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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.494/89.

Date of Judgement 22-7-92 ✓

G.S.Satyanarayana

.. Applicant

Vs.

1. The Secretary to Government,
Dept. of Telecommunications &
Director-General, Telecommunications,
New Delhi.
 2. The General Manager,
Telecommunications,
Hyderabad.
 3. The Telecom. District Engineer,
Adilabad.
- .. Respondents

Counsel for the Applicant :: Shri K.S.R. Anjaneyulu

Counsel for the Respondents:: Shri N.Bhaskara Rao, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A).

Hon'ble Shri C.J.Roy : Member(J).

[Judgement as per Hon'ble Shri R.Balasubramanian, Member(A)]

This application has been filed by Shri G.S.Satyanarayana under section 19 of the Administrative Tribunals Act, 1985 against the Secretary to Government, Dept. of Telecommunications & Director-General, Telecommunications, New Delhi & 2 others. The prayer in this application is to declare the order No.Q.3 ADB/89-90/76 dt. 1.5.89 of the Telecom. District, Engineer, Adilabad and that of the General Manager, Telecom No.TA/STB/18-13/D/GSS/1972 dt. 27.1.89 referred to therein as illegal and for a direction to the respondents to pay the arrears of pay and allowances in the post of Junior Engineer for the period from 18.5.75 to 7.8.83.

2. The applicant was initially appointed as Time Scale Clerk. While he was working as Time Scale Clerk, a memo of charges was served on the applicant on 8.1.73. Through various stages this resulted in a punishment being inflicted on him vide the orders of the Divl. Engineer Telecom. Tirupat dt. 15.2.77. ~~Under the orders of the~~ His appeal to the

appellate authority and review petition to the D.G.P&T were finally turned down. The last rejection was that of the D.G.P&T on 25.7.80. The applicant was also successful in the Junior Engineer's Examination in September, 1972. He completed training in 1975 but was not posted as Junior Engineer on the plea that disciplinary proceedings were pending against him. The applicant filed W.P.No.5913/1980 on 25.11.80 in the High Court of Andhra Pradesh. The judgement was delivered on 3.6.83 quashing the disciplinary proceedings. The applicant started urging for a posting in the light of this judgement. Eventually, the General Manager, Telecommunication, Hyderabad issued orders under letter No.TA/STB/18/13/O/GSS/1972 dt. 14.4.87 appointing the applicant as Junior Engineer notionally w.e.f. 18.5.75 and he also stated that the applicant was not eligible for arrears of pay and allowances as Junior Engineer for the period from 18.5.75 to 7.8.83. The applicant submitted a representation contending that the arrears cannot be denied to him since he was promoted retrospectively. Finally, the Telecom. District Engineer, Adilabad turned down his request vide the impugned letter dt. 1.5.89 referring to the General Manager, Telecommunications letter dt. 27.1.89. Aggrieved, the applicant has filed this O.A.

3. The respondents have filed a counter affidavit and oppose the application. The thrust of their case is that the disposal of the Writ Petition by the High Court of Andhra Pradesh was on technical grounds and was not on merits. Hence he was given only notional promotion by which arrears for the period of notional promotion were not permissible.

4. We have examined the case and heard the rival sides. It is the case of the applicant that in-as-much as the High Court of Andhra Pradesh set aside the disciplinary action and that too with costs, he is entitled not merely to the notional promotion but also to the difference in pay and allowances for the entire period of notional promotion. He relies on a decision of the Chandigarh Bench

