filed writ petitions Nos. 2739/81 and 3662/81 in the Lucknow Bench of the Allahabad High Court, praying that promotions of their juniors to the post of Assistant Engineer which had been made, should be quashed. ^{On} by its judgement dated 20.2.85 The High Court allowed the writ petitions and directed that both the petitioners may be promoted w.e.f. the date prior to a date of promotion of any person who passed the

Departmental examination subsequent to them. The Court also directed that they should be paid salary and allowances accordingly w.e.f. the said date.

3. The applicant filed Execution Case No.1/85 in the High Court at Lucknow. By its order dated 21.1.1986, the Court allowed the application for execution and observed that the applicant will be deemed to have been promoted to the post of Assistant Engineer w.e.f. 12.5.1977 and that the respondents shall pay to him a sum of Rs.79,100.50 within six weeks from the date of the order.

4. The Union of India filed special leave petition in the Supreme Court against the aforesaid order. On 8.4.1986, the Supreme Court passed an order dismissing the SLP on merits. The Supreme Court modified the directions made by the High Court requiring the Union of India to deposit a sum of Rs.79,100.50 for payment to the applicant, alleged to be due towards arrears of his salary. The Supreme Court directed that the Union of India shall deposit half the amount for payment to the applicant as arrears of his salary within one month from the date of the court's order, subject to adjustment.

5. The applicant again moved the High Court at Lucknow by Execution Case No.1/85. The High Court by its order dated 26.8.1986, noted that the applicant has been paid the full amount of salary as per the direction of the Supreme Court. The amount deposited in the Court had been withdrawn by the applicant. A statement was filed by the Union of India in the High Court, according to which, the applicant had been paid Rs.11,187.20 in excess. The statement related to the payment of pay and allowances

from May 12, 1977 to June 30, 1986. The High Court in its order observed that from the statement it appeared that no salary had been credited to the applicant's account for the period from 8th April, 1984 to 30th June, 1986. On behalf of the Union of India, it was submitted that the petitioner did not discharge any duty and, therefore, he was allowed extraordinary leave for this period, but without payment of salary. The learned counsel for the Union of India placed before the Court the order dated 15th July, 1986 passed by the General Manager, Telecommunications, in this regard. The learned counsel for the applicant tried to assail the legality of this order. The learned counsel for the Union of India had submitted that the General Manager passed the order under Rule 25 of the C.C.S. (Leave) Rules. The Court held that the validity of this order cannot be gone into in the execution proceedings and that the applicant was free to take appropriate action to challenge the said order on facts and law. The following observations contained in the judgement are, however, relevant:-

"In our opinion, the dispute now raised by the petitioner is foreign to the present controversy. When we directed the Union of India to make payment of salary, it was implicit that the payment of salary will be made in accordance with rules. If under statutory rules it is open to the Union of India to deprive the petitioner of salary for any period, our order will not stand in the way."

6. The applicant filed an SLP in the Supreme Court against the aforesaid judgement of the High Court dated 26.8.1986. By its order dated 4.5.1987, the Supreme Court permitted him to withdraw the SLP with liberty to approach this Tribunal.

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7. The admitted factual position is that the respondents had paid to the applicant a sum of Rs.39,550.25 towards his pay and allowances for the period from 12.5.1977 to 30th June, 1986, pursuant to the order of the Supreme Court dated 8.4.1986. According to the respondents, only a sum of Rs.28,363.05 is due to him and consequently, a sum of Rs.11,187.20 is recoverable from him.

8. In view of the statement filed by the respondents in the Lucknow Bench of the Allahabad High Court regarding pay and allowances payable to the applicant, the High Court noted that the applicant has not been paid for the period from 8th April, 1984 to 30th June, 1986. The respondents have stated in their counter-affidavit that from August 24, 1982 to 21st September, 1983, the applicant worked in the Lucknow Circle as Assistant Engineer. By an order dated 19th September, 1983, he was posted at Bombay Telephone District, along with others. He did not, however, join duty at Bombay. He was on various kinds of leave - commuted leave, earned leave, and extraordinary leave - from 21.9.83 to 26.5.1984. The respondents have stated in their counter-affidavit that he was paid the pay and allowances admissible to him for the period from 21.9.1983 to 26.5.1984.

