

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR.

O.A.NO. 741/88

: Date of order: 18.5.93

M.L.Sharma

: Applicant

Mr.R.N.Mathur

: Counsel for the applicant

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Union of India & Ors. : Respondents.

Mr.U.D.Sharma

: Counsel for the respondents.

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PER HON'BLE MR.GOPAL KRISHNA, JUDL MEMBER

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant Shri M.L.Sharma, Telephone Operator, has challenged the order dated 9.7.1987 whereby he was "relieved and struck off from the strength of this District with immediate effect in the interest of service under Rule 37 of the P&T Manual, Vol.IV with instructions to report to the Incharge, Telephone Exchange, Makrana under T.D.E., Nagaur at Bikaner".

2. I have heard the learned counsel for the parties. I have carefully perused the records.
3. The applicant's case is that he is a permanent employee of the Telephone Department and he has been posted at Telephone Exchange, Sanganri Gate, Jaipur under the control of Respondent No.3 prior to 9.7.1987 on which date the impugned order was issued. The impugned order has been assailed on the grounds of its validity and legality. The respondents

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resisted the application and contended that the General Manager, Telecommunications, Rajasthan, Jaipur had issued an order No. STA/B-2/3 Nagaur(T) 1 dated 30.6.87 transferring the applicant to Makrana Telephone Exchange under the Telecom District Engineer, Nagaur at Bikaner and in compliance thereof, the General Manager, Telecom District, Jaipur, issued the impugned order dated 9.7.87 (Annexure A.4) and that the order of transfer was passed competently and in accordance with the statutory provisions of para 37 of the P&T Manual, Vol. IV.

4. Since I was unable to agree with the view of a Single Member Bench of this Tribunal in the judgment in an identical case Rameshwar Dayal Sharma Vs. Union of India and Others (O.A.NO.262 of 1988 decided on 11.9.1989), the matter was referred by me to the Hon'ble Chairman, Central Administrative Tribunal, Principal Bench, New Delhi, for constituting a larger Bench to decide the issue as to the competence of the transferring authority. Thereafter a Division Bench of this Tribunal comprising of Hon'ble Mr. Justice D.L. Mehta, Vice Chairman and Hon'ble Mr. B.N. Dhoundiyal, Member (A) answered the reference vide order dated 26.3.1993. Paras 6 & 7 of this order may be extracted below :

6. It is clear that the order dated 17.1.1972 created a new telephone district and the fact that separate establishment had been created becomes clear by a reading of para 5 of this order which reads as under:

"5. - Consequent on the reduction of work in the Circle Office, Jaipur as a result of the formation of the Jaipur

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Telephone District, the supervisory clerical and other posts found surplus in the Circle Office, Jaipur should be brought under reduction and the surplus staff absorbed else where in the circle or the District against vacant sanctioned posts."

Had the Jaipur Telephone District continued to be the part of Rajasthan Circle, the question of declaring the staff as surplus and absorbing them elsewhere would not have arisen. The said order also mentions that the District Manager, Telephone, Jaipur will exercise all the powers of the Head of the Circle and that he will function directly under the Director General. The order dated 12.5.1987 relates to upgradation of the post of District Manager and also mentions that the General Manager, Telecommunication District at Jaipur shall function under the overall charge of the General Manager, Telecom, Rajasthan Circle, Jaipur. Mere mention of the words that he shall function under the over all charge of the General Manager Telecom Rajasthan Circle does not take away either the separation of the establishment or the powers of Head of Circle from the General Manager, Telephones, Jaipur. Consequently, in the matter of transfers his position is that of an independent Head of the Circle. If there is to be any transfer outside his circle, the approval of the Director General would be required as provided in Item No.7 of Schedule No.2 of P&T Manual Vol.III.

7. In view of the aforesaid considerations, we hold that the impugned order dated 30.6.1987 issued by the General Manager, Telecommunication, Rajasthan ordering the transfer of M.L.Sharma, from Jaipur Telecom District to Telecom District Engineer,

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Nagaur was not issued by a competent authority and is liable to be quashed. While parting, we also observe that the Union of India have already filed an SLP in the Hon'ble Supreme Court against the order dated 11.9.1988 passed in O.A.No. 262/88 in case of R.D. Sharma Vs. UOI. It is understood that this SLP has been admitted by the Hon'ble Supreme Court. The case is being remitted to the Hon'ble Single Member to consider issue of directions in O.A.NO. 741/88 in the light of our observations in para 6 and also in the light of any orders that may be passed by the Hon'ble Supreme Court in the aforementioned Special Leave Petition."

5. It is stated on behalf of the respondents that the Union of India have already filed a Special Leave Petition in the Hon'ble Supreme Court against the order dated 11.9.89 passed in O.A.No. 262/1988 in the case of Rameshwar Dayal Sharma Vs. Union of India. There is nothing on the record of the present case to show as to when the aforesaid SLP was filed. The learned counsel for the respondents submitted that he has moved a Review Petition before the Division Bench of this Tribunal seeking a review of the order passed by it on 26.3.93 in the case [in hand] and the same is pending. No copy of any order by the Hon'ble Supreme Court in the aforesaid SLP could be produced on behalf of the respondents till date. This o.A. has been pending since long. Its proceedings have not been stayed. It has already been held by the Division Bench of this Tribunal in this case, that the impugned order dated 30.6.87 issued by the General Manager, Telecommunication, Rajasthan, ordering G.K. Kothal the transfer of the applicant from Jaipur Telecom District

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to Telecom District Engineer, Nagaur was not issued by a competent authority and the same is liable to be quashed.

6. In the conspectus of the facts stated above, the impugned transfer order is held to be bad on the ground of competence and is accordingly quashed. The respondents are directed to allow the applicant to resume his duties at Sanganeri Gate, Jaipur. There shall be no order as to costs.

GKJhre 18-5-93
(GOPAL KRISHNA)
Judl. Member

Anil