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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.1839/2004

New Delhi, This The 21st Day Of October, 2005

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Shri Ashok Kumar Rai,
RM (MZ-17272)
Son of Shri Ramji Rai,
R/o C-30, Saurabh Vihar,
Badarpur
New Delhi – 110 044
(By Advocate : Shri Sumit Arora)

... APPLICANT

VERUS

1. UNION OF INDIA
Deptt. of Telecommunication (DOT),
Now Bharat Sanchar Nigam Ltd.,
Ministry of Communications,
Sanchar Bhawan,
New Delhi
Through its Secretary
2. Mahanagar Telephone Nigam Limited,
Office of Chief General Manager,
Khurshid Lal Bhawan,
Eastern Court, New Delhi,
Through its Chairman
3. Assistant General Manager (A&F),
Mahanagar Telephone Nigam Ltd.,
Nehru Place, New Delhi – 110 019
4. Telecom District Engineer, Raichur,
Office of the Chief General Manager,
Karnataka Circle,
Bangalore (Karnataka)-584 101
(By Advocate : Shri V.K. Rao)

... RESPONDENTS

O R D E R (Oral)

By Mukesh Kumar Gupta, Member (J) :

In this second round of litigation, the applicant prays for the following reliefs:-

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- (i) The record pertaining to O.A. No.853/2001 titled as Ashok Kumar Rai vs. Union of India & Ors. may be summoned;
- (ii) The respondents may be directed to pay the applicant all the arrears of his pay and allowances w.e.f. 13.8.1994 to 12.8.1999 along with increments, due promotions and other service benefits and interest to be calculated at the rate of 24% per annum till its realization; and
- (iii) Any other order/direction which this Tribunal deems fit and proper in the facts and circumstances of the case be made in favour of the applicant.

2. The facts sans unnecessary details are as follows:-

The applicant was appointed on muster roll basis by respondent No.1 on 1st March, 1979 and after incorporation of respondent No.2 in April, 1986 he became daily wage Mazdoor w.e.f. 1.4.1986. Vide Memorandum dated 12th January 1988 he was selected as a Regular Mazdoor and joined the said post on 15th January 1988. All of a sudden, vide order dated 23rd August, 1993 the applicant was placed under suspension with retrospective effect, i.e., w.e.f. 28th April, 1993 on the ground that a disciplinary proceeding "is under investigation". Further vide transfer order dated 2nd August, 1994 he was transferred to Telecom District Engineer, Raichur and the suspension order was ordered to be revoked. The said order was sent to his Pul Pehladpur, New Delhi address. Consequently, the applicant's suspension was revoked w.e.f. 12th August, 1994 (FN), which was also sent on the same address. When the applicant reported for duty to Respondent No.4, i.e., Telecom. District Engineer, Raichur, Karnataka Circle, he was informed that there was no vacant post in the category of Regular Mazdoor and this fact of non-availability of post had already been informed to Respondent No.2 vide communication dated 26th July, 1994. However, the applicant was not given anything in writing and, therefore, he returned from Raichur, Karnataka Circle and reported at his parent Office.

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Respondent No.2 did not assign any work despite repeated request orally as well as in writing. He was paid salary upto the period 31st May, 1995. All of a sudden, respondent No.2 stopped the payment of salary after May, 1995 and despite representations as well as personal meetings, no heed was paid to his request. Therefore, a legal notice dated 26th February, 1998 was served upon respondent No.2 calling upon to pay the arrears of pay and allowances along with interest. In response to the said legal notice, a vague, incomplete and unsatisfactory reply dated 1st May, 1998 was received. However, the said communication informed that the respondent No.4 had reported its inability to admit the applicant on duty for want of vacancy. Under these circumstances, the applicant approached the Hon'ble High Court of Delhi by instituting Civil Writ Petition No.151/1999. Vide order dated 4th August, 1999 the applicant was posted to Ghaziabad S.S.A., G.M.T.D. (West) Telecom Circle, but the matter regarding arrears of pay and allowances was kept pending. Consequent to the above, the applicant joined the Office of G.M.T.D. Noida on 13th August, 1999. Under these circumstances he withdrew the aforesaid Writ Petition on 28th September, 1999 with liberty to approach the appropriate forum for redressal of his grievances in accordance with law.

