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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. ^{O.A.} /1470 of 1990

Date of decision: 18.3.91

Krishan Lal

Applicant

Vs.

Union of India

Respondents

PRESENT

Applicant in person.

Shri P.P. Khurana, counsel for the respondents.

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Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman (J)

Hon'ble Shri P.C. Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter called the 'Act'), the applicant prays for the direction to the respondents to pay him pay and allowances for the period from 27.12.1986 to 13.2.1987. He also prays for direction to the respondents for including his name in the list of confirmed employees as Postal Assistant on the basis of seniority.

2. The applicant joined the Posts & Telegraphs Department, before bifurcation, on 21.5.81 as Postal Assistant at Meerut and continued to work till 10.5.86. While working as Postal Assistant, the applicant filed an application to the General Manager, Telecommunications, Bombay Telephones, through proper channel, i.e. through the Senior Superintendent of Post Offices, Meerut

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Division, for the post of Junior Engineer. The applicant was selected for the post of Junior Engineer as departmental outsider by the G.M.T., Bombay, for the quota of 1983. The applicant was relieved for training as Junior Engineer (Telecommunication) from Postal side and was directed to proceed to Secunderabad for training prior to his appointment as Junior Engineer (Telecommunication). According to him, before he proceeded for training, he was forced to resign from the post of Postal Assistant before joining his training at Secunderabad. He imputes malafide on the part of Respondent No. 3, Shri Hemant Kumar Sharma, Senior Superintendent of Post Offices, Meerut Division, Meerut, that he insisted that he will not be relieved for training until he submits his resignation. Consequently, he submitted the technical resignation and joined the training at Secunderabad. After completing the training, he was directed to go back and join his parent Department as Postal Assistant because by then there was no post of J.E. in the Telecommunications Department. According to the applicant, he reported to Respondent NO. 3 for joining his post of Postal Assistant and submitted his joining report on 29.12.86, but Respondent No. 3 arbitrarily dismissed that application on the ground that he had already submitted his resignation, before proceeding for training, from the post of Postal Assistant. The applicant subsequently submitted a representation to Respondent No. 2 for redressal of his grievance which was allowed by Respondent No. 2 and directed the applicant to rejoin his old post of Postal Assistant at Meerut under Respondent No. 3. Consequently, on 14.2.87, he joined his duties. Respondent No. 3 then posted him at Bagpat, but he has not been paid his emoluments from 27.12.86

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to 13.2.1987 i.e. for a period of 49 days. According to him, he is entitled to his pay and allowances for this period as he was not directed by Respondent No. 3 to join his duties. According to him, pay and allowances for this period should be paid to him because he was prevented by Respondent No. 3 from joining his duties.

3. The respondents have controverted the contents of the petition in their return and have, inter alia, contended that the applicant submitted his resignation on 29.4.86 from the post of the Postal Assistant which was accepted on 7.5.1986. Hence, his severance from the post of Postal Assistant was final and if he joined the duties again on directions from Respondent No. 3, the applicant is not entitled for his emoluments, as prayed for. In the counter, the respondents further contended that the Director General, Post, New Delhi, allowed the applicant to join the post of Postal Assistant till he was appointed as Junior Engineer in the Mahanagar Telephone Ltd., Bombay. The respondents further aver that the applicant represented and prayed for these reliefs and after consideration by the Directorate, it was decided not to make payment of pay and allowances for the period from 27.12.86 to 13.2.1987. The averment further continues that though it was decided not to pay pay and allowances for the above poeriod, but it was also decided that the poeriod between 27.12.86 to 13.2.87 be treated as duty for all purposes.

4. With regard to the second prayer in the OA, the respondents contend that as the applicant had tendered his reisgnation on 23.4.86 on being selected for the training of Junior Engineer, he was not in active service with the Postal Department and he was directed to rejoin as Postal Assistant until he was appointed Junior

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Engineer in Mahanagar Telephone Ltd. Bombay. Consequently, his name cannot be included in the seniority list. Though the allegations were made by the applicant in the OA against Respondent No.3, yet in the return the Respondent No. 3 has contended that the intention of Respondent No. 3 was not malafide.

