

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2738/2004

New Delhi, this the ^{23rd} day of December, 2005

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Shri R.C.Khurana,
S/o Late Shri D.D. Khurana,
R/o B-1/216, Lazpat Nagar,
New Delhi.

...Applicant.

(By Advocate Shri S.P.Chadha)

VERSUS

1. Union of India, through
Secretary, Department of Telecom,
Ministry of Communication,
Samachar Bhawan, 20 Ashoka Road,
New Delhi-110001.
2. The Deputy Secretary
To the Govt. of India,
Deptt of Telecom, 20-Ashoka Road,
New Delhi-110001.
3. The Chief Engineer Civil (C)
Deptt of Telecom,
(Now Bharat Sanchar Ltd)
T.R.A. Building, New Delhi.
4. The Suptd. Engineer (P&D-C-II)
Deptt of Telecom,
(Now Bharat Sanchar Ltd)
6th Floor, Mohan Singh Place
New Delhi.

...Respondents.

(By Advocate: Shri B.S.Jain)

ORDER

Hon'ble Mrs.Meera Chhibber, Member (J)

By this OA applicant has sought the following relief (s) :

“8.1 To direct the respondents to treat the applicant on duty for all purposes from 26.1.1999 to 5.12.2002 and pay arrears of pay and allowances for this period along with other consequential benefits like Annual Increment and Leave Entitlement etc.

8.2 To direct the respondents refix the pensionary benefits of the applicant in relation to the last pay drawn as a result of implementation of relief at 8.1 supra.

8.3 To direct the respondents to issue pension pay order early on the basis of last pay fixed and to release all the retrial benefits with effect from 6.12.2002 along with interest for delayed payment @ 12%.



8.4 Such other relief as this Hon'ble Court may consider suitable in the facts and circumstances of the case.

8.5 to direct payment cost of this application to your humble applicant."

2. It is submitted by applicant that he joined service as Draftsman w.e.f. 10.7.1972 and continued till 24.9.2003 when he was compulsorily retired. He could not attend duties from 2.12.1984 to 24.1.1999 due to depression. He gave joining on 25.1.1999 but was not allowed to join. He was served with a charge sheet dated 19.3.2001 for unauthorized absence from 10.12.1984 to 24.1.1999 without any application and also that after submitting joining report on 25.1.1999, he again left the office without any intimation/permission and remained absconding till date.

3. After completion of disciplinary inquiry, applicant was dismissed from service vide order dated 5.12.2002. Being aggrieved, he filed an appeal which was not decided. Ultimately his appeal was decided vide order dated 24.9.2003 reducing the penalty from dismissal to compulsory retirement by making observations in favour of applicant for the period from 26.1.1999 to 5.12.2002 but left it to the disciplinary authority to pass separate order. In spite of the observations made by appellate authority and even the Tribunal, disciplinary authority passed an order dated 9.12.2003 whereby period from 10.12.1984 to 24.1.1999 was treated as willful absence by declaring it as dies non which would be forfeited for all purposes i.e increment/leave/ pension etc. 25.1.1999 was treated as no work no pay but period from 26.1.1999 to 5.12.2002 was decided by order dated 29.3.2004 to count towards pension. It is this order, which has been challenged by the applicant in present OA, on the ground, that once appellate authority had held the officers responsible for not allowing the applicant to join duty, he could not have been denied the wages for this period. He had even filed OA 1561/2002 seeking permission from the Court to join duty but of no avail.

4. O.A. is opposed by respondents on the ground that it is barred by res-judicata as relief for joining was not granted by Tribunal in its order dated

6.6.2002 in OA No.1561/2002 pursuant to which speaking order dated 5.9.2002 was passed. Applicant then filed R.A.175/2002, which was dismissed on 23.8.2002. he also filed OA 2252/2002 which was dismissed as withdrawn on 28.8.2002. he even filed CP No.404/2002 which too was dismissed on 6.11.2002. He challenged order dated 5.9.2002 in O.A. 3084/2002 seeking the same relief but it was not granted, therefore, present O.A. is not maintainable. His CP 93/2004 was also dismissed vide order dated 31.5.2004.

5. Moreover OA is barred by limitation as well, as applicant did not challenge the order passed by appellate authority. Vide order dated 29.3.2004, applicant has been asked to submit his leave application for settlement of his pension case but no application has been submitted by him, therefore, O.A. may be dismissed.

