

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 18.1.90

PRESENT

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

AND

HON'BLE SHRI A.V. HARIDASAN JUDICIAL MEMBER

ORIGINAL APPLICATION NO. 13/89

Smt. E.Saraswathy Ammal : Applicant

Vs.

1. Director General of Telecommunications
Government of India
Ministry of Communications
Department of Telecommunications (Telcom Board)
Sanchar Bhavan, New Delhi
2. Chief General Manager, Telecommunications
Department, Kerala Circle, Trivandrum .. Respondents

M/s K.L.Narasimhan & Shaji P. Chaly .. Counsel for the applicant
Mr. P.V.Madhavan Nambiar, SCGSC .. Counsel for the respondents

ORDER

Shri S.P.Mukerji, Vice Chairman

In this application filed under section 19 of the Administrative Tribunals Act on 3.1.89, the applicant who has been working as Accounts Officer in the office of the Director of Telecommunications (South) at Trivandrum has prayed that the notice dated 28.6.88 proposing to treat the period of 40 days from 25.9.87 to 3.11.87 as "dies-non" should be set aside and the second respondent be directed to pay her full salary and allowances for the period from 16.9.87 to 3.11.87 treating the same as of compulsory waiting. She has also prayed that the second respondent be directed to sanction full pay and allowances for the period from 1.7.86 to 15.9.87 and to refrain from taking any further action on the impugned notice (Annexure-I). The facts of the case are as follows:

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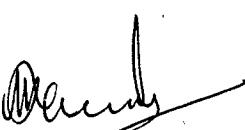
2. While working as an Accounts Officer, the applicant was transferred to West Bengal Circle on 30.5.86. This order was challenged by her before this Tribunal ^{in OAK 22/87} and the Tribunal by its (Ann. II) order dated 11.9.87 quashed the order of transfer. Immediately thereafter, the applicant moved the second respondent, i.e. the Chief General Manager by her representation dated 16.9.87 ^{to be allowed to join duty} (Ann. III). According to the applicant, the second respondent told her orally that formal orders permitting her to resume duty would be issued by the first respondent. On that basis, the applicant immediately on the following date, i.e. on 17.9.87 sent a telegram to the first respondent, i.e. Director General, with a copy to the second respondent soliciting orders to enable her to join her post at Trivandrum. This was followed by letters dated 18.9.87, 29.9.87, 11.10.87 and 21.10.87 (Ann. VI to IX). It was only on 4.11.87 that she was allowed to join duty. The respondents however proposed by the impugned notice at Ann. I to treat the period of her forced absence from 25.9.87 to 4.11.87 as 'dies non'. She gave a reply to the notice challenging the proposal to be illegal and unauthorised. According to her, her transfer to West Bengal which was quashed by the Tribunal on 11.9.87 is a part of the harassment to which she was being subjected and her not being allowed to join duty when she got the transfer order quashed was a part of the same scheme of harassment. She had been forced to proceed on leave ^{because of} her transfer to West Bengal from 1.7.86 to escape from the harassment and she is entitled to full pay and allowances from 1.7.86 to 3.11.87. According to the respondents, when the applicant was transferred to West Bengal, she proceeded on leave and was appointed to a post on 4.11.87. She had applied for leave upto 24.9.87 and thus there was a break from 25.9.87 to 3.11.87 against which the show cause notice (Ann. I) was served on her. The respondents have further explained that she went on leave on 1.7.86 as soon as she was relieved from Kerala Circle to join her new posting at Jalpaiguri in West Bengal. As a member of the

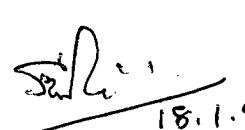
P & T Accounts and Finance Service she has an all-India transfer liability. In 1982 when on promotion she was posted to Calcutta ^{was} ~~was~~ ^{to} ~~to~~ Bengal she did not go there and ^{was} ~~was~~ posted back to Kerala Circle during 1983. Her transfer to West ^{Bengal} ~~was~~ was quashed by the Tribunal in OA K 22/87. The respondents concede that the applicant had sent a letter dated 16.9.87 requesting to be allowed to join duty at Trivandrum and followed it ^{up} ~~by~~ a telegram dated 17.9.87. The last spell of leave with Medical Certificate was to expire on 24.9.87 which was ^{to be} ~~was~~ sanctioned by the Director General. Accordingly, the applicant could not be allowed to join duty by the General Manager on 16.9.87, i.e. nine days before the expiry of the leave. They have further indicated that the applicant has since been accommodated in Kerala and she joined ^{duty} ~~on~~ 4.11.87. She could not be accommodated earlier as there was no vacancy to accommodate her and the post which was occupied by her in 1986 had already been filled up by the time the Tribunal quashed the order ^{thereafter} of transfer. The first vacancy in Kerala ~~was~~ that caused due to the retirement of Shri George, Accounts Officer and the applicant was accommodated in that vacancy. The applicant had produced a Medical Certificate that she was not fit to resume duty till 24.9.87 and hence she could not be allowed to join duty on 16.9.87. They have explained that the delay in giving her a posting was "due to administrative reasons as a post was to be located to accommodate the applicant as a result of order dated 11.9.87". Since the applicant did not discharge the duties during the period in question, it cannot be taken to be a period of compulsory waiting. In the rejoinder, the applicant has stated that one Shri Unnikrishnan joined duty not in the vacancy caused by her transfer to ^{was} ~~was~~ ^{to} ~~to~~ Jalpaiguri but against another vacancy as he joined duty on 25.6.86 whereas she was relieved on 30.6.86. She should not suffer for the inability of the respondents to accommodate her.

3. We have heard the arguments of the learned Counsels of both the parties and gone through the documents carefully. We cannot help

noticing the fact that the respondents on one technical plea or the other refused to take back the applicant to duty at Trivandrum even after this Tribunal set aside the order of her transfer from Trivandrum to West Bengal on 11.9.87. There is sufficient evidence to show that the applicant indicated her willingness to join duty in her representation dated 16.9.87 enclosing a copy of the order of the Tribunal. The following day she sent a telegram to the Director General for necessary orders. This conduct of hers makes us believe in her averment that she personally went to join duty but having been told that orders of the Director General was necessary she immediately sent the telegram to the DG. Otherwise, there was no occasion for her to send such a telegram. The respondents have conceded that the applicant could not be accommodated as there was no vacancy. Accordingly she could not join until 4.11.87 when she was offered a posting. The plea taken by the respondents that her old post had been filled up by an officer from Gujarat is also not convincing as that officer took over at Trivandrum on 25.6.86 while the applicant was relieved for joining the post at Jalpaiguri on 30.6.86.

4. In the facts and circumstances of the case, we are satisfied that the applicant could not join on the expiry of the Medical Leave for no fault of hers. Since there is nothing to show that on 16.9.87 she ~~had~~ produced a medical certificate to join duty she has no right to claim to be on duty or waiting period from 16.9.87 to 24.9.87. ^{without costs} Accordingly we allow the application ^{to} to the extent of setting aside the show cause notice dated 28.6.88 at Ann. I and direct that the period from 25.9.87 to 3.11.87 should be treated as waiting period with full pay and allowance as if she was on duty.


(A.V. HARIDASAN)
JUDICIAL MEMBER


18.1.90
(S.P. MUKERJI)
VICE CHAIRMAN