

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.342/2000

Date of order: 23.10.2002

Mahipal Singh, S/o Sh.Bahadur Singh, R/o 20-A, Purani Chhongi ke Peeche, Modi Nagar, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary, Deptt of Telecommunications, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom, Rajasthan Circle, Jaipur.
3. Principal General Manager, Telecom Distt, Jaipur.

...Respondents.

Mr.U.D.Sharma - Counsel for applicant.

Mr.S.S.Hasan - Counsel for respondents

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

Applicant while working as Motor Driver under A.E Cable, he was informed that his name has been struck off from the strength of AE/Cable MTCC(B&D), Jaipur as vehicle No.RNB 3410 has been scrapped and consequently he was asked to report for duty to DE (Admn), GMTD, Jaipur for further place of posting vide order dated 30.7.92. The applicant reported for duty after 7 days in the office of DE(Admn) by submitting joining letter dated 7.8.92. On the joining report of the applicant, the following endorsement were made on 10.8.92 'Discussed with DGM(Admn). He may be retained under DE(B&D), Jaipur'. To this effect no letter was given but he was verbally told to report to DE(B&D), Jaipur. As Advised, the applicant reported to DE(B&D) on 11.8.92 where he was again told to contact with AEN(Cables) but as per the applicant he also did not allow the

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applicant to join his duties. Thus, according to the applicant he was made a shuttle cock and was asked to run from pillar to post between the various offices of the respondents department with the result that the applicant suffered mental shock and his health deteriorated. When the applicant recouped his health he submitted his joining report on 14.8.95 (Ann.A7) by post to the AEN (Cables) Durgapura. Since he did not get any response to the said application, he again submitted an application on 15.9.95 to the AEN (Cables) Durgapura, requesting him to take on duty. It is the further case of the applicant that since no action was taken on his joining report, he again submitted a representation on 30.10.95 (Annex.A8) to the Divisional Engineer (Phones) (Admn) in the office of GMTD, Jaipur, indicating the facts and circumstances of his case and requested to take him on duty immediately. However the applicant did not receive any reply to the aforesaid representation and he did not get any intimation to report duty in any particular office. On the contrary he received communication dated 8.1.97 from the office of respondent No.3, informing that he had been absenting himself without any intimation from 30.7.92 and as such he was directed to report himself to the Divisional Engineer (Phones) (Admn.) within a period of 7 days. Consequently, the applicant submitted his joining report on 13.1.97 (Annex.A10) and joined duty on 17.1.97. Since no salary was paid to the applicant w.e.f. 30.7.92 to 16.1.97, the applicant filed O.A No.211/97 before this Bench thereby claiming for multiple reliefs including grant of salary for the aforesaid period. This O.A was decided on 12.1.2000 and the applicant was given an opportunity to make fresh representation to the competent authority with regard to the aforesaid relief including other relief and the competent authority was directed to dispose of

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the representation within a period of six weeks by a reasoned and speaking order. Vide the impugned order dated 5.5.2000 (Annex.A1), the representation of the applicant has been disposed of thereby holding that 'the applicant remained absent from 30.7.92 to 16.1.97 and joined duty in the F/N of 17.1.97. The official has not submitted any leave application for his period of absence. As such no wages are to be paid to the official'. It is, on these facts the applicant filed this O.A, inter alia praying for the following reliefs:

"(i) to quash and set aside the letter dated 5.5.2000 (Annex.A1) by which the pay and allowances for the period 31.7.92 to 16.1.97 was denied to him;

(ii) direct the respondents to make payment of pay and allowances to the applicant from 30.7.92 to 28.2.97 with all consequential benefits like increments, actual arrears etc. within a period of two months alongwith 20% interest thereon from 30.7.92 till the date of payment."

2. The respondents have contested the O.A and in their reply it has been stated that the Divisional Engineer (Admn.) directed the Divisional Engineer (B&D) on 10.8.92 to retain the applicant under B&D Division and the Divisional Engineer (B&D) directed the applicant to report for duty under Asstt.Engineer Cable BZN, on 11.8.92. The averment made by the applicant that the Divisional Engineer (B&D) refused to permit the applicant to join duty in his office has been categorically denied by the respondents and submitted that the applicant did not join his duty under Asstt.Engineer Cable Maintenance (B&D) and even his whereabouts were also not known during the period of his absence. It is further submitted that on 14.8.95, a letter was received from the applicant intimating that he was not well therefore he could not join and 'now I am reporting to join my

duty.' According to the respondents, this was simple an intimation just asking for joining duty by post whereas he should have presented himself in person. Similarly, letter dated 15.9.95 was also received by post wherein the applicant requested for taking him on duty but the fact remained that the applicant did not present in person to join duty and as such the Divisional Engineer (B&D) vide letter dated 4.10.95, intimated to the applicant that he was absent from duty for quite long time without any intimation and was directed to report duty immediately. According to the respondents, this letter was received undelivered with the remark that the recipient was not at his residence. According to the respondents, the applicant joined only on 13.1.97 and as such payment of pay and allowances w.e.f. 30.7.92 to 13.1.97, in the absence of any leave application, as required under the rules, cannot be granted to the applicant, as absent from duty period was unauthorised and he has not performed any duty during this period.

3. We have heard the learned counsel for the parties and perused the material on record.

4. The sole question which requires our determination is how the period of absence from 31.7.92 to 16.1.97 are required to be regulated in the absence of any leave application and as to whether the applicant is entitled to full wages during this period.

