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— CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 436/2000

Dated this Monday the 31st Day of May, 2001.

Shri G.G.Kulkarni .... Applicant

(Applicant by Shri S.P.Inamdar, Advocate)

Versus

UOI & Ors. .... Respondents

(Respondents by Shri K.R.Yelwe, for Shri V.S.Masurkar, Adv.)

CORAM

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

(1) To be referred to the Reporter or not? NO

(2) Whether it needs to be circulated to NO other Benches of the Tribunal?

(3) Library. ✓

*S. Raju*  
(Shanker Raju)  
Member (J)

sj\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.436/2000

DATE OF DECISION: 31.5.2001

CORAM: HON'BLE SHRI SHANKER RAJU, MEMBER (A)

Shri Govind Balkrishna Kulkarni,  
Phone Mechanic, M.I.D.C.  
Kupwad-Bamni Road,  
Kupwad, Sangli 416 416. .... Applicant

Vs.

1. Union of India, through  
The Chief General Manager,  
Department of Telecom  
Maharashtra Circle,  
Mumbai 400 001.
2. The General Manager,  
Telecom, Dist- Sangli,  
Sangli - 416 416.
3. The Sub Divisional Engineer (Telecom)  
M.M., M.I.D.C. Kupwad,  
Sangli 416 416 .... Respondents

O R D E R (ORAL)

(Per: Shanker Raju, Member (J))

Shri S.P. Inamdar, Ld Counsel for the Applicant and Shri K.R. Yelwe for Shri V.S. Masurkar, Ld. Counsel for the Respondents were present and heard.

2. The Applicant in this O.A. has assailed ~~the~~ Order passed by the Respondents on 21.1.1999 whereby recovery of an amount of Rs.3,000/- per month has been ordered against the Applicant w.e.f. Feb 1999 on account of over payment inadvertently made for the period from 2/91 to 12/97. The Applicant made a representation to the Respondents to apprise him all the details of overpayment made between the above stated period. The Respondents vide an Order dated 6.8.1999 gave the details of the period during which the overpayment had been made and for which

recovery has been effected from the Applicant. The Applicant assailed this order on the ground that before effecting the recovery and treating the period as dies non/break in service the applicant has not been afforded a reasonable opportunity to show cause which is in violation of the principles of natural justice as the Applicant has suffered civil consequences it is mandatory for the authorities to have afforded him reasonable opportunity to show cause before taking a decision. Learned Counsel for the Applicant has placed reliance on a ratio of judgement by the Jodpur Bench of the Tribunal in the case of *Bhanwar Lal and Ors vs. UOI 1999 (3) ATC 498* to contend that while treating the unauthorised absence as dies non/break in service prior show cause notice is necessary in consonance with the principles of natural justice. The Applicant has also brought to our notice that the period over which the overpayment alleged to have been made comes to around 250 days and in this period about 67 days have already been regularised as leave of the kind due as such this period cannot be treated as dies non.

3. The Respondents Counsel refuted the contentions of the Applicant and further stated that the case of the Application is not maintainable as being time barred. It is also stated that the Application is misconceived because the Applicant was fully aware that was not granted the benefit of EOL and the authorities wrongly paid his the salary. On the ground of limitation learned Counsel has relied upon several decisions of the Tribunal and Apex Court. It is lastly stated that a lenient view had already been taken in this case by treating this period as dies non.

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4. I have carefully considered the rival contentions of the parties and perused the material on record. The stand taken by the applicant as regards the limitation, I find that the impugned order was passed on 21.1.1999 and thereafter the applicant was intimated about the period with details of overpayment between the period 2/91 to 12/97 by an Order dated 6.8.1999. The Applicant has filed this O.A. on 28.6.2000 i.e. within a period of one year from the date of this order. In this view of the matter and keeping in view of the provisions of Sec. 21 of the AT Act, 1985, I find the objection of the Respondents on the point of limitation is not legally tenable and hence is rejected. I find that the Application is within the stipulated time limit.

5. As on the merits the stand taken by the Applicant is that before effecting the recovery due to overpayment to the applicant he has not been issued any Show Cause Notice or accorded a reasonable opportunity is not controverted by the Respondents in their reply to paras 4.13 and 5.5. of the O.A. The Respondents have neither made a specific denial nor stated that the Applicant had been accorded a reasonable opportunity to show cause before the impugned order was passed. In view of the fact that the applicant has not been accorded an opportunity of being heard before the recovery was ordered against him on account of over payment, the action of the Respondents cannot be said to be justified and is rather in violation of principles of natural justice. The Applicant has suffered civil consequences and as such it is mandatory upon the Respondents to afford him an

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opportunity of being heard to show cause before effecting the recovery. In this view of the matter I am fortified by the ratio of the judgment in the case of *D.K. Yadav vs. J.M. Industries* 1993 SCC L&S 723 and also the ratio relied upon by the Applicant's counsel in the case of *Bhanwar Lal and Ors (supra)*.

6. Having regard to the discussion made above, I allow the Application and set aside the Order dated 21.1.99. Respondents are directed to accord a reasonable opportunity to show cause to the applicant before effecting any recovery and also to pass a speaking order dealing with the contentions to be taken by the Applicant in his reply to Show Cause Notice. The Respondents are further directed to refund any recovery effected from the salary of the Applicant in pursuance of orders passed on 21.1.1999 to him. Respondents are directed to comply with the directions within a period of 2 months from the date of receipt of a copy of this Order. In case the applicant is aggrieved by the order passed by the Respondents he is at liberty to seek redressal as per law.

7. The O.A. is disposed of on the above directions. But without any order as to cost.

*S. Raju*  
(Shanker Raju)

Member (J)

sj\*