

(27)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 1414/93.

Dt. of Decision : 13-9-94.

A.V. Sivaiah

.. Applicant.

vs

1. Chief General Manager,
Telecommunications, Andhra Circle,
Hyderabad.
2. Telecom District Manager,
Ashok Nagar, Guntur District. .. Respondents.

Counsel for the Applicant : Mr. D. Govardhanachary

Counsel for the Respondents : Mr. N.V. Ramana, Addl. CGSC.

CORAM:

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

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

AS PER HON'BLE SHRI A.V. HARIDASAN, MEMBER (JUDL.)

JUDGEMENT

Heard Shri D. Govardhanachary, learned counsel for the applicant and also Shri N.V. Ramana, learned standing counsel for the Respondents.

2. This application is an off-shoot of Review application in OA 1068/91. The applicant was transferred from Chilakaluripet in Guntur division to Kamareddy in Nizamabad division on the ground that he was surplus staff. Alleging that this transfer on the ground that he was rendered surplus was illegal and arbitrary as his juniors were retained in that station itself, the applicant filed the OA 1068/91. The above application was disposed of by this Tribunal by the judgement dated 9-1-92 holding that the order of transfer in the case of the applicant was invalid as it was arbitrary and irrational. A Review Application was filed by the Respondents which was also dismissed. The Respondents took the matter before the Hon'ble Supreme Court in SLP which was eventually dismissed. In the meanwhile the applicant was not permitted to perform duties in ~~a~~ station from which the applicant was transferred. Even after the final order was passed in the Original application declaring that the order of transfer was arbitrary and illegal, the Respondents did not allow the applicant to join duty. The applicant was taken back to duty only on 23-9-92. Thereafter, the applicant made a representation dated 22-2-93 claiming the arrears of pay and allowances for the period for which he was kept out of service i.e. from 1-9-91 to 23-9-92. In reply to this representation, the applicant was informed

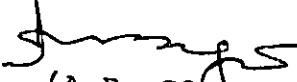
by the impugned order dated 23-7-93 that he has to apply for leave admissible for the period of his absence from 1-9-91 to 23-9-92.

It is against this impugned order the applicant filed this OA praying that ~~xxxxxx~~ the impugned order may be set aside and also to direct the Respondents to treat the above said period as duty for all purposes and pay him the entire salary and allowances for this period.

3. Respondents do not dispute the factual position in this case. Their contention is that as there was no Interim orders staying the transfer order and as the order of the Tribunal setting aside the impugned order of transfer became final only when the Hon'ble Supreme Court dismissed the SLP, the applicant is not entitled to have the above mentioned period treated as duty for any purpose and he has no claim for the pay and allowances for that period without applying for the leave and the Respondents also contend that the impugned order directing the applicants to apply for the eligible leave is perfectly in order. Having gone through the facts in this case and having heard both the counsels, we are convinced that the contention of the Respondents is absolutely untenable. Generally, in a routine administrative matters like transfers, the Tribunal will not interfere. The Tribunal interfered in this case as it was convinced that the order of transfer of the applicant on the ground that he was rendered surplus ^{was} ~~is~~ absolutely illegal, arbitrary and irrational as the juniors of the applicant were retained in service at the same station. As the

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order of transfer has been set aside as invalid and arbitrary in the eye of law, the order is non est, not effective. Therefore, it has to be deemed that the applicant continued in the Station where he was earlier working before the impugned order of transfer was passed. The action of the Respondents all not to allow the applicant to join duty even after the impugned order was set aside by the Tribunal shows that they have scant regard for the orders of the Tribunal. We are convinced that the contention of the Respondents that the applicant is not entitled to have the period from 1-9-91 to 23-9-92 to be treated as duty for all purposes and for payment of arrears of pay and allowances has to be rejected because it has no legal or factual support. In the result, the application is allowed and the Respondents are directed to issue orders treating the period between 1-9-91 to 23-9-92 as duty for all purposes and to pay him the full pay and allowances for the period within three months from the date of receipt of this order. The parties are directed to bear their costs.


(A.B. GORTHI)
Member (Admn.)


(A.V. HARIDASAN)
Member (Judl.)

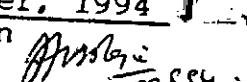
Dated the 13th September, 1994
Open court dictation

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Copy to:-

1. Chief General Manager, Telecommunications, Andhra Circle, Hyd.
2. Telecom District Manager, Ashok Nagar, Guntur District.
3. One copy to Sri. D.Govardhanachary, advocate, 1-1-80/20, RTC X Roads, Hyd-20.
4. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-


Deputy Registrar (Judl.)