5. The case of the applicant is that he was not allowed to join his duties and he was made a shuttle cock and was asked to run from pillar to post between the various offices of the respondents department with the result that the applicant suffered mental shock and his health deteriorated. When the applicant recouped his health, he submitted his joining report

on 14.8.95 followed by another letter dated 15.9.95 and by representation dated 30.10.95. According to the applicant he was asked to join duty only vide letter dated 8.1.97 and consequently he submitted his joining report on 13.1.97 and joined duty on 17.1.97. Thus, according to the applicant, he is entitled to back wages during the aforesaid period as he was prevented from joining duty by the respondents. This version of the applicant cannot be accepted. It is an admitted case between the parties that the applicant was asked to report to the Divisional Engineer (Admn), Office of GMTD, Jaipur for further place of posting vide order dated 30.7.92 (Annex.A4). Consequently the applicant submitted his joining report on 7.8.92 (Annex.A5) wherein it has been recorded that the applicant be retained under DE(B&D). The DE(B&D) has marked this letter to AE (Cable) on 11.8.92. In case, the applicant was not allowed to join duty under Asstt.Engineer Cable Maintenance(B&D), he should have made representation to the higher authorities immediately or within a reasonable period. The applicant slept over the matter for about 3 years and it is for the first time on 14.8.95 he addressed an application to the Asstt.Engineer Cables, Durgapura (Annex.A7). The reason stated by the applicant is that he could not join duty as he was not well and now he is reporting to join duty. This was followed by another letter dated 15.9.95 and representation dated 30.10.95. But the fact remains that the applicant did not present himself for duty personally. The applicant joined duty only on 13.1.97 w.e.f. 17.1.97 when the applicant was asked by the respondents vide letter dated 8.1.97. Thus, we are of the view that the respondents cannot be entirely blamed for the lapses on their part for not making payment to the applicant for the period 30.7.92 to 16.1.97 as the applicant is also

equally responsible for serious losses on his part by not agitating the matter within the reasonable time in case he was not allowed to join duty on the transferred post. Thus, we are of the view that the applicant is not entitled for full wages for the aforesaid period.

6. Now, the question that requires our consideration is how the period of absence from 30.7.92 to 16.1.97 should be regulated. *regularised*

7. The respondents has rejected the claim of the applicant vide the impugned order Anxx.A1 on the ground that the applicant remained absent from 30.7.92 to 16.1.97 and joined duty in the F/N of 17.1.97. The official has not submitted any leave application for his period of absence. As such no wages are to be paid to the official. Similarly, in their counter, the respondents in para 4.8 has stated that

"regarding payment of pay & allowance w.e.f. 30.7.92 to 13.1.97, the applicant has not submitted any leave application as required under the rules for the period he remained absent. On receipt of the required leave application from the applicant his leave case will be decided and the pay & allowances will be paid to the applicant as admissible to him. Further absent from duty period was unauthorised and he has not performed any duty during this period. Leave can only be availed after due sanction by the competent authority."

From this portion, it is evident that the period of absence could not be settled for want of proper leave application and as such no wages were paid to the applicant for his absence from 30.7.92 to 16.1.97.

8. At this stage, it will be appropriate to reproduce the

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relevant portions of Sub-rule (1) & (6) of Rule 32 of CCS Leave Rule which have a bearing in this case:

"32. Extraordinary Leave.

(1) Extraordinary leave may be granted to a Govt servant (other than military officer) in special circumstances-

(a) when no other leave is admissible:

(b) when other leave is admissible, but the Govt servant applies in writing for the grant of extraordinary leave.

.....

(6) The authority competent to grant leave may commute retrospectively periods of absence without leave into extraordinary leave."

The conjoint reading of above rule makes it clear that it is well within the authority competent to grant leave to treat the period of absence into extraordinary leave ~~respectively~~ ^{retrospectively} in appropriate case even in the absence of application in writing by the Govt servant for grant of Extraordinary leave. Simply because, the applicant has not submitted any application does not absolve the competent authority to treat the period of absence from duty unsettled indefinitely. In that eventuality, ~~is not precluded from passing~~ the authority competent to grant leave, ~~should pass~~ appropriate order granting leave to the person concerned in case leave is admissible to him and where the applicant did not apply for grant of Extraordinary leave, in those circumstances, order can be passed by the competent authority to commute the period of absence, without leave, into Extraordinary leave to avoid break in service.

9. In the circumstances stated above, the ends of justice will be met if direction is given to the competent authority to regularise the period of absence from duty w.e.f. 30.7.92 to

16.1.97 as leave of kind due as admissible under the rule and to commute the remaining period of absence into Extraordinary leave to avoid break in service. It will be open for the applicant to make proper leave application to the leave sanctioning authority to regularise the period of absence in the manner as admissible under the rules and in case such application is made within a period of 4 weeks from today, the leave sanctioning authority shall pass appropriate order accordingly in conformity with the rules taking into consideration the leave application of the applicant. In case, the applicant fails to submit any such application to the competent authority, the authority competent may pass appropriate order regularising the period of absence w.e.f. 30.7.92 to 16.1.97, in the light of the ~~observation~~ made above within 8 weeks from today. The O.A is disposed of accordingly with no order as to costs.



(M.L.Chauhan)

Member (J)



(H.O.Gupta)

Member (A).