6. On merits, they have submitted that applicant absented himself from duty from 2/10.12.1984 to 24.01.1999. He also did not give any intimation of his whereabouts. He gave his joining report on 25.01.1999 by only stating that due to unavoidable circumstances, he could not attend office since 10.12.1984. He did not show any interest to resume duty and left the office without any intimation/permission and again remained absent thereafter. In view of this, disciplinary action was taken against him and he was dismissed from service. He filed OA 3084/02 wherein his case was remitted back to the appellate authority. The appellate authority reduced the penalty of dismissal from service to that of compulsory retirement. The appellate authority in its order dated 24.9.2003 also stated that necessary administrative orders in regard to the absence from duty of Shri R.C. Khurana from 10.12.1984 to 24.01.1999 and 25.01.1999 to 5.12.2002 would be issued separately by the competent authority. These orders were issued subsequently. The point sought to be made is that even the appellate authority considered the applicant absent for the period from 10.12.1984 to 24.01.1999 and 26.1.1999 to 5.12.2002. The applicant did not file any revision petition against the orders of the appellate authority. The respondents are counting the period from 26.1.1999 to 5.12.2002 for pensionary benefits. This period has not been treated as duty by the Hon'ble Tribunal in its judgment dated 23.6.2003. They have thus prayed that the O.A. may be dismissed.



7. We have heard both the counsel and perused the pleadings. The preliminary objections taken by respondents have to be rejected. As far as plea of limitation is concerned, applicant is aggrieved by the order dated 29.3.2004 and the O.A. has been filed in November, 2004 which is within one year from the date of cause of action as stipulated under Section 21 of the Administrative Tribunals Act, 1985, therefore, O.A. cannot be stated to be barred by limitation.

8. As far as objection of res judicata is concerned, it is seen that applicant had first filed O.A. 1561/2002 making a grievance that he is not being allowed to join duty, which was disposed of on 6.6.2002 by directing the respondents to decide his representation so the grievance of applicant was not even looked into by the Tribunal. Pursuant to the directions of 6.6.2002, respondents passed a speaking order dated 5.9.2002. He challenged order dated 5.9.2002 in OA No.3084/2002, which was decided by a detailed judgment dated 23.6.2003. During the pendency of O.A., respondents annexed order dated 5.12.2002 whereby applicant was dismissed from service. The Tribunal observed as follows in para 10 of the judgment:

"We also find merit in the submissions made by the learned counsel for the applicant that when the Departmental proceedings were initiated against the applicant which no doubt the competent authority had power to do, he should have also taken an appropriate decision whether the applicant should be taken back on duty or placed under suspension, which action has also not been done. This is a failure on the part of the respondents. No doubt the respondents have power to take a decision in the matter regarding the intervening period, i.e. from the date of suspension. If such an order had been passed to the date of his dismissal from service and to treat the period as dies non or period spent on duty or otherwise in accordance with the relevant rules, which action has not been done in the present case".

It was further observed in para 11 that even if applicant had disappeared after giving his joining report on 25.1.1999, the respondents ought to have passed necessary orders in accordance with rules, including, if need be, suspension, so that period could be decided on conclusion of inquiry. No such procedure was followed. However, since applicant's appeal against dismissal was pending, this O.A. was disposed of by remitting the case to the appellate authority to pass appropriate orders in accordance with law, keeping in view the observations made above. Since no orders were being passed so applicant filed CP 93/2004



in OA 3084/2002 but, in the meantime, since appeal was decided on 24.9.2003, the CP was dropped on 31.5.2004.

9. These facts would clearly show that on both the occasions, matter was directed to be decided by authorities, after making certain observations. Thus it cannot be stated that his relief was rejected because ultimately the matter was remitted back. It is relevant to note that even appellate authority passed remarks against his own officers yet disciplinary authority did not decide his period from 26.01.1999 to 5.12.2002 in clear terms, therefore, he has challenged those orders now. In these circumstances, it cannot be stated that the present O.A. is barred by principle of res judicata, therefore, this objection is also rejected.

