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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A./T.A. NO. 977 of 1991 Decided on : 21.12.95

Brij Lal

... Applicant(s)

(By Shri K.N.R. Pillai, Advocate)

versus

U.O.I.

... Respondent(s)

(By Shri V.K. Rao Advocate)

CORAM

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

THE HON'BLE SHRI DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not ? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No


(DR. A. VEDAVALLI)
Member (J)


(S.R. ADIGE)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.977 of 1991

New Delhi this the 21st day of December, 1995.

HON'BLE MR. S.R.ADIGE, MEMBER(A)
HON'BLE DR. A.VEDAVALLI, MEMBER(J).

Brij Lal,
s/o Shri Ram Subagh Yadav,
Lineman,
C/o Sub-Divisional Officer Phones,
M.T.N.L Sena Bhawan,
New Delhi. Applicant.
By Advocate Shri K.N.R.Pillai.
versus

1. Union of India,
through the Secretary,
Department of Telecommunications,
Ministry of Communications,
New Delhi-1
2. Chief General Manager,
Delhi Telephones, MTNL, Respondents.
New Delhi

By Advocate Shri V.K.Rao.

JUDGMENT

By Hon'ble Mr.S.R.Adige, Member(A)

Applicant Shri Brij Lal, Lineman, Office of SDO Phones, MTNL, New Delhi has impugned the penalty order dated 11.5.87 (Annexure-AXII) entailing stoppage of two increments with cumulative effect and treating the suspension period as dies-non; the appellate order dated 13.1.88 (Annexure-AXIV) modifying the punishment to stoppage of increments for two years without cumulative effect and treating the suspension period as spent on duty; and the revision order dated 14.2.91 upholding the appellate order (Annexure-A XVI).

2. His case is that he joined Delhi Telephones in 1966 and was working as Lineman in the Office

of SDO Phones, Faridabad since June, 1974. He states that throughout he was a Trade Union Worker, and at the relevant time was Divisional Secretary Mazdoor Union as a result of which his superior officers, particularly Divisional Engineer (Phones) Shri Kalia was particularly annoyed with him and wanted to involve him in some fabricated case, in which endeavour he was assisted by the SDO (Phones) Faridabad. He states that on 3.3.83 the SDO Phones had a fall from his scooter and took the opportunity to file a false FIR against the applicant and other Union Workers, and in the judgment dated 3.4.87 arising out of that FIR the applicant and other accused persons were acquitted. He states that a departmental proceeding was also initiated against him alleging misbehaviour, use of abusive language, and abatement in physical assault, in regard to events leading upto and arising out of the incident on 3.3.83 in which he was exonerated by order dated 14.12.87 (Annexure-AII). Meanwhile on being arrested on the criminal charge, he was suspended w.e.f. 2.3.83, but he states he used to attend office regularly to discharge his duties as Divisional Secretary of the Union. He submits that his suspension was revoked sometime in mid 1983, but says he does not know it for certain, because no revocation order was communicated to him. However he ^{receiving he was issued} received a transfer order dated 5.9.83 (Annexure-AIII) and his subsistence allowance was stopped in November-December, 1983, but the said transfer order was also not communicated to him. On the other hand he alleges that he received

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a fabricated transfer order dated 15.10.84 (Annexure-A-V), which he claims was made out much earlier. He states that only much later, after he had represented to the Prime Minister (Annexure-A-VIII) that he was sent for on 15.2.85, and given an attested copy of the transfer order dated 5.9.83, and he joined duty that day itself i.e. 15.2.85. He states that a D.E. was initiated against him on the charge of committing gross misconduct in not complying with the posting orders by reporting for duty and also absenting himself unauthorisedly without permission and not submitting proper leave documents. The I.O. in his findings dated 31.1.86 held the charges proved. Accepting those findings the Disciplinary Authority imposed the impugned penalty dated 11.5.87 which was somewhat reduced by the appellate authority's impugned order dated 13.1.88, against which this O.A. has been filed.