of this Tribunal [1987(3) SLJ CAT 506]. Against this, the learned counsel for the respondents relies on a judgement of the Hon'ble Supreme Court in AIR 1991 SC 958 (G.M.Railways Vs. Avinash Chandra Chadha) wherein the law relating to 'No work - No pay' was laid down by the Hon'ble Supreme Court. We are in the know of at least one more judgement of the Hon'ble Supreme Court on this point - Paluru Ramakrishnaiah Vs. Union of India (AIR 1990 SC 166). In these judgements of the Supreme Court, it is the basic principle that one cannot claim payment for the work that one did not perform. In the much earlier judgement dt. 10.8.87 of the Chandigarh Bench relied upon by the learned counsel for the applicant it had been observed by the Bench that the learned counsel, for the respondents, who pleaded that arrears of pay for the period that one did not actually work, could not produce any judgement in support of his argument. The subsequent judgements of the Hon'ble Supreme Court make the position of law quite clear. There can however be an exception to this rule as seen from the judgement in the case of K.V.Janakiraman Vs. Union of India (AIR 1991 SC 2010). Where the person is willing to perform the task but is denied such work by the Department keeping the findings of the D.P.C. in a sealed cover and where, later on a total acquittal/clearance he is given notional promotion based on the D.P.C. recommendation, payment of arrears for the period of notional promotion can be considered by the Department. We have, therefore, to see if the case before us falls in this category though with the difference that the denial of promotion was on account of the punishment inflicted which was set aside and not the sealed cover procedure.

5. We have seen the judgement dt. 23.6.83 of the Andhra Pradesh High Court based on which the applicant has been given notional promotion with retrospective effect.

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The Judge observed:

"In this writ petition, the learned counsel for the petitioner has raised several contentions, but I am omitting from my consideration all these submissions, because I am of the opinion that the petition should be allowed on the ground that the entrustment of this case to the Divisional Engineer, Telegraphs, Nellore (Ramarathnam) and the appointment of Nagaraj as the Inquiry Officer by the said Ramarathnam had wholly vitiated the proceedings."

The operative portion of the judgement reads:

"I hold that the entire proceedings have been vitiated by the appointment of Nagaraj by Ramarathnam. The report submitted by Nagaraj and the consequential disciplinary action taken by the authorities against the petitioner are hereby set aside. The writ petition is accordingly allowed with costs."

It is not a clear allowing of the petition on merits but on technical grounds as contended by the learned counsel for the respondents. The petition was accordingly allowed. We are not impressed with the argument that costs were awarded. The exception to the rule indicated in the case of K.V. Janak raman Vs. Union of India does not arise here. We are, therefore, not inclined to interfere in this case and dismiss the O.A. with no order as to costs.

R. Balasubramanian

(R. Balasubramanian)
Member(A).

C. J. Roy
(C. J. Roy)
Member(J).

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Dated: 22 July, 1992.

824/7/92
By. Registrar(Judl.)

Copy to:-

1. The Secretary to Government, Department of Telecommunications & Director-General, Telecommunications, New Delhi.
2. The General Manager, Telecommunications, Hyderabad.
3. The Telecom. District Engineer, Adilabad.
4. One copy to Sri. K.S.R. Anjaneyulu, advocate, 1-1-365/A Jawaharnagar, Bakaram, Hyd-20.
5. One copy to Sri. N. Bhaskara Rao, Addl. CGSC, CAT, Hyd.
6. One copy to Hon'ble Mr. C.J. Roy, Judicial Member, CAT.
7. Copy to reporters as per Standard list of CAT, Hyd.
8. One copy to Deputy Registrar(Judl.), CAT, Hyd.
9. One spare copy. *for file*

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(h) 0-17-494/89
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH.

THE HON'BLE MR.

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR.C.J. ROY : MEMBER(J)

Dated: 22/7/1992

ORDER/JUDGMENT

P.A./C.A./M.A. No.

in

O.A.No.

494/89 ✓

T.A.No.

(W.P.No.)

Admitted and interim directions
issued

Allowed

Disposed of with directions

Dismissed

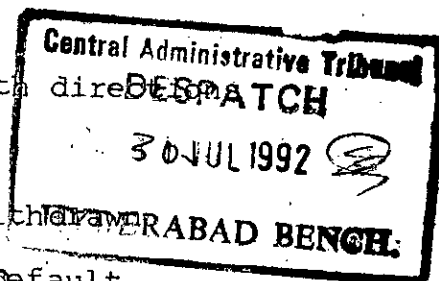
Dismissed as withdrawn

Dismissed for default.

M.A.Ordered/Rejected.

No order as to costs.

pvm.



23/7/92