

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.211/1994

Date of order: 11/5/2000

M.L.Sharma, S/o Shri R.K.Sharma, R/o B-23, Satya Nagar,
Khatipura Road, Jhotwara, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary, Deptt. of Telecommunications, New Delhi.
2. The Chief General Manager, Telephones, Rajasthan Circle, Near Govt Press, Jaipur.
3. General Manager, Telecommunications, Jaipur Ditt, M.I. Road, Jaipur.

...Respondents.

Mr.R.N.Mathur - Counsel for applicant.

Mr.V.S.Gurjar - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to give salary to the applicant for the period 9.7.87 to 22.5.93 and to direct the respondents to give promotion to the applicant on the post of HGTO giving benefits of sale on completion of 26 years of service.

2. In brief facts of the case as stated by the applicant are that while he was working on the post of Telephone Operator at Sanganeri Gate, Jaipur, he was transferred from Jaipur to Makrana vide order dated 9.7.87 issued by the General Manager, Telecom, Rajasthan Circle, Jaipur. The applicant challenged the said order of transfer on one of the grounds that the impugned order of transfer was issued by an authority not competent to issue the order of transfer and ultimately, this Tribunal quashed the impugned order of transfer dated 9.7.87 vide its order dated 18.5.93 on the ground of competence and directed the respondents to allow the applicant to resume his duties at Sanganeri Gate, Jaipur. It is stated that in pursuance of the above order of the Tribunal, the applicant was taken on duty on 23.5.93. It is further stated that the respondent department knowingly that the General Manager, Telecom, is not the competent authority for transferring the applicant from Jaipur to Makrana, ^{by the impugned order of transfer and} it was not the mistake of the respondents and therefore, the applicant is entitled to salary and promotion, selection grade after completion of 26 years of service but the same has been denied by the respondents. Therefore, the

applicant filed the O.A for the relief as mentioned above.

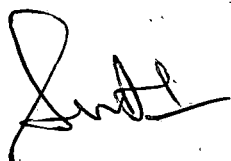
3. Reply was filed. It is stated in the reply that the applicant was relieved in the forenoon of 9.7.87 to join duty at Makrana and LPC was also issued. But the applicant did not join duty and he joined his duties only after the decision in O.A No.741/88 on 23.5.93. It is stated that the applicant did not work at Jaipur or at Makrana during the period from 9.7.87 to 22.5.93, therefore, he was not paid any salary for that period. It is stated that his promotion to one time bound promotion (OTBP) could not be considered as he was transferred to Makrana but it is stated that it will be reviewed from 1985 onwards, shortly. It is denied that there was any arbitrariness, unreasonableness or malafide on the part of the respondents, therefore, the applicant's claim for salary is not tenable on the principle of no work no pay and the applicant is not entitled to any relief sought for.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The short question for determination in this case is whether the applicant is entitled to salary for the period between 9.7.87 to 22.5.93 (the period after the applicant was relieved to join at new place of posting and the date on which the applicant was allowed to resume duty).

6. The learned counsel for the applicant has vehemently argued that the applicant was not bound to join the new place of transfer in pursuance of the order issued by a an authority not competent to issue the transfer order. He has argued that ultimately, this Tribunal quashed the impugned order of transfer vide its order dated 18.5.93 declaring the order of transfer was not issued by the competent authority. He has also argued that the order of the Tribunal was also upheld by the Supreme Court, therefore, the applicant is entitled to full salary for the period between 9.7.87 to 22.5.93 and the applicant is also entitled to be considered for OTBP and selection grade. In support of his contention he has referred to Union of India Vs. K.V Jankiraman. AIR 1991 SC 2010 and Dr.Ramesh Chandra Tyagi Vs. UOI & Ors, 1996(1) SLR 703.

7. On the other hand the learned counsel for the respondents has argued that after the applicant was relieved to join his new place of transfer, it was incumbent upon the applicant to join his duties and since the applicant opted not to join duties till the impugned order of transfer is quashed, he was not prevented by the department to perform his duties, therefore, the applicant is not entitled to salary for the period on the basis of the principle of 'no work no pay'. In support of his contention he has referred



Gujrat State Electricity Board Vs. Atmaram Sungomal Poshani, 1989(3) SLR 684 (SC).

8. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record and the judgments cited above.

9. It is admitted by the learned counsel for the applicant at the time of arguments that no stay was operating against the order of transfer dated 9.7.87. It is also an admitted fact that Hon'ble Supreme Court did not express any opinion regarding competency of the authority who issued the order of transfer. However, Full Bench of CAT Cuttak answered the reference made in O.A No.672/95 to 674/95 as follows:

(i) Division Bench decision in K.C.Rout Vs. UOI & Ors, OA No.629/99 lays down the law correctly.

(ii) Transfer under Rule 37 of P&T Manual is permissible provided the seniority of the transferred officer is not affected.

(iii) Letter dated 23.8.90 does not restrict the power of the Head of the department or Head of the Circle like CPMG to transfer Group-C or Group-D official from one division to another division within his own circle provided his seniority is protected.

(iv) Transfer can be resorted under Rule 37 of the P&T Manual to remove officials suspected of creating indiscipline and such transfer cannot be punitive.

10. In the instant case, the applicant was not prevented by any order of the respondents to perform his duties and the applicant himself suo motu had opted not to join his new place of transfer and thereby did not perform the duties for the period for which the applicant claims the salary, we are of the considered view that the applicant is not entitled to salary on the principle of 'no work no pay' for the period as claimed by the applicant.

11. As regards other contentions of the applicant, the respondents have made it very clear in their reply that the case of the applicant will be considered shortly w.e.f. the year 1985. In view of the reply filed by the respondents and the facts and circumstances of this case, it will be just and proper to direct the respondents to consider the candidature of the applicant for one time bound promotion scheme with effect from the year 1985 and selection scale.

12. As regards the period w.e.f. 9.7.1987 to 22.5.1993 for which the applicant did not perform his duties, it will be just and proper that this period may be adjusted against any kind of leave due to the applicant if the applicant submits his representation/leave application for regularisation of the same. After

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regularisation of this period, the candidature of the applicant must be considered for one time bound promotion and selection scale.

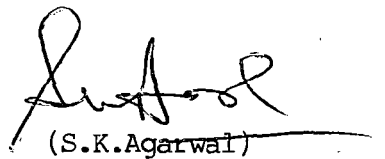
13. We, therefore, allow the O.A partly and direct the respondents to consider the candidature of the applicant with effect from the year 1985 for one time bound promotion scheme and selection grade. The period w.e.f. 9.7.1987 to 22.5.93 should be regularised by sanctioning any kind of leave due to the applicant in case the applicant submits application/representation for the same within a period of one month from the date of passing of this order.

14. No order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member (J).