FINAL ORDER
30-9-1988

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

THIRTIETH SEPTEMBER ONE THOUSAND NINE HUNDRED AND EIGHTY EIGHT

No.OA 109/87

M. Sankaran Kutty : Applicant

Versus

1. Director General Telecommunications, Dept. of Telecommunications, Ministry of Communications, New Delhi.
2. General Manager, Telecommunication, Kerala Circle, Trivandrum.
3. The Director, Telecommunications(N), Trichur
4. The Divisional Engineer, Telegraphs, Trichur

Respondents

No.OA 172/87

M. Sankaran Kutty : Applicant

Versus

1. The Director General, Telecommunications, Dept. of Telecommunications, Ministry of Communications, New Delhi.
2. General Manager, Telecommunications, Kerala Circle, Trivandrum.
3. Divisional Engineer, Telegraphs, Trichur.
4. Smt. M.V. Savithri, SDOT, Irinjalakuda.
5. Divisional Engineer(Adm.), Calicut Telecom District, Calicut.

Respondents

Shri M.G.K. Menon : Counsel for applicant in both OA 109/87 and OA 172/87

Shri P.A. Mohamed, ACGSC : Counsel for respondents in both except R4 in OA 172/87

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CORAM:

The Hon'ble Shri S.P. Mukerji, Vice Chairman
&
The Hon'ble Shri Ch. Ramakrishna Rao,
Judicial Member

ORDER

(Pronounced by the Hon'ble Shri S.P. Mukerji)

Since common question of law and similar facts are involved in these two applications filed by the same applicant under Section 19 of the Administrative Tribunals Act they are disposed of by a common judgment as follows.

2. In the first application, OA 109/87 the applicant has prayed that the period of absence from duty from 7-4-1985 and 16-8-1985 should be treated as on duty and the impugned order dated 17th February, 1986 rejecting the applicant's request and the other impugned order dated 15th November 1985 regularising the period of absence by grant of leave should be set aside. He has also prayed that all consequential benefits of salary, increment, leave etc should also be given to him. In the second application OA 172/87 the applicant has prayed that the period of absence between 1-7-1986 and 2-1-1987 should likewise be treated as on duty with all consequential benefits of salary, increment, leave etc and that the impugned order dated 4th February 1987 at Annexure 6

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rejecting his request should be set aside. The brief facts of the two cases are as follows.

3. The applicant has been working as Sub Divisional Officer, Telegraphs at Irinjalakuda in Trichur district since June 1981. It appears that he was given some adverse remarks in his character roll and ~~that~~ on his representation having been rejected ~~adversely~~ by the General Manager he moved the High Court of Kerala in Writ Petition No.9218/83. While that Writ Petition was pending, by an order dated 31-5-1984 he was transferred from Kerala to Bombay. He moved the High Court in Writ Petition No.4371/84 against the transfer order and got the order stayed on 6-6-1984. The stay order was vacated on 3-4-1985 and he was forcibly relieved from duty on 6-4-1985. He drew T.A. advances on 11-4-1985 but did not report in Bombay but applied for 34 days Earned Leave. Thereafter the High Court of Kerala set aside the transfer order on 23-7-1985 but the applicant was not given any posting order and not allowed to join duty till 16-8-1985. According to him he was forced to apply for leave to regularise the period of absence from 7-4-1985 to 16-8-1985 and this period of absence was regularised by the impugned order dated 15th November 1985 granting him Earned Leave

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for 120 days and half pay leave for 12 days.

4. It appears that the respondents again issued a second transfer order on 27-6-1986 transferring him to Bombay and he was relieved on 1-7-86. The applicant this time moved this Tribunal with application No.569/86 against the second order of transfer which was set aside by the Tribunal on 10-11-1986. He was again not allowed to join duty at the original place of posting until 31-12-1986 when the third transfer order transferring him to Calicut was issued. This order was received by him on 2nd January 1987 and he assumed duty at Calicut on 7-1-1987. He was not paid any salary for this period (from 1-7-86 to 2-1-87) and his request to treat this period as on duty was rejected by the respondents through the impugned order dated 4th February 1987 with the observation that the applicant could get this period of absence regularised by applying for leave. While the applicant has argued that since both the orders of transfer dated 31-5-1984 and 27-6-1986 have been set aside by the High Court and the Tribunal respectively the two periods of absence forced upon him by the issuance of illegal orders have to be treated as on duty.

5. The respondents on the other hand have argued that the applicant should have joined the

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place of posting even pending decision on his Writ petition as he was under the obligation to be transferred to any part of the country. Unemployment during the intervening period after he had been relieved of his duties was due to his manipulative and speculative manoeuvres. The respondents have however stated that immediate posting could not have been ordered as some correspondence had been going on about the applicant. In respect of the first application ie. O.A. 109/87 the respondents have further argued that the applicant himself applied for leave on 11-4-1985 and again on 16-10-1985 which were granted to him. Therefore he cannot claim to be on duty from 7-4-1985 to 16-9-1985.

6. We have heard arguments of the learned counsel for both the parties and have gone through the available records. It is admitted that both the transfer orders dated 31-5-1984 and 27-6-1986 were set aside by the High Court of Kerala and the Tribunal respectively. The applicant therefore was not obliged to comply with these orders and cannot suffer for non-compliance of these transfer orders. The Karnataka High Court in Manchaiah Vs. Director of Medical Education, 1985(1) SLJ 128 has held in a similar case of transfer order that if for any reason the petitioner had failed in the petition he would have taken the consequences of not reporting for duty in compliance

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of that transfer order and the State would have been right in treating the intervening period as absence from duty. "But when the Writ Petition had been allowed and the order of transfer was quashed the period was bound to be treated as duty". In that case the petitioner was transferred on 7-5-1980 but he questioned the legality of the transfer order and got the same quashed in a Writ Petition. He was taken on duty subsequently and claimed that the period of absence should be treated as on duty. The respondents took the plea that since the order of transfer had not been stayed and since there was no direction from the court to stay the transfer order he cannot be treated as on duty. This plea was not accepted by the High Court which decided that since the order of transfer had been quashed, he had to be treated as on duty during the period of absence.

7. Since in the instant two cases the orders of transfer had been quashed and the period of absence was not due to any default on the part of the applicant he cannot be made to suffer due to noncompliance of the transfer orders the legal validity of which could not be upheld.

8. As regards the applicant himself applying for leave in the first application we are inclined to

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accept the argument of the applicant that these applications for leave were filed under compulsion to get some salary from the respondents. Besides, the respondents themselves in that case sanctioned the leave between 7-4-1985 and 16-8-1985 (Annexure-A.4) with the following observations:

> "the leave is sanctioned to regularise his absence between 7-4-1985 and 16-8-1985 (From the date of his relief to the date of reporting for duty) in connection with his transfer to Bombay". (emphasis added).

This leave applied for was not because of his sickness but for regularising the period of absence.

9. In the circumstances indicated above we allow both the applications, set aside the impugned orders and direct the respondents that the applicant should be treated to be on duty between 7-4-1985 and 16-8-1985 in the first application and between 1-7-1986 and 7-1-1987 in the second application with all consequential benefits such as pay, leave, seniority, etc. as if he had been on duty throughout between the dates of being relieved and the dates of joining duty in both the cases.

10. There will be no order as to costs.

11. A copy of this order may be placed on both the files.

Sd/-
(Ch.Ramakrishna Rao)
Judicial Member

Sd/-
(S.P. Mukerji)
Vice Chairman

30-9-1988

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CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

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Date 6/10/88

Deputy Registrar

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