3. The respondents in their reply have contested the O.A. They state that the punishment was imposed after recording of findings in a D.E. in which the applicant was given full opportunity to defend himself and was conducted strictly in accordance with prescribed procedure. They contend that on his acquittal, he knew very well that orders had been passed revoking his suspension and posting him out of Faridabad. These orders were sought to be served on him and were sent to his residential address by registered post, but he intentionally did not accept the registered letters, perhaps because

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he wanted to remain at Faridabad. They also state that the applicant was told by the SDO verbally that his suspension had been revoked, and furthermore when his subsistence allowance was stopped, it was only because he had been reinstated after his suspension was revoked. He thus became entitled to full salary on joining duties, but the applicant never joined his duties inspite of knowing about his posting. They state that on the basis of the orders received revoking his suspension, an order dated 15.10.83 (date wrongly mentioned as 15.10.84 in the Hindi version of the order) was prepared and sent to the applicant, who received it, although belatedly in May, 1984. It is further stated that the fact that the applicant knew of his posting out of Faridabad, is supported by his efforts to file a suit for injunction in the Court of Senior Sub-Judge, Faridabad, and it is only when he failed to obtain an injunction there that he finally accepted the transfer order on 23.5.84 by hand. They state that the application is therefore fit to be dismissed.

4. The first ground taken is that the D.E. was vitiated as a copy of the enquiry report was not furnished to the applicant before imposing the impugned punishment. As the D.E. was concluded prior to 20.11.90, this ground lacks force, in the background of the Hon'ble Supreme Court's ruling in ⁷⁾ E.C.I.L Vs. Karunakar, JT 1993 (6) S.C. 1.

5. Secondly it has been contended that the I.O's findings are based on no evidence, but conjectures and sumises. We note that there is no specific denial by the applicant in his rejoinder to the averment by the respondents in their reply that the applicant had filed a suit for injunction in the Senior Sub Judge, Faridabad's Court against his order of transfer out of Faridabad, and it is only when he failed to obtain that injunction, did he accept the order dated 15.10.83 by hand on 23.5.84. In the absence of any denial we must hold that the applicant did have knowledge of the revocation of his suspension and his transfer out of Faridabad, but despite that he refused to accept the transfer order, and did so only when he failed to secure the injunction he had sought. That being the position, it cannot be said that it is a case of 'no evidence' to sustain the charge. Hence this ground also fails.

6. Thirdly it has been urged that the appellate authority has not sustained the findings of the Disciplinary Authority and having disbelieved part of the evidence on which the finding is based, could not simply reduce the penalty but either had to exonerate the applicant or remit the case back to the Disciplinary Authority. The appellate authority has clearly held that the applicant had intentionally avoided taking the transfer order of 15.10.83, and it therefore cannot be said that he has not sustained the findings of

the Disciplinary Authority. He has himself recorded that because the transfer order was defective in certain respects that in fairness to the applicant he reduced the punishment somewhat and directed that while the period of suspension from 2.3.83 to 13.10.83 be treated as on duty, the period from 14.10.83 until 14.2.85 (that is from the date of the transfer till the applicant actually joined duty) may be adjusted against leave due, and the balance period, if any, be treated as dies non without break in service, or in other words leave without pay. When it is established that the applicant despite being aware that his suspension had been revoked and he had been posted out of Faridabad refused to abide by the transfer orders, and remained absent from duty, the question of exonerating the applicant or remitting the matter back to the Disciplinary Authority was not required under law. Hence this ground also fails.

7. Fourthly, it has been urged that the revision order dated 14.2.91 (Annexure-A-XVI) is a non-speaking one. The revision order is a detailed and exhaustive one. This ground is wholly without merit.

8. Lastly, it has been urged that the department's version that the applicant was refusing to receive orders revoking suspension, which would have entitled him to full pay and allowances is not one which a reasonable person could believe. As stated earlier the applicant

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has not denied seeking an injunction against his transfer out of Faridabad. It therefore cannot be said that the assumption that he wanted to continue at Faridabad even if that meant staying there by absenting himself from duty even after his suspension had been revoked, and his suspension allowance stopped, was an unreasonable assumption.

9. In the result, this OA warrants no judicial interference. Before parting with this case, we may mention that during arguments applicant's counsel Shri Pillai urged that as the applicant received the revocation -cum- transfer order only on 23.5.84 at least the period 14.10.83 to 23.5.84 should be treated as on duty. This is an aspect which involves appreciation of evidence, which lies beyond our jurisdiction. If however upon a representation filed by the applicant on this point, the respondents are disposed to consider the same, nothing contained in this judgment will preclude them from doing so.

10. The OA accordingly stands disposed of in terms of para 9 above. No costs.

A.Vedavalli
(DR.A.VEDAVALLI)
Member(J)

S.R.Adige
(S.R.ADIGE)
MEMBER(A)

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