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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 208/91.

Dt. of Decision : 19.7.94.

Mr. G. Nagaswara Raju

.. Applicant

vs

1. Union of India, rep. by
The Secretary, Telecommunications,
New Delhi - 110 001.
2. The Chief General Manager,
Telecom, Hyderabad-500 001.
3. Telecom District Engineer,
Vizianagaram-531 202.
4. The Sub-Divisional Officer,
Phones, Vizianagaram-531 202.

.. Respondents

Counsel for the Applicant : Mr. C. Suryanarayana

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

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OA 208/91.

Dt. of Order: 19-7-94.

(Order of the Divn. Bench passed by Hon'ble
Shri A.V.Haridasan, Member (J)).

* * *

The applicant who was appointed as Peon with effect from 31-12-75 in the Office of Divisional Engineer, Telegraphs, Visakhapatnam, while on leave met with an accident on 27-1-80 in which he sustained serious head injuries and was admitted in the K.G.Hospital, Visakhapatnam. As the result of the injury he suffered paralysis of the right side of the body. The Doctor advised him complete bed rest and treatment up to 23-8-80 and thereafter again advised for rest up to 23-11-80. As the condition of his health was not permitting him to resume to duty, he was on leave till 24-5-84 and he joined duty on that date. He was transferred by order dt. 26-5-84 as Adult Peon in the Trunk Telephone Exchange, Vizianagaram, and he performed duty for about 2 months 7 days till 31-7-84. He was thereafter on Half Pay Leave from 1-8-84 to 10-8-84 and again joined to duty on 11-8-84. He continued and performed duty only up to 14-8-84. As he was very weak and could not perform his duty, ^{he} applied for leave with effect from 16-8-84 to 25-8-84. Again he went on applying leave on medical grounds which was being granted up to 11-10-89. Leave for the entire period of absence from 16-8-84 to 11-10-89 was sanctioned by the competent authority. The applicant again applied for 90 days extraordinary leave on medical grounds from 12-10-89 and for further extension by 90 days from 10-1-90. This was refused by the Respondent No. 4 on the ground

that leave of any kind cannot be granted for a continuing exceeding period 1/5 years as per extant rules and therefore the leave application was returned by the 4th respondent along with his letter dt.6-3-90. The Respondent No.4 not only refused to grant leave as applied for by the applicant but also issued impugned order dt.23-3-90 (Annexure A-7), wherein referring to the applicant's letter dt.22-11-89 requesting for sanction of invalid pension, it was stated that as the applicant was continuously on leave for 5 years w.e.f. 16-8-84 and as he did not submit his application for invalid pension within the aforesaid period of 5 years, the applicant was considered to have resigned from service and therefore not entitled to the invalid pension. The applicant made a further application on 9-4-90 for extention of extraordinary leave and again represented on 19-7-90 to the 4th Respondent explaining the exceptional circumstances which compelled him to take leave for /period exceeding 5 years. The applicant was informed by letter dt.16-7-90 of the 4th Respondent (Annexure A-9)/ to grant the leave beyond 5 years was not within the powers of the sanctioning authority. Thereafter the applicant submitted a leave application dt.16-8-90 to the 3rd respondent i.e. the Telecom District Engineer, Vizianagaram. Finding no response, the applicant has filed this application under section 19 of the A.T.Act, 1985, for a declaration that the applicant is entitled to invalid pension together with interest from 22-12-89 and to

issue a direction to the Respondents to sanction him the above said invalid pension with interest and arrears and also for a declaration that the applicant is entitled for extraordinary leave on medical grounds from 10-12-89 till he is granted invalid pension.

2. There is an averment in the application that the Civil Surgeon Specialist Dr.N.S.P.T.Prasada Rao, Govt. Headquarters Hospital, Vizianagaram, who examined the applicant had in his certificate dt.31-1-91 declared that the applicant was permanently and completely incapacitated for service in the Department as a result of the Head Injury (Primary Brainstem Injury) with paralysis of right upper and lower limbs and weakness of left upper and lower limbs. After obtaining certificate, the applicant again made a request for grant of invalid pension on the basis of the above said certificate.

3. The Respondents resist the claim of the applicant for invalid pension on the ground that he had not applied for retirement on the ground of being physically incapacitated within the period of 5 years for which leave was granted to him. The prayer for grant of Extraordinary leave beyond 5 years is also contested on the ground that no authority other than the President has no powers to grant extraordinary leave beyond the period of 5 years to a Govt. employee under any circumstances. The Respondents further contend that as the applicant was absent for more than 5 years and as even thereafter he did not join duty, the applicant has to be deemed to have resigned from service and therefore his application for invalid pension could not be processed. According

to the Respondents the applicant who is deemed to have resigned from service is not entitled to invalid pension at all.