9. The case of the respondents is that from 27.5.1984 to 13.8.1986, the applicant was "absconding" and he never applied for any sort of leave either at Bombay or at Lucknow nor did he perform any kind of Government duty anywhere at any place. No pay and allowances were given during this period as it was not admissible to him.

10. The Lucknow Bench of the Allahabad High Court in Execution Case No.1/85, passed an order on 13.8.1986 whereby the petitioner was directed to report for duty

at Lucknow. From 13.8.1986 to 30.9.1986, the applicant remained at Lucknow and he was paid his pay and allowances till September 30, 1986.

11. By an order dated 5.9.1986, the applicant was again transferred to the Railway Electrification Project Circle at Warangal, Andhra Pradesh. This order also was subsequently cancelled. By another order dated 8.10.1986, the applicant was transferred to Delhi where he joined on 11.11.1986. He has, however, not been paid any pay and allowances for the period from 1.10.1986 to 10.11.1986.

12. The version of the petitioner is that he joined duties as Assistant Engineer at Lucknow w.e.f. 31.5.1984 and that he relinquished charge at Lucknow only on 10.11.86. In support of this, he has produced copy of his letter dated 31.5.1984 addressed to the General Manager, Telecom., U.P., wherein it has been stated that on the expiry of his medical leave, the applicant has joined duties and submitted necessary fitness certificate in the forenoon of 28.5.1984. He has also produced copies of his letter dated 10.11.1986 addressed to the G.M.(P), U.P. Circle, Lucknow, wherein it has been stated that he has relinquished charge of Junior Engineer at Lucknow.

12. As against the above, the version of the respondents is that the applicant did not join duty after 26.5.1984 and that he was sanctioned extraordinary leave from 27.5.1984 to 13.6.1986 when he was allowed to join at Lucknow pursuant to the orders of the Allahabad High Court.

13. We have carefully gone through the records and heard the applicant and the learned counsel for the respondents. The applicant had submitted numerous MPs seeking various other reliefs. During the hearing on

8.4.1988, the applicant stated that these MPs would be infructuous if the case is heard and decided finally. The applicant has produced copies of several communications in support of his case. However, no record has been produced to substantiate the version of the applicant that he had worked at Lucknow from 27.5.1984 to 13.8.1986. It is reasonable to infer from the facts and circumstances of the case that though his name was struck off from the strength of the U.P. Circle at Lucknow pursuant to the order of posting at Bombay in September, 1983, he did not join the Bombay office and pursued his litigation with the department in the Lucknow Bench of the Allahabad High Court till he joined duty on 13.8.1986.

14. The learned counsel for the respondents contended that as the applicant neither joined his duties after his release from the U.P. Circle to join the Bombay Office, nor did he apply for any leave beyond 26.5.1984 to the G.M. (Telephones), Bombay, or even G.M. (Telecom.), U.P. Circle, Lucknow, the period from 27.5.1984 to 13.8.1986 was regularised as extraordinary leave in terms of Rule 25 of C.C.S. (Leave) Rules, 1972. Rule 25(1) provides that unless the authority competent to grant leave extends the leave of Government servant who remains absent after the end of leave is entitled to 'no leave salary' for the period of such absence and that period shall be debited against his leave account as though it were half-pay leave, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

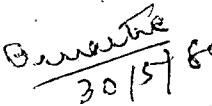
15. The counter-affidavit was filed by the respondents in January, 1988 wherein they had raised the contention that from 27.5.1984 to 13.8.1986, the applicant did not

join duty. Though the applicant has filed a detailed rejoinder affidavit, together with various documents, he has not produced any documents to indicate that he performed the duties as Assistant Engineer either at Lucknow or at any other station. In the facts and circumstances of the case, we do not see any merit in the contention that the decision of the respondents to treat the period from 27.5.1984 to 13.8.1986 as period of extraordinary leave under Rule 25 of the C.C.S. (Leave) Rules, was tainted with any arbitrariness or unreasonableness.

16. To our mind, the applicant will be entitled only to be paid his pay and allowances for the period from 1.10.1986 to 10.11.1986, if this has not already been paid to him. We order and direct that the amount due for the said period should be paid within a period of three months from the date of this order. The parties will bear their own costs.


/ 3.5.88
(S.P. Mukerji)

Administrative Member


30/5/88
(P.K. Kartha)
Vice-Chairman (Judl.)