

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

O.A.NO.142 of 1995.

Between

Dated: 28.8.1995.

Syed Abid Ali

...

Applicant

And

1. Govt. of India rep. by its Secretary, Ministry of Communications Department of Telecommunications, New Delhi.
2. Asst. Director General(CWN) Dept of Telecom, Parliament Street, New Delhi.
3. Chief General Manager Telecom, A.P.Circle, Hyderabad.
4. Superintendent Engineer Telecommunications, Civil Circle, Hyd.

Respondent

Counsel for the Applicant : Sri. K.K.Chakravarthy

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

CORAM:

Hon'ble Mr. A.B.Corthi, Administrative Member

Contd:...2/-

X As per Hon'ble Shri A.B.Gorthi, Member (Admn.) X

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The applicant joined Telecom (Civil) Department on 8.9.64 as Draughtsman and retired on 31.10.94 in the Grade of Draughtsman Grade-II. Admittedly he was absent without leave from 1.2.79 to 13.5.84. His claim in this OA is for a direction to the respondents to treat the said period as Extraordinary leave or leave on medical certificate so that he becomes entitled to pensionary benefits.

2. The respondents in their reply affidavit have stated that for ^{the} absence without leave, ^a departmental enquiry was held against the applicant and he was awarded the penalty of withholding of increments for 2 years w.e.f. 1.8.87 without cumulative effect. Further, as the absence of the applicant was ~~for a period exceeding five years, sanction of the President is required in accordance with Rule 12 of C.C.S. (Leave Rules)~~ read with F.R.18.

3. Central Civil Services (Leave)Rules 1972, Rule-12 reads as under:-

"Maximum amount of continuous leave:
Unless the President, in view of the exceptional circumstances of the case otherwise determines, no Government servant shall be granted leave of any kind for a continuous period exceeding five years".

4. F.R., Rule 18 is also to the same effect.

5. Note 1 published below F.R. Rule 18 in Swamy's Compilation of F.R.S.R. Part-I 12th Edition 1994 reads as under:-

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" (1) Treatment of Wilful absence from duty not regularised :- Wilful absence from duty, even though not covered by grant of leave shall have to be treated as "dies non" for all purposes, viz., increment, leave and pension. Such absence without leave where it stands singly and not in continuation of any authorised leave of absence will constitute an interruption of service for the purpose of pension and unless the pension sanctioning authority exercises its powers under Article 421, Civil Service Regulations (now Rule 27 of the CCS (Pension) Rules) to treat the period as leave without allowance, the entire past service will stand forfeited". (underlined for emphasis).

6. From the above note it is evident that unless the pension sanctioning authority decides to treat the period of absence as leave without allowance, the entire past service will stand forfeited.

7. Learned counsel for the applicant has drawn my attention to the final orders of the Government of India ~~has~~ communicated in letter dated 29.8.89 addressed to the Chief General Manager, Telecom, A.P. Circle. The said letter conveys "the approval of the competent authority for regularise^{ring} the absence of Syed Abid Ali, Draughtsman, Grade-II from 1.2.79 to 13.5.84 by treating the same as dies non". The said order gives an impression that the period of absence from 1.2.79 to 13.5.84 has been regularised but that no pay and allowances would be paid for the said period. As per extant instructions (above quoted) unless the competent authority decides to treat the period of absence as leave without allowance, the entire past service will stand forfeited.

In the instant case the respondents stated that the period of absence has been regularised. ~~The order dated 29.8.89 had~~ stated that the period of absence would be treated as leave without allowance, the applicant would be entitled to count the past service for pension.

8. It is clarified in D.G. P&Ts letter No.14/12/82-Vig.

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III, dated 23.9.1982) that when there is a break in service it could be condoned for the purpose of pension only even when it is not condoned for other purposes. Relevant passage from the said letter is reproduced below:-

"It is not the intention of Government to deny pensionary benefits to the employees in all cases of break of service. If necessary, the authority may, in its discretion, not condone absence on account of unauthorised absence-in-service only in exceptional and grave circumstances of pension and not as a matter of course. The question of condonation of break-in-service for the purpose of Pension Rules may be considered suo motu without waiting for a representation from the affected officials and orders issued so that the retired employees are not put to financial hardship. It is requested that these instructions may be brought to the notice of all the appointing authorities for their information and guidance".

9. In view of the above rule position, the respondents are required to issue a categorical order to the effect that the period of absence of the applicant from 13.5.84 is to be treated as leave without allowance, if that be their intention. The order dated 29.8.89 merely states that the period of absence has been regularised by treating it as dies non, which expression is not very clear.

10. In view of what is stated above this OA is disposed of after hearing learned counsel for both the parties and after perusing the material before me with a direction to the Respondent No.2 to reconsider the case of the applicant and pass appropriate orders thereon from which it should be clear that the past service of the

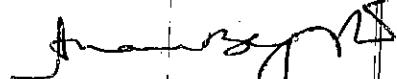
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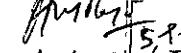
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applicant would count for pension or would stand forfeited. This shall be done by the respondents within a period of three months from the date of communication of this order.

11. O.A. is ordered accordingly without any order as to costs.


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

Dated: 28th August, 1995
(Dictated in Open Court)


Dy. Registrar (Judl.)

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Copy to:-

1. Secretary, Ministry of Communications, Department of Telecommunications, Govt. of India, New Delhi.
2. Asst. Director General (CWN) Dept of Telecom, Parliament Street, New Delhi-1.
3. Chief General Manager Telecom, A.P.Circle, Hyd.
4. Superintendent Engineer Telecommunications, Civil Circle, Hyd.
5. One copy to Sri. K.K.Chakravarthy, advocate, CAT, Hyd.
6. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

HON'BLE MR. A.B. GORTHI, ADMINISTRATIVE MEMBER.

HON'BLE MR.

JUDICIAL MEMBER.

ORDER/JUDGEMENT: ✓

DATED: 28/8/1995.

M.A./P.A./C.A.NO.

IN
O.A.NO. 142/95

T.A.NO. (W.P.NO.)

ADMITTED AND INTERIM DIRECTIONS ISSUED.

ALLOWED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

DISMISSED FOR DEFAULT.

ORDERED/REJECTED.

NO ORDER AS TO COSTS.

* * *

Rsm/-

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(B)

Central Administrative Tribunal
DESPATCH
15 SEP 1995 NSW
HYDERABAD BENCH.