4. We have gone through the pleadings and have heard the arguments of Shri C.Suryanarayana, learned counsel for the applicant and Shri N.R.Devraj, learned standing counsel for the Respondents. The fact that the applicant met with an accident, on which he sustained severe head injury causing paralysis of his upper and lower limbs and that on account of this he could not perform his duty is not seriously in dispute. In fact this fact is admitted by the Respondents since the competent authority sanctioned to the applicant extraordinary leave on medical ground till 11-10-89 even though as per rules the leave sanctioning authority had power to sanction such leave only up to 15-8-89 (i.e. for 5 years). The leave applied for by the applicant thereafter on medical grounds was not granted solely for the reason that the leave sanctioning authority did not possess the power to grant leave beyond 5 years and not for the reason that the authority was not satisfied about the genuineness on the ground on which leave was sought. So admittedly it is a case where the applicant could not perform his duties not on account of lack of devotion to duties, but for reasons beyond his control i.e. on account of incapacity resulting from the head injury sustained by him. Annexure A-11, the certificate issued by the Civil Surgeon (Specialist) shows that the applicant is suffering from severe disability

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rendering him unfit for performing his duties. As leave applied for by the applicant beyond 11-10-89 could not be granted for the reasons mentioned above, the applicant had requested for grant of invalid pension as admitted by the Respondents by his letter dt.22-12-89. This request of the applicant was turned down on the ground that he did not apply for retirement on invalid grounds and also for invalid pension within a period of 5 years while leave was sanctioned to him. Respondents seem to assume that as the applicant had remained on leave for more than 5 years and has thereafter overstayed. They are justified in deeming that the applicant has resigned from service. However, no rule or instruction has been brought to our notice by the learned counsel for the Respondents which provides for such a presumption. As the absence of the applicant beyond the period for which leave was granted was evidently for reasons beyond his control, as he was incapacitated, it is a case where the competent authority should have exercised its discretion and considered the grant of invalid pension to the applicant granting retirement on medical invalidation under Rule 38 of CCS Pension Rules, referring the applicant for an examination by a medical board as provided in the rules. The impugned order at Annexure A-7 which says that the applicant's request for invalid pension could not be processed for not having preferred that request within the period for which leave was granted and that having been away from duty for more than 5 years, the applicant is deemed to have resigned from

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service is totally unsustainable and has only to be struck down. In the light of the foregoing discretion we are of the view that it is a fit case where the Respondents have to consider the case of the applicant for grant of invalid pension under Rule 38 of CCS Pension Rules with effect from 11-10-89 relaxing, if necessary, the requirement of seeking such retirement within a particular time. We however make it clear that this view is taken in the peculiar circumstances of the case and therefore is not to be taken as a precedent.

5. The application is therefore disposed of with the following directions :-

(i) the Respondents are directed to consider allowing the applicant to retire on the ground of medical invalidation and for grant of invalid pension under Rule 38 of CCS Pension Rules with effect from 11-10-89 if necessary after obtaining from him the necessary application and after observing the formalities as per rules within a period of three months from the date of communication of this order;

(ii) if on consideration and after observation of the formalities, the competent authority in accordance with rules is satisfied that the applicant is entitled to invalid pension, the pension along

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with arrears with effect from 11-10-89
shall be disbursed to the applicant
within a period of 2 months from the date of
the decision taken as per clause (i) above.

6. There is no order as to costs.

Jayaram
(A.B.GORTHI)

Member (A)

AVH
(A.V.HARIDASAN)

Member (J)

Dt. 19th July, 1994.
Dictated in Open Court.

Anbu
Deputy Registrar (Judl.)

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Copy to:-

1. The Secretary, Telecommunications, Union of India, New Delhi-001.
2. The Chief General Manager, Telecom, Hyderabad-001.
3. Telecom District Engineer, Vizianagaram-202.
4. The Sub-Divisional Offices, Phones, Vizianagaram-202..
5. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd.
6. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

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8th page
from 28/7/94.

O.A-20891

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Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN: MEMBER (J)

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER (A)

Dated: 19/7/94

ORDER/JUDGMENT

M.C./R.P./D.P.NO.

O.A.NO.

20891

T.A.NO.

(W.P.NO.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as Withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

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Am 28/7/94:

