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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA No. 350/94

Date of Decision: _____

BETWEEN:

Md. Q. Siddiqui

.. Applicant

AND

The Chief General Manager,
Telecommunication,
A.P. Circle,
Hyderabad - 500 001.

.. Respondent

Counsel for the Applicant: Mr. V. Venkateswara Rao

Counsel for the Respondents: Mr. K. Bhaskar Rao

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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JUDGEMENT

(PER HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER(J)

Heard Sri V. Venkateswar Rao the learned counsel for the applicant and Sri K. Bhaskar Rao the learned counsel for the respondents.

This is an application under Section 14(1) of the Administrative Tribunals Act. The application was filed on 13th March, 1994.

The applicant in this OA has sought for the following reliefs:-

- (a) To call for the records relating to proceedings No.TA/TTC/26-2/OPBP/93/KW Dt.8.2.94.
- (b) To quash the second paragraph of the said letter by holding that the applicant is eligible to count the period from 6.10.82 to 30.6.87 as duty for all purposes including pension and consequential benefits.

The applicant was working as telegraphist in the department of Telecommunications, Andhra Pradesh Circle. On 6.10.82, the applicant submitted the letter of resignation for the said post on domestic reasons. On 10.11.82 the applicant submitted another letter seeking permission to withdraw his letter of resignation dt.6.10.82 and to permit him to continue in service. His official superior declined by his order Dt.22.11.92, the request for the withdrawal of his letter of resignation. On 24.12.82 the applicant was intimated about the acceptance of his resignation effective from 6.10.82. Against the said decisions,

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the applicant submitted a representation to the Director of Telecommunications, Hyderabad, A.P. Circle. His representation was rejected on 11.1.83.

The applicant challenged the orders Dt.22.11.82 and 24.11.82 before the Hon'ble High Court of Andhra Pradesh in WP No.1710/83.

While the said writ petition was pending the Hyderabad Bench of the Central Administrative Tribunal was constituted. Accordingly, the writ petition was transferred to this Bench and was re-numbered as TA No.498/86. On 11.11.86 the Bench accepted the OA and directed the respondents to reinstate the applicant into service. It further directed the respondents to treat the period of absence of the applicant from 6.10.82 till the date of his reinstatement as "Dies non".

The applicant was thereafter reinstated into service on 1.7.87.

After a lapse of about 6 years the applicant filed a review application in RASR 1636/93 praying the Tribunal to review its direction to treat the period of absence of the applicant from 6.10.82 to till the date of reinstatement as "Dies-non". The RASR application was decided on 27.7.93. In para-11, this Bench has observed as follows:

"

Even if it is accepted, as argued by the applicant's counsel, that in a case of this nature of resignation having been held to be wrongly accepted, the employee would be deemed to be continuing in service and would be entitled to all the benefits of such continuity in service, we cannot on this very ground hold that there is any error apparent on the face of the record in the judgement in TA.498/86.

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We are not convinced with the statement made by the applicant's counsel that as the judgement of the Tribunal was an error that itself should be treated as an error apparent on the face of the record. May be that the judgement so far as it is related to the direction with regard to the treating of the period of absence is erroneous, but in this review we cannot accept such contention and pass a different judgement. We are satisfied that no such error apparent on the face of the record has been brought to our notice as would warrant out interference in this Review Petition.

"

Against the orders passed in RASR Dt.27.7.93 in TA No. 498/86 the applicant filed a writ petition before the Hon'ble High Court of Andhra Pradesh in WP No.17281/1993. The Hon'ble High Court dismissed the said writ petition on 16.11.93 with the observations that it was open to the applicant to make a representation, if he is so advised, to the authorities.

Accordingly, the applicant submitted a representation Dt.18.11.93.

The respondents by the impugned order declined the request of the applicant to treat the period of absence from 6.10.82 to 30.7.82 as on duty for the purposes of pension.

Para-2 of the impugned order reads as follows:

"

The Chief General Manager Telecom Hyderabad has also ordered that the request of Shri M.Q. Siddiqui for counting the period of his absence from 6.10.1982 to 30.6.1987 as duty for the purpose of Pension cannot be agreed to as the period of his absence shall not count as Qualifying Service under the provisions of Rule 26(6) of CCS (Pension) Rules, 1972 as amended from time to time.

