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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 991 of 1986
(Suit No. 349 of 1973)

Surendra Kumar Johri Plaintiff-Applicant.
Versus
Union of India Defendant-Respondent.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

Suit No. 349 of 1973, Surendra Kumar Johri v. Union of India, has been received on transfer from the court of Civil Judge, Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985.

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2. The plaintiff's case is that he was served with an order dated 28.6.1969 passed by the Divisional Engineer, Telegraphs, Bareilly, who was not competent to pass the said order and, therefore, the plaintiff filed a suit no. 384 of 1969 in the court of Munsif, Hawali, Bareilly against the transfer order and this suit was decreed against him. Thereafter the plaintiff filed an appeal against the order of Munsif, Hawali, Bareilly, in the court of District Judge, Bareilly being Appeal No. 113 of 1971. This appeal was decided on 9.3.1972 and the order of Divisional Engineer, Telegraphs, Bareilly, was declared illegal and void. During the pendency of the suit an interim injunction was also issued restraining the defendant from transferring the plaintiff. However, an order was passed on 14.5.1970 by the Assistant Engineer, Long Distance, Bareilly, purporting to have been passed

by the Director of Telegraphs (East), Lucknow transferring the plaintiff. According to the plaintiff even the Director of Telegraphs (East) was not competent to transfer him as was held in the judgment in Appeal No.113 of 1971. The plaintiff's case is that the defendant did not pay him any pay and allowances during the pendency of the suit and the appeal which was decided on 9.3.1972. He has, therefore, claimed Rs.11,281.32 p. against pay and allowances, arrears and interim relief covering the period May, 1970 to April, 1973. The plaintiff has further said that he submitted two medical bills but they were disallowed on the plea that they were submitted late. He was also not paid overtime allowance and thus a total amount of Rs.12,536.21 p. became due to him, details of which he has given in paras 4, 5 and 6 of his application. He has, therefore, prayed for a decree for this amount to be passed in his favour with pendente lite and future interest and the costs of the suit and any other relief.

3. In their written statement the defendants have admitted that against the transfer order the plaintiff had filed a suit in which an interim injunction was granted and the plaintiff continued to serve at Bareilly. There was no harassment on the part of any of the officials. The allegations made in this respect are frivolous. They have challenged the claims ~~to be~~^{to} forwarded by the plaintiff in para 4 of his application (plaint) as the plaintiff had not given details how he arrived at those figures. According to the defendants the plaintiff remained absent from 15.5.1970 to 2.7.1972 and as such he was

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not entitled to any salary. In regard to the claims in para 4 the defendants have made the following averments :-

- i) Against the claim of Rs.14.62 p. they have admitted a claim of Rs.13.20 p. which was paid on 15.2.1974.
- ii) Against a claim of Rs.365/- as salary for the month of June,1970, they have said that the plaintiff was only entitled to Rs.291.95 p. after deducting the Provident Fund and the amount was paid to him on 15.2.1974. According to the defendants the full salary for the month of June,1970 was not due as the plaintiff had remained absent from 15.5.1970 onwards. The amount of Rs.291.95 p. was affixed at after taking into consideration the leave which was admissible to the plaintiff.
- iii) Against Rs.4,686/-, the amount due, which has been paid on 15.2.1974, came to Rs.1,504.45 p. after allowing him the leave due as well as making deduction of the Provident Fund, etc.
- iv) Against Rs.5,185.80 p. only an amount of Rs.77.10 p. was due which was also paid on 15.2.1974 because the plaintiff remained absent during this period and no pay was due to him.
- v) Against the claim of Rs.90.65 p. as the arrears for July,1972, there was nothing due according to the defendants.

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- vi) Against the claim for Rs.437.15 p. the plaintiff was paid a total sum of Rs.2,527.95p. including arrears and increments for the periods August, 1972 to February, 1973.
- vii) Against a claim of Rs.439.65 p. an amount of Rs.352.20 as pay and allowances for the month of March, 1973 was drawn. A sum of Rs.68.50 was deducted for payment to Co-operative Society, Bareilly. The plaintiff refused to receive this amount which was returned to the Accounts Officer, Delhi.
- viii) Against a claim of Rs.62.45 p. as arrears of pay and allowances for the month of April, 1973, according to the defendants the plaintiff is only entitled to a total sum of Rs.352.15 which after deduction of the payments for Co-operative Society was sent to the plaintiff by Money Order in May, 1973 and was received by him. Some arrears of increment amounting to Rs.12.90 p. were also paid on 15.2.1974. Thus according to the defendants the plaintiff is not entitled to any further payment on this account.

