

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 160/1998.

Tuesday, this the 26th day of February, 2002.

Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Smt. Shanta Shastry, Member (A).

Mrs. Hema Ishwar Daulatani,
BK. 167, Room No.1,
Ulhasnagar - 421 001.
(By Advocate Shri S. Marne)

... Applicant.

v.

1. The Union of India,
through the Secretary,
Ministry of Telecommunications,
New Delhi.
2. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Prabhadevi,
Dadar,
Mumbai - 400 028.
3. The General Manager (E-1),
Mahanagar Telephone Nigam Ltd.,
Kailash Commercial Complex,
L.B.S. Marg, Vikhroli (W),
Mumbai - 400 083.
4. The Assistant General Manager (Adm.),
E-1, Mahanagar Telephone Nigam Ltd.,
Kailash Commercial Complex,
L.B.S. Marg, Vikhroli (W),
Mumbai - 400 083.
5. The Sub-Divisional Engineer (Adm.),
E-1, Mahanagar Telephone Nigam Ltd.,
Kailash Commercial Complex, L.B.S. Marg,
Vikhroli,
Mumbai - 400 083.

(By Advocate Shri V.S. Masurkar) ... Respondents.

: ORDER (ORAL) :

Smt. Shanta Shastry, Member (A)

The applicant in this case is aggrieved by the show cause notice issued on 6.8.2001, whereby it is proposed to treat the period of absence from 28.12.1989 to 17.7.1996 and 26.7.1996 to 2.3.1998 as dies non without break in service instead of as

of duty as ordered earlier.

2. The applicant who is a Telephone Operator had earlier proceeded on maternity leave from 3.9.1984 to 2.12.1984. As the applicant had not recouped, she remained on further leave on account of sickness upto 26.12.1989. Thereafter, according to the applicant she reported to duty on 27.12.1989 with the fitness certificate, however, she was not taken on duty. According to the applicant, she made certain representations to the Respondents to take her back on duty, but one was replied. All of a sudden on 17.10.1994 applicant was issued with a charge sheet on the ground of irregularity in her attendance. After due enquiry, the applicant was exonerated by order dt. 6.3.1996. Even after exhortation on her making a request and despite an order by the Respondent No.5 dt. 5.7.1996 to take back the applicant on duty she was not taken back on duty. Thereafter, she was taken on duty from 17.7.1996, but was again dis-continued from 26.7.1996 after a week. Further, she was issued with a charge sheet again in the year 1998. During the pendency of the OA in the Tribunal, the applicant was taken back on duty on 3.3.1998 and thereafter a charge sheet was issued on 3.6.1998. The enquiry was completed and the applicant was exonerated on 14.7.2000. Thereafter, the Disciplinary Authority passed an order treating the period from 27.12.1989 till the date of resumption of duty, initially on 17.7.1996 and thereafter from 3.3.1998 as on duty. The order was passed on 14.7.2000. Accordingly, the entire period from 28.12.1989 onwards was to be treated as duty for all purposes. Thereafter, however, the appellate authority has issued the show cause

notice dt. 6.8.2001 almost after one year of the passing of the order by the Disciplinary Authority.

3. It is the contention of the applicant that the Appellate Authority could not have issued such a show cause notice. As per CCS (CCA) Rules notwithstanding anything contained in the Rules. According to Rule 29 of the CCS (CCA) Rules, the Appellate Authority within six months of the date of the order proposed to be revised may at any time either on his own motion or otherwise call for the record of any enquiry and revise any order made thereunder for which an appeal is allowed. In this case, since the appellate authority reviewed the order of the Disciplinary Authority after a period of more than six months according to the applicant, the show cause notice cannot be sustained. The applicant also contends that the applicant was ever willing to join her duties and work, it is not her fault that she was not allowed to work. Therefore, she is entitled to full salary for the period from 28.12.1989 onwards.

4. The Learned Counsel for the Respondents, however, counters this and submits that the Appellate Authority rightly issued the show cause notice to the applicant because the basic rule of "no work no pay" applies in her case. She had not worked during the period from 28.12.1989 till 17.7.1996 and further from 26.7.1996 to 2.3.1998 and therefore, the period deserves to be treated as dies non without break in service. The Learned Counsel also has taken the objection that the applicant slept over her rights for nearly 9 years and has approached this Tribunal only in the year 1998. Therefore, the OA suffers from delay and laches and is beyond the period of

limitation and deserves to be dismissed on that ground alone.

5. We have considered the rival pleadings in this matter. It is seen that the applicant had definitely reported for duty on 28.12.1989, but she was not allowed to resume her duties. She has made representations to take her back on duty, but the Respondents have not replied the same. In fact, the respondents informed her that the matter was being taken up with the Headquarters. But, all of a sudden in 1994, the Respondents proceeded by issuing a charge sheet for the period of her absence from 1984 to 1989. Even after exonerating the applicant, she was not allowed to resume her duties. It is only in 1996 for one week and thereafter in 1998 that the Respondents allowed the applicant to resume her duties. This goes to show that the applicant on her own had not backed out from joining the duty, but it is the respondents who dilly dallied in taking her back on duty. The applicant cannot be faulted for the same. We find that the applicant was granted all the relief when the disciplinary authority passed orders on 14.7.2000 treating the entire period from 28.12.1989 onwards as on duty. Therefore, the earlier period from 28.12.1989 till the date of filing of this OA gets covered up by the orders passed by the disciplinary authority. Therefore, we hold that the ground of limitation cannot be taken for dismissing the OA. We do find substance in the arguments of the Learned Counsel for the applicant that the Appellate Authority could not have passed any order in revision on the order of the Disciplinary Authority after the period of six months was over, which has been provided for in the

CCS (CCA) Rules. Definitely such a show cause notice issued by the Appellate Authority after a period of one year had elapsed cannot be said to be legal. We therefore, quash and set aside the impugned show cause notice dt. 6.8.2001 treating the period from 28.12.1989 to 17.7.1996 and 26.7.1996 to 2.3.1998 as dies non without break in service. At the same time, we note that the applicant definitely did not put in any work during the aforesaid period. Whatever may be the reason, if the applicant was aggrieved she could have approached this Tribunal before 1998 for any relief. In the circumstances, we direct that the applicant's pay shall be fixed notionally for the period from 28.12.1989 till she resumed her duties with all consequential benefits. The applicant submits that applicant has not received any benefits out of the period for 3.12.1984 to 27.12.1989 which was treated as medical leave. The Respondents shall consider the claim as per Rules. The OA is disposed of accordingly. No costs.

Shanta F-
(SHANTA SHAstry)
MEMBER (A)

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN

B.

~~Order, Judgement despatched~~
dk 26/2/02
to Appellant, Respondent (s)
on 19/3/02

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