

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

RECORD SECTION INDEX SHEET

OA. NO. 14624 /1994

a) Applicant (S) Ch. ~~L~~ Lakshminarayana

Versus

b) Respondent(s) Supt of P.O. Khamman. and another

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	<u>16/12/94.</u>	

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DA.1464/94

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, VC)

Heard Sri K. Venkateswara Rao, learned counsel for the applicant and Sri N.R. Devaraj, learned counsel for the respondents.

2. The applicant when working as Accountant at Kothagudem was elected as Secretary of National Union of Postal Employees Class-III, Khammam Division, affiliated to INTUC. It is stated that after election of the applicant as Secretary of the Union, their union made a representation to R-1 on 16-11-1994 requesting for transfer of the applicant to Khammam. Then R-1 issued order No.B1-2/36 dated 29-11-1994 (A-2) whereby the applicant was transferred as Accountant, Divisional Office, Khammam, on transferring Sri V. Rajeswara Sastry to Kothagudem. Therein it was also stated that the said transfer was considered under 'immunity' without TA & TP. On the same date, the applicant was received by Superintendent of Post Offices, Khammam-3 (page-7) permitting the applicant to rejoin duty on 29-11-1994 as Accountant on transfer at Divisional Office, Khammam, by curtailing unavailed period of leave granted.

3. It is alleged for the applicant that he reported in the Divisional Office on 29-11-1994 and as Sri V. Rajeswara Sastry was not in the office, he sought instructions from R-1 and the latter informed him that he can assume charge as Accountant in the Divisional

Office and Sri V. Rajeswara Sastry was deemed to have been relieved. In the copy of the charge report, which is filed as Annexure-4 (page 8) it was stated that the applicant assumed charge on the afternoon of 29-11-1994 and it does not bear the signature of Sri V. Rajeswara Sastry under column 'relieved officer'. It is stated that attestation on the same is that of R-1. But the attestation is only to the effect that it is a true copy.

4. Order No.81-2/35 dated 29-11-1994 was issued cancelling the orders whereby the applicant was transferred to Khammam, and Sri V. Rajeswara Sastry was transferred to Kothagudem. The same is assailed in this OA.

under 'Immunity Clause', it is necessary that the Secretary/Treasurer of the Union who was working away from the Headquarters by the date of the election had to be immediately brought to the Headquarters by transferring one of the employees in the Headquarters to Moffusil. 'Immunity' clause is incorporated as Secretary/Treasurer can effectively discharge duties from Headquarters. But as it was not intended to cause inconvenience to any member of the staff working in the of the Union has to be brought to the Headquarters in the vacancy if available or in the next available vacancy. Probably realising the mistake in transferring Sri V. Rajeswara Sastry to Kothagudem in order to accommodate Secretary to the Union at Khammam, the impugned order of transfer might have been issued.

Thereby malafides cannot be inferred on the part of R-1 in cancelling the order of transfer.

6. It was not alleged in the OA that when the applicant did not find Sri Rajeswara Sastry from whom he had to take charge, he approached R-1 and then the latter instructed him to assume charge and it would be held that Sri V. Rajeswara Sastry was deemed to have been relieved. The applicant had come up with the same in the affidavit filed alongwith MA.1009/94 in the OA filed today. It is not the case of the applicant that R-1 had given written orders to that effect. If infact R-1 stated to that effect and accordingly the applicant assumed charge, then it would be a case where the original order of transfer was acted upon and then R-1 would not have passed an order cancelling the original order of transfer. It might be a case where R-1 might have stated so to the applicant and as he passed the order cancelling the transfer, it stated so.

7. We feel that as it was an error in passing original order of transfer and as prejudice will naturally be caused to Sri V. Rajeswara Sastry who was transferred to cancellation is allowed to stand, it is not just and proper to interfere with the impugned order of cancellation. In the above circumstances, we feel it not a case where evidence has to be recorded in order to determine whether in fact the version of the applicant that R-1 orally instructed him to take charge by stating that Sri V. Rajeswara Sastry was deemed to have been transferred or whether it is not true.

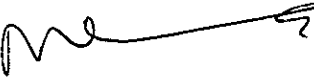
(158)

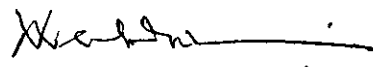
5.

8. It is also stated for the applicant that as the applicant was at Khammam while he was availing leave, he could report for duty on 29-11-1994 itself at the Divisional Office, Khammam. It is now open to the applicant to submit a representation to R-1 to permit him to avail the unexpired leave if he is interested in continuing the leave and in such a case he should be allowed to continue on leave for the unexpired period, and the period from 29-11-1994 till the date of such representation should also be treated as part of that leave.


9. But if the applicant is not interested in continuing to avail the unexpired period of leave, he has to make a representation to that effect to R-1 by 7-12-94 and then R-1 has to issue order cancelling the leave from the date he is going to report for duty at Kothagudem. The period from 29-11-1994 till that date has to be treated as leave which was already sanctioned.

10. The OA is ordered accordingly, at the admission stage. No costs.


(R. Rangarajan)
Member(Admn)


(V. Neeladri Rao)
Vice Chairman

Dated : December 5, 94
Dictated in Open Court


Deputy Registrar(J)CC

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI
VICE-CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN : M (ADMIN)

DATED: 5 - 12-1994

~~ORDER~~/JUDGEMENT:

M.A./R.A/C.A.No.

in

O.A.No.

subu/94

T.A.No.

(w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed
Ordered/Rejected

No order as to costs.

No spare copy

Dvm