4. In regard to paras 5 and 6 of the plaint the defendants have said that the amount of Rs.153.62 p. was not admissible as ^{3/}the ~~its~~ claim was not put-forth within time and the claim ^{2/}for amounting to Rs.491.07 p. against medical bills and overtime allowance bills of Rs.509.00p. and Rs.101.20 p. have not been admitted by the defendants for want of full and better particulars. These bills were not traceable and unless full details are given the same could not be verified.

5. The plaintiff had given further details of the medical bills vide paper no.146-Ga of the suit file. He has also given details of the overtime allowance bills for the period June,1968, October,1969 to December,1969, and January,1970 to May,1970. In his replication the plaintiff has challenged the averments made by the defendants.

6. In the written arguments submitted by the plaintiff he has said that he never remained absent from his duty nor he ever relinquished or resumed any charge as required under P&T Manual, Volume IV. He had regularly signed on the attendance register which has not been submitted by the defendants deliberately before the trial court. The plaintiff has further said that he was performing fixed duty from 10.00 hours to 17.20 hours and, therefore, he was signing in General 13 Register instead of T.I. 2. He has challenged that he was ever transferred by the Director Telegraphs. He has referred to a letter of D.E.T., Bareilly dated 7.11.1970 in which it is clear that the Director of Telegraphs never issued any such orders. Regarding the medical bills he has said that he submitted them within time. This could be proved by the DAK receipt register and other documents but these are not produced.

7. In the amendment application, which we have rejected in the Civil Revision, the defendants have said that the plaintiff's appeal was allowed by the judgment of 9.3.1972 which effected the orders dated 28.6.1969 and 2.7.1969 by which the plaintiff was transferred by D.E.T., Bareilly to Pithoragarh. The plaintiff did not attend to his duty between the period 2.7.1969, when he was ordered to be transferred, till 8.11.1969, when

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he joined after the interim injunction. On 12.5.1970 the Regional Director, Telecom., New Delhi and the Director, Telecom., Lucknow held a meeting and decided that the plaintiff be withdrawn from the control of the Regional Director, Telecom., Lucknow and ^{he should} report to the Divisional Engineer, Telecom., Bareilly, therefore, ~~xxxxx~~ ^{he} was relieved on 14.5.1970 but he did not join and report for duty to the Divisional Engineer, Telecom. Bareilly and remained continuously absent and that is why he is not entitled to any salary for the period 15.5.1970 to 2.7.1972. On 10.7.1972 the plaintiff was again posted at Bareilly under the Assistant Engineer, Long Distance. He had already resumed duty on 3.7.1972.

31/ 8. We are not able to understand why another order had to be issued on 10.7.1972 in supersession of the order dated 14.5.1970 by the Post Master General, Lucknow by which the plaintiff got posted to Bareilly.

Evidently the order dated 14.5.1970 ^{is either} was not correct ^{or the PMC had made some considered some other aspects} and this is what the plaintiff has been challenging on the plea that he had been regularly attending his duties and he had regularly signed the attendance register and this fact ^{as claimed by the plaintiff} has been admitted by the D.W.2 in his statement and, therefore, the order issued on 12.5.1970 after the meeting between the Regional Director, Telecom., New Delhi and the Director, Telecom., (East), Lucknow was not correct.

9. In Civil Appeal No.113 of 1971 on issue no.1 whether the plaintiff was not under the administrative control of defendant no.2, the learned Additional Civil Judge made observations that a new Telegraph Division was opened at Bareilly and a Divisional

