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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

....

Registration T.A. No. 255 of 1987

(W.P. No. 7186 of 1985)

R.C. Mathur ... Petitioner

vs.

Union of India and ors ... Respondents

Hon' Mr K. Obayya, A.M.

Hon' Mr J.P. Sharma, J.M.

(By Hon' Mr K. Obayya, A.M.)

Writ petition No.2186/85 was filed in the High Court of Judicature at Allahabad on 20/5/1985. This petition stood transferred to this Tribunal with the coming into operation of the Administrative Tribunals' Act, 1985 under section 29, for disposal and was registered as T.A. NO.255 of 1987.

2. The prayer of the petitioner is:

(a) to issue a direction to the respondents to give work and duties to the petitioner and to pay his salary;

(b) to decide the petitioner's representation and take necessary action;

The petitioner by an amendment dated 23-4-90 added another prayer for issue a direction to the respondents to make payment of the salary for the period from 1-7-82 to 29-1-86 and from 1-7-85.

3. The facts of the case are that the petitioner was appointed as a Clerk in the Telephone Department on 21-8-78, after completion of training, he joined duty at Moradabad on 7-11-79. The appointment was, " on compassionate ground due to demise of the petitioner's wife Smt. Kusum Lata Mathur who was working as Telephone Operator in the same Department. On 6-7-81 the petitioner was transferred from Revenue Accounts Section to

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construction branch in the same office, later he was transferred to Ghaziabad where he joined on 19-8-1981. He was transferred to Bareilly on 27-4-82 at his request. This transfer was for 6 months. At the end of the 6 months period, he was relieved on 14.11.82 and thereafter, he proceeded on medical leave. At the request of the petitioner to transfer him to Moradabad to look-after his children he was transferred to Moradabad by an order dated 29-8-83. The contention of the petitioner is that he proceeded to join at Moradabad on 3-9-83, but he was not allowed to join by the Divisional Engineer Telegraph. He made several representations in this regard, but, to no purpose. The petitioner also filed a suit on 21.11.83 in the Court of Munsif Magistrate 11th at Moradabad, praying for a direction to the Divisional Engineer Telegraph, Moradabad to permit the petitioner to join duty. This suit was dismissed on 14.12.84. He made further representations to the General Manager and the Director Telecommunication requesting that he should be permitted to join duty at Moradabad. Copies of the representations are Annexures- 2, 3 and 4, as ~~the~~ there was no response from the authorities and the salary was not being paid and there was no termination of his service, he approached the High Court in the above writ petition.

4. The respondents contested the case. In the counter filed on their behalf they admitted the fact about the compassionate appointment of the petitioner and also his transfer to Ghaziabad, Bareilly and Moradabad. According to them he was transferred to Ghaziabad which was a new Division formed in 1981. It is <sup>on</sup> option of the petitioner who gave his option on 1-7-81 for transfer to Ghaziabad Division. He was transferred to Bareilly

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at his request on medical ground for a period of 6 months. Again at his request he was transferred from Ghaziabad to Moradabad. It is contended that the petitioner <sup>wanted</sup> straightway to Moradabad without obtaining his relieving order from the D.E.T. Ghaziabad parent unit. The petitioner was advised to bring his relieving order. The D.E.T. Ghaziabad reminded the petitioner vide his letter No.E/19/TOA/138 dated 20-10-83 to obtain his relieving order and report to D.E.T. Moradabad. The petitioner failed to comply with the above orders and consequently he was not allowed to join at <sup>Moradabad</sup> Ghaziabad. The letter was received back undelivered. Again on 1-11-83 the petitioner was instructed by D.E.T. Ghaziabad in his letter No.E-19/TOA/148 dated 1-11-83 to comply with the earlier orders but the petitioner failed to turn up. The Director of Telecom (W) Dehradun also instructed the petitioner vide his letter No.DW/staff/23-6 dated 1-10-83, that the petitioner should be allowed to join at Moradabad after obtaining his relieving order from D.E.T. Ghaziabad.