On his transfer from MTNL, New Delhi to GMTD, Ghazaiabad, respondent No.2 issued a last pay certificate dated 20th September, 1999 indicating in specific that the applicant was paid salary upto 31st May, 1995 which certificate was revised on 22nd September, 1999 inserting that the applicant was over-paid a sum of Rs.18,548/- though no such over-payment was ever made by the respondents. He was shocked to receive a letter dated 1st December, 1999 from the Office of Telecom District Manager, Bellary with the caption "unauthorized absence from duty" and alleged that

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the applicant had been transferred from C.G.M.T., MTNL, New Delhi to Bellary SSA in April, 1996 and had not reported for duty. Therefore he instituted OA No. 853/2001 before this Bench seeking direction to respondents to treat the period of service from 13th August, 1994 to 12th August, 1999 as continuous and spent on duty with arrears of pay and allowances along with interest. The said OA was disposed of vide order dated 23rd January, 2004 with a direction to respondents to "re-examine the claim of the applicant for pay and allowances having regard to the aforesaid direction by a detailed and speaking order" within a period prescribed therein. In the purported compliance of the aforesaid order, the respondents passed the impugned order dated 19th May, 2005 rejecting the request stating that "you did not report for duty anywhere after being relieved by MTNL in August, 1994 till August, 1999 when your transfer orders were revised". The aforesaid order is under challenge in the present OA.

3. Shri Sumit Arora, learned counsel appearing for the applicant contends that this Tribunal vide order dated 23rd January, 2004 while disposing of the aforesaid OA No.853/2001 specifically concluded as follows:-

"7. Having regard to the communication sent by applicant on 10.9.94 a registered AD addressed to the SDO (Phones) Nehru Place, New Delhi, new address of applicant was very much in the knowledge of respondents. Moreover, on his further changed address his posting order at Ghaziabad and New Delhi were issued. As such, we are of the considered view that the service of the modified order of transfer has not been validly effected upon, as a result of which for want of posting applicant had been prevented from joining duty. Non-payment of pay and allowances cannot be attributable to applicant."
(emphasis supplied)

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4. In the back-drop of above findings vis-à-vis the impugned communication dated 19th May, 2004 it was contended that the respondents had not considered at all about the Telecom District Engineer, Raichur's communication dated 2nd April, 1998 wherein a specific stand had been taken that "there was no vacant post in the cadre of RMs. Hence he was not taken on duty in this district". Shri Arora, learned counsel further contended that if the applicant was transferred to Raichur and later to Bellary as per Respondents' averments, then why and how the applicant was transferred vide order dated 11th August, 1999 (Annexure A/14) from MTNL, New Delhi to GMTD Ghaziabad. It was further contended that there was a total non-application of mind on the part of the respondents while issuing the impugned order dated 19th May, 2004 stating that "there is absolutely no proof of your travel to Raichur or Karnataka to join duty, there are no joining reports either at Raichur, Karnataka Circle HQ or upon alleged refused joining at Raichur, any office in Delhi". With reference to the facts noticed hereinabove, it was contended that the aforesaid observation in the impugned order is mis-placed, contrary to facts and records and deserves to be rejected. It was further contended that the aforesaid observations of this Tribunal were neither noticed nor considered while passing the impugned communication.

5. Respondents Nos. 2 and 3 contested the applicant's claim and maintained that the impugned order dated 19th May, 2004 was just and legal. The applicant was transferred vide order dated 17th February 1994 and was posted to Raichur Telecom District vide Karnataka Telecom Circle letter dated 08th April 1994. Since there was no clear vacancy in the cadre of Regular Mazdoor at Raichur Telecom District, the applicant was directed

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to go to Hubli, and GMT, Hubli Area was asked to intimate his place of posting. Subsequently the applicant was informed that his place of posting was changed to Bellary, which was in an administrative exigency and public interest as well. The revised order of posting was sent to his last known residential address, i.e. Madangir, Delhi which was returned with the remarks thereon "addressee left without address". Vide DoT letters dated 21st July, 1999 and 1st August, 1999 a decision was taken to post the applicant to Ghaziabad Telecom SSA of UP (West) Telecom Circle under rule 38 of P&T Manual Vol.4. Since the applicant had not joined at Bellary he was treated on unauthorized absence and, therefore, he was called upon to explain as to why departmental action be not initiated against him. It was the duty and responsibility of the applicant to provide the office with his correct address, which he failed to do so. Since the applicant was involved in some criminal case and was in custody for more than 48 hours, he was placed under suspension, which was revoked only on 12th August, 1994. Since the applicant was relieved on his transfer to Raichur in August 1994, he was not entitled to pay and allowances and hence, a sum of Rs. 18,548/- was shown as over-payment in the last pay certificate. Since the applicant did not report for duty anywhere after being relieved by MTNL in August 1994 till August 1999, when his transfer order was revised, the applicant was not entitled to any pay and allowances for the said period. There is no violation of the principles of natural justice nor the respondents had acted in an arbitrary manner.

