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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 1109/92

~~Decided on Application No.~~

Date of decision 10.6.93

Shri Hari Prasad Upadhyay Petitioner

Shri R.B. Jaiswal Advocate for the Petitioner

Versus

Union of India and others Respondent

Shri V.S. Masurkar, Advocate for the Respondent(s)

Coram :

The Hon'ble Shri V.D. Deshmukh, Member (J)

The Hon'ble Shri

1. Whether the Reporters of local papers may be allowed to yes see the Judgement ?
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? } yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? } yes



(V.D. DESHMUKH)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1109/92

Shri Hari Prasad Upadhyay

... Applicant.

V/s

The Union of India through
Chief General Manager, MTNL
Telephone House, Dadat(West)
Bombay.

The Assistant Engineer, Adm.
(South) office of the
General Manager (South)
Telephone Bhavan, Colaba,
Bombay.

... Respondents.

CORAM: Hon'ble Shri V.D. Deshmukh, Member (J)

Appearance:

Shri R.B. Jaiswal, counsel
for the applicant.

Shri V.S. Masurkar, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 10.6.93

{ Per Shri V.D. Deshmukh, Member (J) }

The applicant who is at present working as the Junior Engineer in the MTNL has filed this application with the prayer that the letter of the respondent No.3 dated 5.9.91 asking for recovery of Rs. 5823.65 from the applicant's salary be set aside. I heard learned counsels for both the parties.

The facts which are necessary for decision on the controversy involved are as follows:

The applicant had applied for appointment to the post of Telephone Inspector (T.I) and also to the post of Junior Engineer (J.E.). It is the admitted position that training was compulsory before the incumbent could be appointed either as Telephone Inspector or Junior Engineer. After the applicant filed the applications he was selected for training for the post of Telephone Inspector from 16.10.79. As has been stated earlier the applicant had also applied for the post of Junior Engineer. It is an admitted position

that this application was filed before the training for the post of T.I. commenced on 16.10.79.

After the applicant completed the training for the post of T.I. on 15.6.80 he was appointed as T.I. with effect from 16.6.80. Before the applicant joined the training he had to execute the bond and the bond was executed on 13.9.79.

While the applicant was serving with the respondents as the T.I. he received a call for training for the post of J.E. and his training commenced from 6.10.80. The respondents have attached the O.M. dated 4.10.79 by which the departmental outsider candidates were called for undergoing the training. After receiving this letter the applicant requested for being relieved but having not been relieved he tendered his resignation on 4.10.80 and joined the training for the post of J.E. This training commenced on 6.10.80 and was completed on 5.10.81 and the applicant thereafter joined as J.E. with effect from 6.10.81 i.e. the next date after the completion of the training.

The applicant while continuing as J.E. in the MTNL received a demand letter dated 18.7.84, demanding that the amount mentioned in the letter be recovered from his salary. This letter was followed by two other letters. Different amounts were mentioned in these letters. However finally by the letter dated 5.10.81 it was directed that the amount of Rs. 5323.65 be recovered from the salary of the applicant which happens to be ^{the} amount of stipend paid to him while he was undergoing the training for the post of T.I. This was by way of enforcing the bond which the applicant executed on 13.9.79, that is before he joined the

training for the post of T.I. The bond vide clause II(c) stipulated that after the completion of training the applicant has to accept the employment as T.I. for a period of 5 years. Clause ^{III}III(ii) of the bond provides for the forfeiture.

It is the contention of the applicant that although he had resigned from the post of T.I. in order to join the training for the post of J.E. his resignation has to be treated as technical one and the bond cannot be forfeited. The learned counsel for the applicant relies upon the letter dated 15.4.89 written by the Dy. Area Manager, MTNL Bombay ^{to the} ~~through~~ Dy. General Manager(A). The letter mentioned that as per the instructions contained in DGP & T's letter No. 23/7/68-P-80 dated 4.5.72 the resignation of the applicant was to be treated as a technical formality and the officer was entitled for full pay and allowances for the post during the period of training for the new post. It also states that the bond should be enforced against those Government servants only who leave government service to acquire private service and since the applicant continued to serve the department in higher capacity it was felt that enforcing the bond against the applicant was unjust. It is however very pertinent to note that this letter primarily deals with the pay and allowances for the post for which the applicant was holding. This letter refers to the department's letter dated 4.5.72. A copy of this letter is also attached to the written reply of the respondents. The letter is regarding the subject 'Entitlement of pay and allowances and treatment of period during the training cases of officials selected for the new appointments'. There are certain clarifications in this letter and the applicant relies upon the clarification (iii) on page 2. This clarification

states that the training allowance in the old post of T.I. /Telephone Operator should not be recovered as bond could be enforced only against those Government servants who leave the government service to secure private employment. The preamble of the letter is very relevant and it states that the orders in the letter dated 17.8.70 will be applicable only to those candidates who apply for two different posts prior to entry in the department and while working in one post they are selected for another post. It is stipulated that when two different posts are applied for prior to the entry in the department, such officials are to be treated as rank outsiders and they are entitled to training allowance only during the period of training in the new post. It is further clarified that these orders were not applicable to those officials who while working in one post apply for another post through proper channel against outsider quota. The clarification relied upon is clearly applicable in case of an official who while in service applies for another post through proper channel and not in a case where the applications for both the posts are made prior to entry in the department.

As has been stated earlier it is an admitted position that the applicant had applied for both the posts before he was selected for the training in the post of T.I. The documents are produced by the respondents regarding the applicant's selection for the post of T.I. as well as for the post of J.E. The O.M. dated 8.11.79 which deals with appointments of T.I. (Training) both outsiders and the departmental outsiders clearly shows that the applicant was treated as an outsider. The candidates were called for training for the post of T.I. under the letter dated 4.10.79 and the copy of the letter clearly shows that the applicant was treated as an outsider.

The letter dated 4.9.80 which directed that the selected candidates should report for training for the post of J.E. also shows the applicant as an outsider. In the circumstances of the case the applicant could not have been treated ~~otherwise~~. He had admittedly applied for both the posts before he was selected for training for either of the posts. Although he joined as T.I. before he went for training for the post of J.E. his application for the post had to be treated as an application by an outsider. The proper training is condition precedent for both the posts and the incumbent ~~is~~ entitled to the stipend during the period of training. It is difficult for me to appreciate as to how when the applicant had applied for both the posts as an outsider and had undergone training for both the posts also as an outsider, ~~as~~ he would be entitled to stipend for both the training periods. The entire controversy depends upon whether the applicant joined the training for the post of J.E. as an outsider or ~~as an outsider or as a~~ an departmental candidate sent for the training through proper channel. The entire documents and circumstances clearly show that he joined the training as an outsider for the post of J.E. and he is not entitled to stipend for the training period for both the posts.

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I therefore, find that the applicant is liable to be dismissed. However it has been rightly pointed out that different amounts are mentioned in the different letters issued by the respondents as the amounts which are to be recovered from the applicant. The respondents shall have to ascertain the correct amount which has to be recovered from the applicant.

In the circumstances I pass the following order

The application is dismissed. The respondents shall ascertain the exact amount which has to be recovered from the applicant within a period of three months from the receipt of the copy of this order. There shall be no order as to costs.


(V.D. DESHMUKH)
MEMBER (J)

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