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Engineer, Telegraph was posted there. Defendant no.2 was working as the Divisional Engineer, Telegraphs, Bareilly when the transfer order of 1969 was passed by him. He concluded that the plaintiff was originally appointed as Telephone Operator and worked under the direct control of Divisional Engineer, Lucknow and after the creation of the new Telegraph Division at Bareilly he worked under the Divisional Engineer, Bareilly. In 1967 the post of the plaintiff was transferred from Bareilly to the Regional Director, Telecom., New Delhi. Under these circumstances after the transfer of the post under the Regional Director, Telecom., New Delhi, the plaintiff was working under the direct control of that Regional Director and he was included in the strength of the circle situated outside the Headquarters. The method of transfer of staff from Installation Unit to another Unit in the same region and within the concerned Unit was within the powers of the Regional Director, Telecom. Therefore, defendant no.2 was not authorised to transfer him from Bareilly to Pithoragarh. Thus being under the control of the Regional Director, Telecom., New Delhi, the plea taken by the defendants in their amendment application that it was decided to withdraw him from the region of the Regional Director, Telecom. and to strike off his name from D.E.T., Lucknow and ask^{3/} him to report to D.E.T., Bareilly. The D.E.T., Lucknow, in pursuance of the said order relieved the plaintiff on 14.5.1970 so that he may report for duty to D.E.T., Bareilly, but the plaintiff did not join and report for duty to D.E.T., Bareilly and remained absent.

10. D.W.2 is V.B. Kulshrestha, Regional Engineer (Maintenance), Lucknow. According to him the plaintiff

was transferred to D.E.T., Bareilly on 14.5.1970, but the plaintiff reported for duty only on 3.7.1972 and during the intervening period the plaintiff did not do any work. The plaintiff's name was entered in the attendance register on 3.7.1972 as Sub-fault Controller. On 1.7.1972 his name had not been entered in the Register because he was not working in his office at that time. Before this period the plaintiff's name was not there in the Attendance Register because ^{or} ~~he~~ he had been relieved on 14.5.1970. In his statement D.W.2 has said that there are two types of Attendance Registers. Operative staff signs on T.I. 2 Register and fixed duty staff signs on the other Register. He denied that the plaintiff had marked his attendance in the General 13 Register during the intervening period before he joined as Sub-fault Controller on 3.7.1972. He has further said that from 19.5.1970 to 2.7.1972 the plaintiff had not worked in ^{or his} ~~the~~ office and neither on the operation side.

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11. The plaintiff in para 3 of his additional arguments filed on 31.3.1987 has said that he had regularly signed on the Attendance Register General 13. This register was meant for those who ^{or were} ~~had~~ performing fixed duty and the plaintiff was on fixed duty. He has denied that he was ever transferred by any order dated 14.5.1970. According to him no such orders were ever issued.

12. In his written arguments submitted on 2.2.1987 the plaintiff has admitted the payments which is said to have been made by the defendants.

13. From the above it becomes clear that part of payments against the claim made in para 4 of his

application have already been made to the plaintiff and the major amount under dispute is for the period July, 1970 to June, 1971 and July, 1971 to June, 1972. According to the written statement submitted by the defendants the plaintiff has been paid at the rate of Rs. 96.50 p. as pay for the period July, 1970 to February, 1971 and as Rs. 49.80 p. for the period March, 1971. During June and July, 1971 he has been paid Rs. 19.30 and Rs. 43.60 as pay while no pay has been given for the period August, 1971 to May, 1972. In the month of June he has again been paid Rs. 19.30 p. as pay. The plaintiff has at no place indicated his monthly salary. He has only submitted a statement in his written arguments where he has shown his pay during the period June, 1970 to June, 1971 as Rs. 199/- and from July, 1971 to June, 1972 as Rs. 205/- and from July, 1972 to December, 1972 as Rs. 212/-. He has, however, shown his revised pay in the scale of Rs. 260-480 as Rs. 432/- from January, 1973. In the absence of any counter version it ^{it becomes} ~~is~~ difficult to accept these figures as correct. As we have already observed the orders dated 14.5.1970 were changed by the Post Master General on ^{28/10/72} ~~December, 1974~~ and the plaintiff was ordered to continue at Bareilly. In another document paper no. 198-C certain periods have been shown as having been counted on half pay leave for which the salary has been fixed as Rs. 96.50 p. It would thus appear that the amount of Rs. 96.50 p. shown against the month for which it was paid was on the basis of half pay leave to the plaintiff. Certain periods have also been treated as extra-ordinary leave for which no payment has been made to him. The main question, therefore, to be decided is in regard to

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this period whether it should be treated as leave of any kind due to the plaintiff or he should be considered to be on duty for this period.