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The applicant has filed this OA challenging the para-2 of the impugned order dt.8.2.94 on the grounds that this Tribunal had no jurisdiction to direct the respondents to treat the period of absence from 6.10.82 to 30.6.87 as "Dies-non" that the applicant was not unauthorisedly absent from duties that the direction of the bench ~~had no jurisdiction and per incuriam~~ that the said direction resulted in gross injustice to him, that even while considering the RASR the Bench felt that the said direction was erroneous and however rejected the same holding that it was beyond time that Rule 26 (6) of the CCS (Pension) Rules are applicable to resignation and to the facts of this case that the period of absence between 6.10.82 and 30.6.87 does not at all come within the ambit of pension rules 1972. That the respondent should have considered the said period for the purpose of pension despite the directions in TA No. ⁴⁹⁸498/86 that the respondent was well within his powers to treat the period of absence as on duty and that the impugned order is not sustainable in law.

The respondents have filed their counter contending that in compliance with the directions of this Bench in TA no.498/96 the applicant was reinstated as telegraphist effective from 1.7.87 that the period of his service from 6.10.82 to 30.6.87 was treated as "Dies-non" vide Memo No. E 11/87-88/149 dated 1.7.87 of the CSCTO, Hyderabad that however it was ordered therein that earlier service rendered by the applicant prior to 6.10.82 would count for all purposes as per rules that the review petition filed by the applicant was dismissed that the applicant also challenged the order of this bench in the review application

in WP 17281/93 that the same was dismissed by the Hon'ble High Court of Andhra Pradesh on 16.11.93 that the representation of the applicant was considered and was replied to the applicant through the impugned order that the request of the applicant to count the said period of absence as on duty for the purposes of pension could not be agreed to as the said period should not count as a qualifying service under the provisions of the Rule 26 (6) of the CCS (Pension) Rules that there are no grounds to interfere with the impugned order and that the OA be dismissed with costs.

The main point to be considered is as to how the period of absence from duty by the applicant from 6.10.82 to 30.6.87 be considered by the respondents. 6.10.82 is the date of acceptance of the letter of resignation submitted by ~~the~~ the applicant for the post. 1.7.87 is the date on which the applicant was reinstated back into service. As per the directions issued by this Bench in TA No.498/86, the said period was treated as 'dies non'. It is stated, this bench while deciding the TA it was observed that the period of absence of the applicant from 6.10.82 till the date of reinstatement i.e. 30.6.87 be treated as "dies-non".

It is the contention of the applicant that the said direction issued by the Tribunal was without jurisdiction that during the said period he had not remained unauthorisedly absent that the said period was not spent by him by undergoing any punishment and that therefore the direction of the bench to treat the period as "dies-non" is without jurisdiction. The learned counsel for the applicant pressed into service Rule 17 (A) of the the Fundamental Rules. Rule 17(A) of the Fundamental Rules provide for regulating unauthorised absence without prejudice to the provisions of the Rule 27. The absence was occasioned by the wrongful exercise

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of the discretion by the respondent in accepting the letter of resignation Dt.6.10.82 even though the applicant had in the meanwhile submitted a letter Dt.10.11.82 seeking permission to withdraw the resignation and to permit him to continue in service. As held by the apex court an employee who had submitted resignation to the said post can withdraw the same at any time before its acceptance. In the instant case, the applicant sought permission to withdraw his letter of resignation on 10.11.82 the letter resignation submitted by the applicant was still under consideration of the respondent. It is only by the letter Dt.24.11.82 the respondent accepted the resignation of the applicant with retrospective effect.

The Tribunal considered the legal position held that the action of the respondent was bad in law, and therefore it directed the respondents to reinstate him back into service.

The learned counsel for the applicant further relied upon the Sub-rules 3 & 4 of Rule 26 of the Fundamental Rules. It is, according to him, the said Sub-rules are applicable to the facts of the case. On the otherhand the learned counsel for the respondent relied upon sub-rule 6 of the same rule in justification of the impugned order.

After reinstatement of the applicant into service the respondents should have sanctioned the leave that was available at the credit of the applicant and should have regularised his service. If the applicant had no leave at his credit he should have been sanctioned extraordinary leave. The respondents should have considered the claim of the applicant under Fundamental Rules.

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Sub-rule 3 of Rule 26 of the ^{Fundamental} ~~CCS (Pension)~~ Rules empowers the Appellate Authority to allow counting of extra ordinary leave to give certificate for allowing increment. Sub-rule 4 empowers the authority competent to issue the certificate even in the case of temporary or officiating Government servant for sanctioning increments in the post in which the Government servant was officiating at the time of proceeding on leave and would have continued to initiate but for his going on leave.

Sub-Rule 6 of Rule 26 of the CCS (Pension) Rules states that when an order is passed by the appointing authority allowing a person to withdraw his resignation and to ~~be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.~~

When the respondents further state that period prior to 6.10.82 has been considered for the purpose of pension the respondent has not stated clearly as to why he could not follow the sub rules 3 & 4 of the Fundamental Rules 26.

The directions issued by this Tribunal in TA No. 498/96 and the order Dt.27.7.93 in RASR 1737/93 have become final. The applicant in this OA prays for similar relief claimed in RA. In service matters, the principle ^{of Res Judicata} will apply only if the court or the Tribunal has applied its judicial mind on that issue. This Tribunal, in our opinion applied its judicial mind on that issue specifically in RA 1636/93. Though the tribunal in disposing RASR 1636/93 observed at p.11 (as extracted above), the position does not in any way change. The principle of resjudicata is intended not only to prevent new and possibly conflicting decisions but also to prevent a party from

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establishing his case again and again. The principle is attracted if relief claimed in a later case is same as has already been decided in an earlier case (that is, Order in RASR 1636/93) though validity of the order was not specifically challenged. Similarly, if particular relief which was claimed earlier but was rejected, fresh relief cannot also be granted (see R C. Ahuja Vs. Union of India (1991) 16 ATC 422 (Delhi)).

The learned counsel for the applicant relied upon the decision of the Honourable Supreme Court of India in the case of Himachal Pradesh Road Transport Corporation (HPRTC) Vs. Union of India reported in 1993 (23) ATC 673, In fact, in that case also the termination of the respondent therein was set aside by the Hon'ble High Court and granted monetary relief for the period respondent actually worked, also granted but such relief for the period he did not work rejected by the High Court. In our humble view the said decision does not come to the aid of the applicant. In that case also the respondent approached the High Court after a lapse of 2 years by filing another application. In para-4 of the judgement the honourable Supreme Court has observed that the High Court in the circumstances was not justified in entertaining the claim and allowing the same.

The learned counsel for the applicant also relied upon the Full Bench Decision of the Honourable High Court of Bombay in the case of New India Industries Limited Vs. Union of India (AIR 1990 Bom. 239). In that case the doctrine of unjust enrichment was considered and explained.

The applicant is not entitled to any reliefs for the simple reason that there was laches in his part and

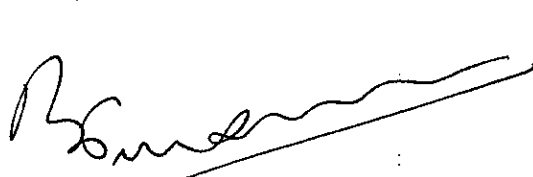
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that the decision in RASR 1636/93 operates as resjudicata to this OA.

For the reasons stated above the only conclusion that can be reached is that the applicant is not entitled to any of the reliefs in this OA. His claim is barred by the principles of resjudicata and also by the principles of limitation.

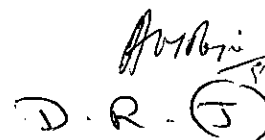
We find no reasons to interfere with the impugned order passed by the respondent.

Hence the OA is dismissed in the circumstances of


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
29.4.97


(R. RANGARAJAN)
MEMBER (ADMN.)

Date 29th April 1997


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TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. NG. RAJAN : M(A)

AND

THE HON'BLE SHRI S.S. JAI PRAMESHWAR:
M(J)

DATED: 29/4/97

ORDER/JUDGEMENT

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

in

O.A.No. 350/94

ADMITTED INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED ✓
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS

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II COURT

HYDERABAD BENCH
3 JUN 1997
RECEIVED
JUDGE