

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL 43
 NEW DELHI

O.A. No.
T.A. No.

641

1989

DATE OF DECISION 25-8-89

G. Rama Chandru Reddy Petitioner

M. V. Raju Gopal Reddy, Advocate for the Petitioner(s)
 Versus

Govt. of A.P. and Others Respondent

M. M. S. Chandramouli Advocate for the Respondent(s)
 SC & H. State 2 AP 163

M. N. Bhattacharya
 Adm. Case

Advocate for
 Respondent-1.

CORAM :

The Hon'ble Mr. D. Surya Rao, M.V.

The Hon'ble Mr.

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

No

(JUDGMENT OF THE TRIBUNAL DELIVERED BY HON'BLE SRI D. SURYA RAO,
MEMBER(J)).

This application has come up for orders for admission. The facts of the case as stated in the application are, briefly, as follows:

The applicant herein is an IPS officer of the Andhra Pradesh cadre. He was deputed as Superintendent of Police, Vigilance Cell, Civil Supplies Department, Government of Andhra Pradesh, Visakhapatnam. While working as such, he was granted 30 days earned leave on L.T.C. from 6-5-1988 to 4-6-1988, by an order of the Director General of Police, A.P. dated 26-4-88. ^{The order made it clear that} On return from leave, the applicant was re-posted as Superintendent of Police, Vigilance Cell, in the Civil Supplies Department, at Visakhapatnam. The applicant states that after the expiry of the leave, when he reported for duty, the 2nd Respondent viz. the Special Inspector General of Police, Vigilance Cell, Civil Supplies Department told the applicant that the post of Superintendent of Police, Vigilance Cell, Visakhapatnam was proposed to be abolished and he should report to the Director General of Police for a posting in the Police Department. When the applicant approached the Director General of Police, the latter directed him back to the second Respondent stating

that he would not accept the applicant 's reporting before him and it ~~was~~ for the Government to pass the orders for his repatriation to the Police Department in case the post in the Civil Supplies Department was abolished. The applicant thereupon met the 2nd Respondent, apprised him of the position and also gave him a letter on 6-6-88 that he was reporting back for duty as, Superintendent of Police, Vigilance Cell, Visakhapatnam. He signed the C.T.C.S. for this purpose and handed over them to one Shri Prabhakar Reddy, Additional Superintendent of Police, Vigilance Cell, Hyderabad who was in additional charge of the Visakhapatnam post during the leave period of the applicant. After proceeding to Visakhapatnam, the applicant, on 8-6-88 applied for leave for six months with effect from the date of his valid repatriation to Police Department consequent on the abolition of the post of Superintendent of Police, Vigilance Cell, Visakhapatnam. However, on 14-6-88 the applicant came to know that Shri Prabhakar Reddy had directed that all the tappals of the office of the Superintendent of Police, Vigilance Cell, Visakhapatnam should be re-directed to Hyderabad. The applicant wrote to the second Respondent stating that this action amounted to his not holding the charge of the post of Superintendent of Police, Vigilance Cell, Visakhapatnam and he sought clarification of correct

position whether he ceased to be the Superintendent of Police, Vigilance Cell, Visakhapatnam with effect from 4-6-88 or continues to hold the post. This clarification was sought by way of letter dated 14-6-88. He did not receive any reply thereon. On 28-6-88, the 2nd Respondent transferred the staff attached to the post of Superintendent of Police, Vigilance Cell, Visakhapatnam to other zones. Subsequently, the Government passed orders in G.O.Rt.No.2934, G.A.D. dated 31-8-88 which was received by the applicant in the first week of September 1988 sanctioning him study leave from 5-6-88 to 4-12-88. Though the applicant has sought leave from the date of his repatriation, the leave was sanctioned with retrospective effect from 5-6-88. This leave was extended by four months upto 4-4-1989. While matters stood thus, the Applicant received a Memo. No.17038/B2/88 dated 28-11-88 from the 2nd Respondent stating that the telephone of the Superintendent of Police, Vigilance Cell, Visakhapatnam bearing No.66477 was disconnected from 6-7-1988, that the telephone bill dated 10-10-88 came to Rs.10,767/- and that if the telephone had been used by the applicant during his leave period, to arrange for payment of the bill amount since the applicant had been on leave from 5-6-88. The applicant

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sought extension of time as he was not in possession of information in regard to the trunk calls made. The applicant states that the leave salary for the period from 5-12-88 to 4-4-89 due to him in the post of Superintendent of Police, Vigilance Cell, Visakhapatnam was not paid and the third Respondent instructed the present Superintendent of Police, Vigilance Cell, Visakhapatnam not to effect disbursal of this leave salary pending payment of the telephone bill dated 10-10-88. The applicant, on 15-6-89 submitted a letter stating that he was acting as Superintendent of Police, Vigilance Cell, Visakhapatnam during the period in question and as such he was entitled to use the telephone in discharge of his duties and therefore, not liable to pay the bill amount. In regard to the private trunk calls made, he sent an amount of Rs.296-50 ps. by draft. However, the 3rd Respondent, by the impugned memo. Rc.No.B2/2853/88 dated 15-7-1989 directed that the entire amount of Rs.10,267/- after excluding Rs.500/- towards rental charges for two months, be deducted from the applicant's leave salary which is already drawn and kept. The applicant has filed this Application questioning the above Memo. dated 15-7-1989.