10. Coming to the merits of the case, it is seen that applicant was dismissed from service vide order dated 5.12.2002 passed by disciplinary authority but while deciding the appeal, appellate authority not only modified the punishment of dismissal to compulsory retirement but also observed as follows:

"It is seen in this case that the appellant absented himself from duty in the first spell i.e. from 10.12.1984 to 24.01.1999 without any permission/intimation in an unauthorized manner. Even the appellant has admitted during the inquiry that he was unauthorisedly absent during the said period. But the records also indicate that the appellant had presented himself for joining duty on 25.01.1999 in the office of SSW-II, Mohan Singh Place, New Delhi alongwith a joining report which is on record. The records also show that no decision was taken by the concerned authority for quite sometime either to allow him to join duty or to redirect him to report to another office. Unfortunately, neither his place of posting was intimated to him nor his services were placed at the disposal of some other office. So much so, no communication was sent to him with reference to his joining report dated 25.01.1999. In these circumstances, it is difficult to hold that the appellant willfully absented himself from duty after 25.01.1999 against the above mentioned facts of the case. It is also seen that the appellant had made requests to the various authorities a number of times even during the inquiry proceedings to allow him to join duty but his request was not acceded to. Thus, there should be no hesitation to hold that the Inquiry Officer has held the charges under Article-II & III levelled against Shri R.C. Kurana as proved in a mechanical manner without really making an objective assessment of the evidence brought on record. Even the disciplinary authority also failed to appreciate that when the appellant presented himself for duty on 25.01.1999 alongwith the joining report neither his place of posting was made known to him nor he was redirected to report to any other office. As such, the appellant was forced by the circumstances to remain away from office from 26.1.1999 to the date of his dismissal from service i.e. 05.12.2002. Therefore, benefit of doubt certainly accrues to the appellant in respect of the charge of remaining unauthorisedly absent after 25.01.1999 which remained unsubstantiated. But, at the same time the charge of remaining unauthorisedly absent from duty from 10.12.1984 to 24.01.1999 stands conclusively established against the appellant

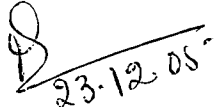
beyond any reasonable doubt which in itself renders him unfit for retention in service".

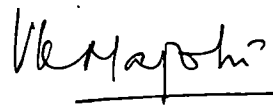
It goes without saying that once appellate authority had recorded the above findings in favour of applicant, the period from 26.1.1999 till 5.12.2002 could not have been declared to the detriment of applicant yet in the order passed on 29.3.2004 by the disciplinary authority though it was stated that the period from 26.1.1999 to 5.12.2002 would count for pension but the nature of this period was not decided as to whether it would be deemed as spent on duty or not spent on duty. On the contrary, applicant was advised to submit his leave applications for settlement of pension case. Applicant is aggrieved only by this part of the order as he has submitted that since he was not allowed to join duty by the respondents themselves, he cannot be made to suffer for the fault of respondents.

11. We find force in the submission made by the applicant in view of the fact that appellate authority has categorically observed that since applicant repeatedly requested the authorities to allow him to join the duties but he was not allowed by the officers concerned. It is difficult to hold that the applicant willfully absented from duty after 5.1.1999. He further observed that there is no hesitation to hold that the inquiry officer proved charge No. II and III against the applicant in a mechanical manner without really making an objective assessment of the evidence brought on record. In view of the findings recorded by the authority coupled with the fact that disciplinary authority also decided to count the period from 26.1.1999 to 5.12.2002 towards pension, it is clear that the disciplinary authority accepted force in the contention of applicant but has given the relief half heartedly without any justification. Since it has been decided already by the appellate authority that applicant was deprived from attending the office due to negligence of their own officers, we see no reason as to why applicant should be made to apply for leave during this period and why he should not be granted the monetary benefits for the above said period, therefore, to this extent only order dated 29.3.2004 is quashed and set aside. However, while deciding the relief to be granted to the applicant, we have to keep in mind that in fact no work was performed by the applicant for the period from 26.1.1999 to



5.12.2002 and before 25.1.1999, admittedly applicant had remained unauthorisedly absent for a long period of over 15 years without seeking any permission, therefore, weighing and balancing the equities of both the sides, we think, ends of justice would be met, if respondents are directed to give 50% of the wages to the applicant for the period from 26.01.1999 to 5.12.2002 by fixing his pay at the corresponding scale ^{of B} and what he would have drawn when he last attended the office in December, 1984. It is made clear applicant would not be entitled to any increment for the intervening period as he had not performed any duty even during this period. After fixing his pay, the difference payable (50% of the back wages from 26.1.1999 to 5.12.2002) shall be paid to the applicant along with due and drawn statement. He would not be entitled to any interest. His pensionary benefits should accordingly be prepared on the basis of last pay drawn and payments ^{shall be B} made to him within a period of four months from the date of receipt of a copy of this order. Ordered accordingly. No order as to costs.


 (Mrs. Meera Chhibber)
 Member (J)


 (V.K. Majotra)
 Vice Chairman(A)

'SRD'