6. The applicant contested the respondents' averments by filing a detailed rejoinder and reiterated the contentions so raised in the OA. It is contented that the respondents have not re-examined the entire matter pursuant to direction issued by this Tribunal in OA No.853/2001 and

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rejected the same without any application of mind. As far as applicant's transfer from Raichur to Bellary is concerned, this Tribunal vide order dated 23.01.2004 in OA No.853/2001 had clearly held that the service of the modified order of transfer had not been validly effected upon him as a result of which he was prevented from joining the duties. The applicant had duly intimated his change of address from I-II/80, Madan Gir, New Delhi-110062 to 28, L.I.G. Flat Pul Pehladpur, New Delhi in the year 1994 itself and it was unimaginable as to why the said letter/communication issued in the year 1996 had been sent at the previous address of the applicant. This loudly speaks of the injustice done to the applicant by the respondents.

7. We have heard the learned counsel for both sides and perused the pleadings on record.

8. We have carefully gone through the order dated 19.05.2004 passed by the respondents pursuant to the directions issued by this Tribunal on 23.01.2004 in OA No.853/2001. On examination of the facts noticed hereinabove, we find force in the contention raised by the learned counsel for the applicant that the applicant was posted to Raichur despite the fact that no vacancy existed there and he was not taken on duty as communicated by respondents as late as on 02.04.1998 in specific that: "there was no post in the cadre of RMs. Hence he was not taken for duty in this district" (Page 54/55 of the paper book). We find further justification and substance in the contention raised that vide aforesaid order dated 23.1.2004 this Tribunal specifically observed that having regard to the communication sent by applicant on 10.9.94 a registered AD addressed to the SDO (Phones), Nehru Place, New Delhi, new address of applicant was very much in the knowledge of respondents. Moreover, on his further

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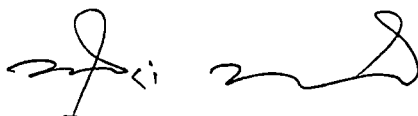
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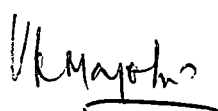
changed address his posting order at Ghaziabad from New Delhi were issued. Not only this transfer order dated 02.08.1994 as well revocation of suspension orders were also sent at 28, LIG, DDA Flats, Pul Pehladpur, New Delhi-44. As such we are of the considered view that the service of the modified order of transfer to Bellary, sent at 9-II, 80 Madangir, Delhi-62 had not been validly effected upon, as a result of which for want of posting applicant had been prevented from joining duty. Non-payment of pay and allowances cannot be attributable to applicant. The said findings had become final, as the said order had not been challenged before any higher Court. In the backdrop of above observation, the respondents were directed to re-examine the applicant's claim for pay and allowances and pass a speaking order. The order dated 19.05.2004 though appears to be a speaking order, but the aforesaid aspect has neither been noticed nor discussed/analyzed by the respondents. On the other hand, the respondents tried to point the basic issue by stating, "there is absolutely no proof of your travel to Raichur or Karnataka to join duty". The learned counsel for applicant vehemently contented that unless and until applicant had reported for duty at Raichur, the Telecom Distt. Engineer, Raichur would not have issued communication dated 02.04.1998, contents of which have been noticed hereinabove. We find justification and great force in the said contention raised. The applicant, we may note, was transferred vide order dated 02.08.1994 and the alleged modified posting order to Ballery was issued only in April 1996. What action had been taken by the respondents if the applicant had not reported for duty almost after two years from August 1994 to April, 1996, remains unexplained and uncommented even in the impugned order dated 19.05.2004. Similarly, if the applicant had not reported for duty at Ballery as ordered in April 1996 what steps were taken

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by the respondents against the applicant also remains unexplained and unsubstantiated. We find no justification in the respondents' contention that the applicant having not reported for duty anywhere after being relieved by the MTNL in April 1994 till August 1996, is without any substance and cannot be agreed to. There is one more aspect which is required to be commented, namely, on what basis the respondents issued order in August 1999 posting the applicant to GMTD Ghaziabad particularly when he had already been relieved from MTNL, New Delhi in August, 1994 as the transfer/posting order dated 11.08.1999 states in specific that the applicant "on transfer from MTNL, New Delhi to GMTD, Ghaziabad" is posted to Ghaziabad SSA with immediate effect. Normally if the applicant was transferred to Bellary in the year 1996, the language employed in the said order would have been that the applicant stands transferred "from Bellary to GMTD, Ghaziabad", which is not the case in hand.

9. In view of the discussions made hereinabove, we allow the present OA and quash and set aside the impugned communication dated 19.05.2004 and direct the respondents to pay arrears of his pay and allowances w.e.f. 13.08.1994 to 12.08.1999 along with increments and promotions due, if any. However, in the facts and circumstances of the case, the applicant would not be entitled to any interest, as prayed for. This exercise should be completed within a period of two months from the date of receipt of a copy of this order. No costs.


(Mukesh Kumar Gupta)
Member (J)


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

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