2. Heard the learned counsel for the applicant Sri V.Rajagopal Reddy and the learned Standing Counsel for the Government of Andhra Pradesh, Sri M.P.Chandra Mouli on behalf of the Respondents 1 to 3 and the learned Additional Standing Counsel for the Central Government, Sri N.Bhaskara Rao on behalf of the Respondent No.4. Sri Rajagopal Reddy contends that the applicant can be treated as on leave only from the date of sanction of the leave and that he could not have been compelled to be on leave retrospectively from 5-6-88. The applicant, according to Sri Raja Gopal Reddy, has been given re-posting as Superintendent of Police, Vigilance Cell, Visakhapatnam and was entitled to occupy the said post till there was a modification or cancellation of this order. Till today no such modification or cancellation was ordered. The applicant having sought leave only from the date of his repatriation to the police department, cannot be compelled to go on leave for a period prior to such repatriation. He also contends that the phone in question was an office-cum-residence phone, that the post of Superintendent of Police, Vigilance Cell, Visakhapatnam has never been abolished and as such the phone was not only used for official purposes but for private purposes also. He contends that it is the duty of the Department to determine or compute

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the cost of official calls and the private calls and it is only thereafter that the applicant can be made liable for payment of any amount in regard to the ^{private} said ~~private~~ telephone calls. It is further contended that the telephone was reported to have been disconnected on 6-7-88 and as such it must be clearly established that the bill for Rs.10,767/- pertained to the period from 6-6-88, that is the date on which the applicant resumed duty at Visakhapatnam, to 6-7-88 when it was disconnected.

Shri Chandramouli, on behalf of the State Government contends that the applicant is aggrieved by the impugned order dated 15-7-89, ought to have made an appeal to the Government of India. He also states that it is open to him to make a representation to the State Government for determination of the various questions as to the validity and the quantum of the bill, etc. and that his rushing to this Tribunal is premature. In so far as the plea that the applicant cannot be deemed to be on leave from 5-6-88, is concerned, Sri Chandramouli contends that the applicant has never objected to the leave sanctioned ~~in~~ order issued in GO Rt. No. 2934, G.A.D. dated 31-8-88 granting him leave for six months from 5-6-88 to 4-12-88.

(Signature)

3. From the rival contentions, it is clear that these are
have been raised
the various questions of facts which have been to be
determined by the State Government in the first
instance, namely, whether the applicant was deemed
to be on duty as Superintendent of Police, Vigilance
Cell, Visakhapatnam from 5-6-88 onwards in view of
earlier
the orders of the Director General of Police in
Proceedings No. 461/G2/88 dated 26-4-88 reposting him
as such or whether the period is to be treated as
compulsory wait in view of the tentative decision of
the second respondent that the post is to be abolished.
The further question which the Government also have to
determine is as to for what period the bill for
Rs.10,676 relates to ^{and} whether the applicant is liable
to pay the said bill amount either in whole or in
part. These are all the issues which have to be
determined by the administrative authority or the
department as the case may be in the first instance.
If the applicant is aggrieved by the order of the third
Respondent, he ought to have made a representation
to the Government of Andhra Pradesh for clarification
of these points instead of rushing to this Tribunal.
It is therefore, clear that the application is premature.

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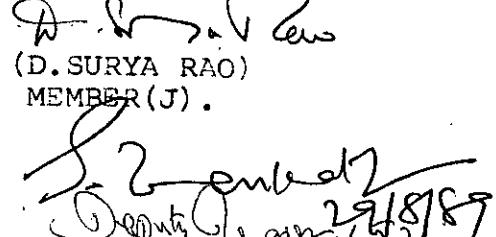
Accordingly the applicant is directed to make a representation to the Government of Andhra Pradesh for determination of clarification in regard to these aspects referred supra, within 10 days from the date of receipt of this order. Till the determination of these matters, any recovery made, however, would be unjust, particularly since the recovery is sought to be made in lumpsum.

Sri Chandramouli has sought to contend that the Government would be losing interest on any amount if the applicant is found due and that therefore there should not be any direction to pay the amount withheld. I am unable to agree with the contention that the Government would be entitled to interest on delayed payments of telephone dues. Accordingly it is directed that the amount proposed to be recovered from the applicant's leave salary pursuant to the impugned order RC.B2/2853/88 dated 15-7-89, be disbursed to the applicant within ~~10~~ ^{three weeks from} days from the date of receipt of this order. It is, however, open to the Government of Andhra Pradesh to recover whatever amount is found due from the applicant towards telephone charges after disposal of the representation which the applicant has been directed to submit. With these directions, the application is disposed of at the admission stage. No order as to costs.


(D. SURYA RAO)
MEMBER (J).

Dated: 25th August, 1989.

mhb/


S. VENKATESWARAN
Deputy Registrar (J)
29/8/89