14. In his letter dated 20.5.1970 the plaintiff wrote to the Director of Telegraphs, Lucknow that he had been working as a Sub-fault Controller at Bareilly under D.E.T., Lucknow and he requested for the cancellation of his transfer orders which were issued by the Assistant Engineer, Long Distance, Bareilly. On the said representation the Director, Telegraphs is supposed to have replied that no such orders were issued by him, so the orders dated 14.5.1970 were without ^{any} instructions. The plaintiff, therefore, represented to the Assistant Engineer on 23.5.1970 saying that the supervisory staff is not permitting him to perform his duties nor they are accepting his request either verbal or in writing, so he was feeling laid off. He followed the same by another letter dated 6.6.1970 to the Director, Telegraphs, Lucknow saying that the Assistant Engineer has taken no action to withdraw the transfer orders issued by him. Thereafter the plaintiff has been representing at regular intervals but nothing was available on the file ^{by to support his} except a letter from Sri V.B. Kulshrestha, Assistant Engineer, Bareilly, saying that the plaintiff had already been relieved on 14.5.1970 for reporting to D.E.T., Bareilly and, therefore, his application should be addressed to D.E.T., Bareilly. There is another letter dated September, 1973 (paper no. 195-C), which talks about regularisation of the period of absence of the plaintiff from 15.5.1970 to 2.7.1972 which was ordered to be regularised by grant of leave due & admissible to him. Yet another letter dated 29.9.1972

(paper no.196-C) says that during the period 15.5.1970 to 2.7.1972 the official had remained absent and had not submitted his leave papers, therefore, his absence has not been regularised so far. It also says that the official had objected to the orders issued by the Assistant Engineer, Bareilly and the official should have carried out the orders of transfer dated 14.5.1970 and reported in the office of D.E.T., Bareilly.

15. Appeal No.113 of 1971 was decided on 9.3.1972. During the pendency of the suit an interim injunction was operating not to transfer the plaintiff till the pendency of the suit. The judgment in the Suit no.384 of 1969 was given on 26.8.1971. On 14.5.70 the alleged transfer order was issued, under which the plaintiff was put under the control of Divisional Engineer, Telecom., Bareilly. It is this order transferring him from the control of Director, Telecom., Lucknow to that of Divisional Engineer, Telecom., Bareilly which was changed by the Post Master General on 10.7.1972 and the plaintiff was ordered to continue on his original post.

16. If this was so, then where did the plaintiff work. He has been saying that he was attending office daily while the D.W.2 has said that till 3.7.1972 he did not work anywhere. On 20.5.1970 the plaintiff wrote to the Director, Telegraph East, Lucknow that he may be allowed to continue to work at the Carrier Station, Bareilly. On 23.5.1970 he referred to the order of 3/5.1970 and requested A.E. Carrier, Bareilly to let him continue as such instead of being asked to report to D.E.T., Bareilly. He had complained that the supervisory staff were not letting him work. On 6.6.70

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he again wrote to Director, Telecom., Lucknow requesting for cancellation of his transfer order of 14.5.1970. On 18.6.1970 the transfer order was still not cancelled and ^{he suffered to be} he was going to office daily but without any work and he ^{is supposed to be} is signing the G-13 register. On 13.3.1972 he again wrote to A.E. Carrier, Bareilly that the order of 14.5.1970 was without jurisdiction and he was regularly attending office but was not permitted to perform his duties. He was not paid any pay and allowances about which he wrote on 13.3.1972. He was advised on 19.4.1972 that he had already been released on transfer to D.E.T., Bareilly on 14.5.1970 and, therefore, he should correspond with him only. These letters indicate that the orders of 14.5.1970 were not changed, the plaintiff attended the office on his own, signed some register but he was not paid any salary as his presence was not accepted in view of his transfer to D.E.T., Bareilly's office.

