

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 24 of 2000.

Dated this Monday, the 6th day of March, 2000.

Shri I. M. Khan, _____ Applicant.

Shri K. R. Yelwe, _____ Advocate for the
Applicant.

VERSUS

Union Of India & 3 Others, _____ Respondents.

Shri V. S. Masurkar, _____ Advocate for the
Respondents.

CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library.

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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Hon'ble Shri D. S. Baweja, Member (A).

Shri I. M. Khan,
T.I.A. in the O/o. the
Sub-Divisional Engineer
(Phones), Bhiwandi - 421 302. ... Applicant

(By Advocate Shri K. R. Yelwe).

VERSUS

1. Union Of India through
The Secretary to the
Government of India,
Ministry of Communication,
Department of Telecommuni-
cation, Sanchar Bhavan,
Ashoka Road, New Delhi.
2. The Chief General Manager,
Maharashtra Circle, Deptt.
of Telecommunication.
3. The General Manager,
Kalyan Telecom District,
Kalyan - 421 301.
4. The Divisional Engineer
(Internal), Kalyan Telecom
District, O/o. the D.E.
(Internal), Central Telephone
Exchange, Bhiwandi,
Dist. Thane. ... Respondents.

(By Advocate Shri V. S. Masurkar)

OPEN COURT ORDER

PER.: Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant
for a direction to the respondents to take him back on
duty and to pay him salary for the period from 05.03.1999

till the date of joining duty. The respondents have filed reply opposing the application. We have heard the Learned Counsel appearing on both sides. Since the point involved is a short point, we are disposing of this application at the admission stage.

2. The applicant is working as a T.T.A. in the Office of the Sub-Divisional Engineer (Phones) at Bhiwandi. It appears that applicant had remained absent for nearly 38 months. The applicant wanted to join duty on 05.03.1999 but he was not allowed to join duty on the ground that he has remained unauthorisedly absent. Now the administration has also issued a charge-sheet against the applicant dated 28.09.1999 for unauthorised absence. The applicant's grievance is, whatever may be his conduct, the respondents have no legal right to stop him from joining duty on 05.03.1999.

3. The respondents in their reply have asserted that applicant had remained unauthorisedly absent for 38 months and now that a departmental charge-sheet is issued, he cannot be taken back on duty unless he is exonerated in the departmental enquiry case.

4. Even assuming for a moment that applicant had remained absent unauthorisedly for 38 months, there is no provision under the rules that administration can stop him from joining duty. If the administration is not happy with the work of the applicant and they do not want to take him on work, the administration can keep him under suspension. If the administration does not

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want the applicant to work at Bhiwandi and that the office work has suffered because of the applicant, then it is open to the administration to transfer the applicant to any other suitable post. Even if a charge-sheet is issued, the administration cannot stop the applicant from joining duty unless he is kept under suspension by a proper competent authority. Therefore, in the circumstances, we hold that applicant is entitled to join duty forthwith.

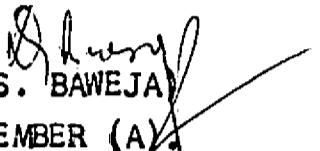
5. As far as the applicant's prayer for backwages from 05.03.1999 till the date of resuming duty is concerned, we are leaving that question open and give liberty to the applicant to make a proper representation to the competent authority. The competent authority may apply its mind to the relevant rules and then decide whether the applicant is entitled for salary for that period or not. If any adverse order is passed, the applicant can challenge the same according to law. We are not expressing any opinion advisedly on the charge-sheet about unauthorised absence and about the allegation made in the charge-sheet. All those questions are left open, since the departmental enquiry is still pending.

6. In the result, the application is disposed of ^{stage} at the admission with a direction to the respondents to forthwith allow the applicant to resume duty. In the circumstances, respondent no. 4 is granted two weeks time from the date of receipt of a copy of this order to comply with this order. The applicant can give a

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representation for joining duty before Respondent No. 4 alongwith a copy of this order. In the circumstances of the case, there will be no order as to costs.

Copy of this order be furnished to both counsel TODAY itself.


(D. S. BAWEJA)

MEMBER (A)


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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