5. Regarding the representations it is contended that the representations dated 12-10-84 and 14.12.84 were received and they have been rejected and that no further representations are pending with them. It is denied by the respondents that the petition dated 7-2-85 addressed to Minister of Communication has been received by them. They have received petitioner's representation dated nil through Shri Arif Mohd Khan the then Minister of State for Agriculture in Feb.1984 for transfer to Moradabad Division. The same was examined and it was not accepted as the petitioner has not obtained his relief at Ghaziabad. It is further stated that the petitioner was on medical leave from

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22-7-82 he was entitled for 5 days medical leave and the same was granted from 22-7-82 to 26-7-82. Their contention is that the petitioner continued to remain on medical leave not due to him and as such, he is not entitled for any salary for unauthorised absence from duty. According to them the petitioner is entitled for a sum of Rs.243.90 towards ADA, HRA and CCA etc. while the due outstanding to be recovered from him are to the tune of Rs.3846.90. These includes pay advance, TA advance, LTC advance, Cycle advance, festival advance, medical advance etc. It is further contended by them that the petitioner has continued to be absent from duty unauthorisingly, as such, he is not entitled for any salary or any remuneration.

6. In the rejoinder, the petitioner mentioned that he sought inter division transfer from Accounts Branch to any other branch since that was not considered, the petitioner was not able to discharge his duties due to mental strain, consequently he was going on leave from time to time. He has also mentioned about the Hindu- Muslim riots which added to his problems as he borrowed money from a Muslim who was pressing for its payment. It is also mentioned that it is not correct to say that the applicant remained absent from duty. Applications were sent for leave from time to time along with medical certificate. He also denied of any dues outstanding against him. In the supplementary affidavit, the petitioner mentioned that he joined duty at Ghaziabad on 30-1-86 and that he is getting salary w.e.f. 30-1-1986. In pursuance of the orders dated 23-1-86 passed by D.E.T., Ghaziabad and represented for payment of salary allowances due to him from the date of his transfer to Moradabad

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till his date of joining at Ghaziabad, as he was illegally kept out of office. In supplementary counter, it is admitted that the petitioner joined duty at Ghaziabad on 30-1-86 and thereafter he proceeded on leave from 30-6-86. He was paid salary and other allowances from 30-1-86 to 30-6-86. He performed his duties for 5 months and thereafter proceeded on unauthorised leave within ~~not~~ any application. It is also contended by them that the petitioner has failed to prove himself to be loyal to the Department and has been committing serious irregularities and violation of rules by remaining absent unauthorisingly from duty.

9. Both sides <sup>Preferred</sup> ~~prevent~~ to file written arguments. The petitioner in his lengthy written submissions, repeated the facts contained in the petition, amendment petition, supplementary affidavit and also petitions filed by him from time to time. He dealt with considerable length, about his problems and un-timely death of his wife, the responsibility to look-after the children and run the home, financial problems, ill-health and his long treatment. We do not wish to make any comment on these problems, since we are only concerned with the reliefs prayed for in the petition. The petitioner has stated in his written arguments that he requested D.E.T. Ghaziabad for issuing necessary relieving certificate by post and he again reminded D.E.T. Ghaziabad to issue relieving order by his letter dated 12.9.83. From this he pleads that it was not his fault if the authorities have not issued the relieving order. The petitioner also questioned that he was relieved in Ghaziabad on 29-4-82 during the leave period and also at Bareilly on 28-12-82, as such, his relieving at Ghaziabad on his transfer to Moradabad should have been given without insistence on his physical

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presence. The letter dated 1-11-83 by which he was asked to report for duty first at Ghaziabad and obtain relieving certificate, is not authentic, that is why the petitioner did not pay attention to it. The petitioner also mentioned that he did not join at Ghaziabad to obtain the relieving order as he would have been charge sheeted <sup>for</sup> of not attending to duties. He concluded that relieving certificate is not required and that he was harassed unnecessarily and because of his illness, he requested his transfer to Moradabad on 9-1-87. The petitioner further submitted that he is not able to discharge his duties at Ghaziabad, therefore, his absence should not be treated as unauthorised absence. It is the contention of the petitioner that proper rules were not enforced in his case and that the rule 'no work no pay' will not apply in his case.

8. In the written arguments the respondents have narrated the sequential events. On 8-7-81, the petitioner was transferred to Ghaziabad for which he was paid travelling and other allowances. On 27-4-82, on the request of the petitioner, he was transferred to Bareilly (Phones Division) temporarily for 6 months. On 14.11.82, he was relieved from Bareilly, thereafter, instead of joining at Ghaziabad, the petitioner requested transfer from Bareilly to Moradabad for 6 months. This was also considered and the petitioner was transferred to Moradabad temporarily. The petitioner did not obtain relieving order from the D.E.T. Ghaziabad which is his parent unit and went straight to resume his duties. He was advised by D.E.T. Ghaziabad to obtain relieving order and then proceed to Moradabad, but the petitioner