17. An employee cannot insist on not carrying out a transfer order. He can represent but that does not entitle him to act in an undisciplined manner and that too stubbornly as the plaintiff had ^{done} been. When he was not paid any salary he should have woken up and got the matter settled but he was happy ^{as without the salary} and in a very routine manner ^{as ascertained by him} went on attending the office every working day of each month without doing any work and without receiving any salary. How he sustained himself would be a big question? Did he not undergo any tribulations? Evidently it was all in routine and he was not suffering on this account otherwise he would not have waited till 1973 to challenge the case in the court of law. The posting of an officer is a matter in the discretion of the

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Government and this discretion is not justiciable. If this power³⁴ is exercised honestly and bonafide and not for extraneous purposes or for any alien purpose it would not be malafide. It was not a reduction of rank. It was at the same station. Thus leaving aside the fact that the P.M.G. changed in order in 1972 the transfer order of 14.5.1970 remained in force till it was changed and the plaintiff did not report³⁵ to the office where he was posted to. Thus his signing a register in some other office where also he was not given duty had no meaning. So if he was regularised by being granted leave of any kind due to him, we do not find that the defendants could do anything else. ~~and~~ The plaintiff has³⁶ ~~thus not~~ been able to make a case for himself for our interference.

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18. As far as the medical bills are concerned, the amount involved is paltry. As a model employer the defendants should have considered the claims sympathetically. Such bills cannot be submitted again. They were submitted by the plaintiff but he was not paid on the plea that they were time barred. We do not accept this argument. What was to be checked was whether their claims are genuine and admissible. Rejecting them on the plea of not being submitted within time is not tenable. Similarly, ~~the~~ ³⁷ Some other overtime bills and other medical bill were rejected on the ground that details are not given. These bills should be examined now and what ever is admissible should be paid to the plaintiff. He has not³⁸ submitted details too. These can be had by the defendants from him³⁹ once again. If they are not traceable, ~~and~~ ³⁷ overtime duplicate bills ^{only} cannot be produced. The claims made by the plaintiff

should be settled as claimed by him now after due scrutiny within a period of two months from the date of issue of these orders. Similarly the salary bill which was returned to Accounts Officer, Delhi should also be paid to the plaintiff by recalling the amount.

19. The treatment of the period from 14.5.1970 to 2.7.1972 as extra-ordinary leave by the defendants is contrary to the provisions of the Central Civil Services (Leave) Rules, 1972 because no leave can be thrust on a Government servant. Rule 7 of the Central Civil Services (Leave) Rules provides :

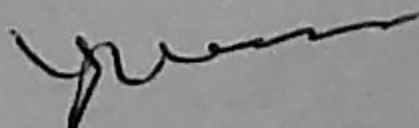
- "(1) Leave cannot be claimed as of right.
- (2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant."

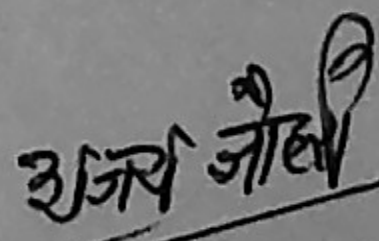
20. Apart from this, Rule 32 of this Leave Rules deals with grant of extra-ordinary leave. This ~~rule~~ leave can be granted only in a special circumstances, i.e. when no other leave is admissible and when other leave is admissible but the Government servant applies in writing for the grant of extra-ordinary leave. There is no doubt that sub-rule (6) of Rule 32 empowers the authority competent to grant leave to commute retrospectively periods of absence without leave into extra-ordinary leave. This provision caters to cases where a Government servant has overstayed a period of leave duly sanctioned or has been absent from duty for some other reason. In the instant case for all practical purposes the plaintiff can be treated as having been

He remained
~~kept~~ away from ~~from~~ work due to his insistence in not carrying out his transfer. It will, therefore, follow that extra-ordinary leave could not be forced upon the plaintiff. The plaintiff can now put in an application to regularise this period by extra-ordinary leave or leave not due and if he so applies the defendants will *in accordance with the relevant rules* consider his request and pass necessary orders.

21. In the result we do not find any substance in the claim made by the plaintiff for full salary for the period 14.5.1970 to 2.7.1972. He may now apply for the period being regularised by *other* extra-ordinary leave or leave not due. He has already been paid his dues on the basis of the period being treated as leave due and extra-ordinary leave. *This will be readjusted by defendants* He will, however, also be entitled for payment of reimbursement of medical bills and overtime allowance in terms of observations made by us in para supra. The plaintiff has requested for payment of interest on the unpaid amounts. He submitted his claims late and they have been pending for want of details and scrutiny as a matter of fact they have been rejected on the ground that they were submitted late, hence he is not entitled to the interest. We find no force in this request.

22. The application (Suit No.349 of 1973) is disposed of accordingly. Parties will bear their own costs.


Vice-Chairman.


Member (A).

Dated: September 16th, 1987.

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