5. In the end, the contention of the respondents is that the applicant is not entitled for any remedy as prayed for.

6. The questions arising ^{for} determination are:

(i) whether the applicant is entitled to pay and allowances for 49 days from 27.12.86 to 13.2.87 and

(ii) whether the applicant's name can be included in the list of confirmed employees as Postal Assistant on the basis of seniority?

The answer to question No. (ii) is dependent upon the answer to question No. (i). The facts, as enumerated herein above, indicate that when the applicant proceeded for training, he submitted his resignation from the post he was holding as Postal Assistant at Meerut. The resignation submitted by him was voluntary or otherwise is a question of fact with regard to which no cogent evidence has been produced by the applicant before us. The allegation in the application that Respondent No. 3 forced him to submit the resignation is denied in the counter by the respondents. The documents filed by the applicant, which he sent to the higher authorities, do not contain any such allegation that he was forced to resign from his post as Postal Assistant by Respondent No. 3. Vide Annexure 'A', the applicant requested the Senior Superintendent of Post Offices, Meerut Division, to

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relieve him so that he may be able to join his training at Secunderabad. Annexure 'B' indicates that the applicant was successful in his training. Annexure 'E' clarifies that the applicant was treated as a departmental outsider for the purpose of recruitment and training as Juunior Engineer. In Annexure 'F' the applicant admits that he had given the technical resignation only. Nowhere he has alleged that the resignation submitted by him was at the instance of Respondent No. 3. Annexure 'G' is an order of Assistant Director General (SPN) dated 3.2.1987 by which the Post Master General, U.P. Circle, was directed that it has been decided to allow the applicant to rejoin the duties as Postal Assistant till he is appointed as JE in the MNTL, Bombay. The documents indicate that he was paid his pay and allowances for the period he was in training. After completing his training, he never complained to any of his senior officers that he was forced to resign by Respondent No.3. Annexure 'K' is his representation to the Director General, Postal Department, New Delhi. In para 4, he mentions that Respondent No. 3 asked him to give technical resignation before joining training and till he submits that resignation, he cannot be relieved and that he submitted his technical resignation. In this very para he further proceeds to state that his technical resignation was accepted by SSPOs, Meerut, as total resignation. Nowhere he has indicated that he ever withdrew his resignation submitted before proceeding to training. This is settled that resignations submitted can be withdrawn before they

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are accepted (Keshav Ram Joshi Vs. Secretary, Ministry of Health & Others - SLR 1987(3) CAT 176). The moment the resignation is accepted, the Government servant is deemed to have been relieved from service (Sitaram Jivyachai Cavali Vs. Ramjibhai Potiabhai Rahala and others SLR 1987 (2) S.C. 279). In the absence of any evidence of withdrawal, the resignation submitted by the applicant after being accepted became final and he resumed his duties only when vide Annexure 'G', the Postmaster General U.P. Circle was directed by the Assistant Director General (SPN), Department of Posts, that the applicant be permitted to join as Ex-Postal Assistant, Meerut Division, till he is appointed as JE in the MNTL, Bombay.

7. From the counter filed by the respondents, it becomes evident that the period between 27.12.86 to 13.2.87 has been treated as duty for all purposes except pay and allowances. ✓ It appears that during this period of 49 days, the applicant has not performed any of his duties either as JE or as Postal Assistant and he has not worked during this period. In our opinion, Respondent No. 3 is correct in not paying the applicant pay and allowances for the period between 27.12.86 to 13.12.87 because he had not worked in that post. This situation would not have arisen had the applicant withdrawn his resignation before it was accepted. Thus, the answer to question No. (i) is that the applicant is not entitled to pay and allowances for 49 days from 27.12.86 to 13.2.1987.

8. Once the applicant resigned from his post as Postal Assistant and once it is held that he has not worked for 49 days, no directions can be issued against the respondents for considering the applicant to be confirmed as Postal Assistant and hence his seniority as Postal Assistant, after his resignation, cannot be

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considered. Both the questions are answered in the negative.

9. Consequently, this application is bereft of any merit and is dismissed. Parties are directed to bear their own costs.

P.C. Jain
(P.C. JAIN) 18/3/1998
MEMBER (A)

Ram Pal Singh 11.3.91
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VICE-CHAIRMAN (J)