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failed to comply with this order. He was again advised by D.E.T. Ghaziabad and also Director, Telecom in this regard. His representations dated 12-11-84 and 14-12-84 were rejected. It is also stated that the petitioner himself was responsible for not working and not joining at Moradabad after getting his relieving order. Regarding dues, it is mentioned that the <sup>amounts</sup> ~~points~~ are indicated in the L.P.C. issued by the D.E. (Phones) Bareilly. It is also submitted that the petitioner has not been performing his duties since 22-7-82 and that he submitted fitness certificate on 3-7-85 to D.E.T. Ghaziabad by registered post, but he never attended office~~y~~. The petitioner was advised by D.E.T. Ghaziabad by letter No.Q-67/27 dated 25-9-85 and Q-67/40 dated 6-12-85 to join duty at Ghaziabad failing which disciplinary action will be taken against him. It is denied that the petitioner made a request for transfer due to Hindu-Muslims riots, ~~is~~ <sup>as</sup> false. It is stated that the petitioner, ultimately joined at Ghaziabad on 30-1-86 and worked up to 30-6-86 and he proceeded on 4 days leave from 1-7-86 to 4-7-86, after that he failed to turn up for duty. Salaries were paid to the petitioner for the period from 30-1-86 to 30-6-86, as no leave is due to the petitioner, there is no question of regularisation. It is also stated that the Department has honoured the directions of the High Court. Representations <sup>considered and</sup> received by the petitioner were ~~re~~ rejected. It is alleged that the petitioner is in the habit of deliberately dis-obeying the orders of his superiors and that he himself is responsible for the situation. It is also alleged that the petitioner's version of blood cancer are false and concocted. *R*

9. It is well settled that government servant is governed by different rules on various aspects of work and conduct. In Roshan Lal Tandon vs. Union of India (AIR 1967 S.C. 1989), it was held that the legal position of a government servant is more one of status than of contract. The hallmark of status is the <sup>attachment &</sup> ~~punishment~~ to the legal relationship of rights and duties <sup>imposed by</sup> ~~by~~ public law and not by mere agreement by the parties. There are fundamental rules, <sup>Service</sup> ~~Separate~~ Rules, Conduct Rules, Leave Rules, Discipline and Appeal Rules etc. which govern the work and conduct of government servant. Besides the rules there are also instructions issued from time to time. Regarding transfers and postings, the applicant has filed before us the relevant rules published as Appendix No. 3 to the Post and Telegraph Compilation of Fundamental and Supplementary Rules. Rule 42 provides that in the case of a transfer it should be specified how the transfer is to be carried out. ~~to whom or to whom~~. The official has to make or take over the charge, whether the charge has to be relinquished or assumed of specified duties etc. Rule 43 lays down that where officer is relieved of a charge without making it over to anyone he should assign the charge report in the prescribed form. According to rule 44, the transferred official without urgent necessity or special orders of the head of the circle should not leave station before the arrival of his successor. It is clear from this and other rules that clear indications have to be given as to handing over and taking over the charge. It is written in the transfer order itself but separate instructions may follow. So far as the requirement of rule is concerned,

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we agree with the petitioner. But the facts in this case indicate that he has proceeded to join at Moradabad without being relieved. So long as he is not relieved, he is borne on the establishment where he is serving at the time of transfer. It is really incomprehensible why he apprehended

that his transfer may be cancelled, if he reports at the office. It is not a convincing reason and also when he was not permitted to join at Moradabad, he should have joined at his old station, instead he chose not to attend the office. Normally, in these circumstances, this would undoubtedly attract the disciplinary action. It is also not known why no disciplinary action was initiated for his unauthorised absence. The petitioner has brought out in the petitioner as also in the written arguments about hardship, misery, personal and family health problems which seem to have necessitated his frequent leave or absence, but these problems cannot be related to his work or conduct as a government servant.

10. We have given our serious consideration to the facts of the case and also submissions made on both the sides. The petitioner chose not to attend the office unauthorisedly and his absence to the extent of leave eligibility has been regularised. He was absent for long spells, first when he was not allowed to join at Moradabad in 1982 and later from 30.6.86 onwards. It is not known why he has stayed away without leave application and not joined duty and asked for leave.

In these circumstances, we see no reason to direct the respondents to regularise the leave without application on the part of the petitioner.

For the reasons stated above, we are of the opinion that there is no merit in the petition. Accordingly, it is dismissed. Parties to bear their own costs.

*Dhase*

Judl. Member.

Allahabad Dated: 9 August, 90.

*R. Bhagat*  
Adm. Member.