

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. No.4608 of 2015

Orders reserved on 5.12.2018

Orders pronounced on : 11.12.2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Shri H.K. Jain Age 65 years
s/o late Shri U.S. Jain
Ex-Technical Supervisor
Dept of Telecommunications,
R/o 313, Lane No.12, Senani Vihar Colony,
Telibag, Rae Barellie Road,
Lucknow.

....Applicant
(By Advocate : Ms. Meenu Mainee)

VERSUS

UNION OF INDIA : Through

1. Secretary,
Ministry of Communications,
Dept of Telecommunication,
Sanchar Bhawan, New Delhi.
2. The CMD
MTNL, Khurshid Lal Bhawan,
New Delhi.
3. SDO (Phones)
ITO
KEN Exchange,
Old Connaught Place,
New Delhi.

.....Respondents
(By Advocate : Ms. Allya Durafshan for Mr. Rajpal Singh)

O R D E R

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8.1 That the Hon’ble Tribunal may be graciously be pleased to allow this application and quash the impugned order.

8.2 That the Hon’ble Tribunal may further be graciously pleased to direct the respondents to make the payment of wages for the period for which he was waiting from 10-8-2011 to 20-8-2005.

8.3 That the Hon’ble Tribunal may also be graciously pleased to direct the respondents to declare the period as ‘spent on duty’ for which the applicant had been working and/or was on sanctioned leave and make the payment of wages with all consequential benefits.

8.2 That the Hon’ble Tribunal may further graciously be pleased to pass any other or further order as may be deemed fit and proper on the facts and circumstances of the case.

8.3 That the Hon’ble Tribunal may further be graciously pleased to grant costs against the respondents and in favour of the applicant.”

2. In the instant case, the applicant is aggrieved by the impugned order dated 25.11.2014, the relevant part of the said order reads as under:-

“The official Sh. H.K. Jain Tele. Supr. (TK-5903) was working under this unit (SDOP ITO/KHN) and he was DOT employee. He was compulsory retired from DOT vide order No.1-62/2007-Vig.III dated 16/12/2009. Now the Hon’ble Tribunal has passed an order dated 20/05/2014 in OA No.3498/2012 filed by Sh. H.K. Jain wherein the Hon’ble Tribunal directing the respondents to take a decision on payment of pay and allowances to the applicant for the period from 10/08/2001 to 24/07/2007 for the purpose of pensionary benefits.

In compliance of court direction a sum of Rs. 1,,18,184/- has been paid to the applicant vide cheque No.984556 dated 26-7-14 as pay and allowances for the period he had attended the office.

On going through the available record in this office, it has been, come to my knowledge that the applicant, Sh. H.K.Jain (TK-5903) was absent as per details given below.

S.No.	Period of absence	Status
1.	10/08/2001 to 21/08/2005	Absent
2.	20/09/2005 to 22/09/2005	Absent
3.	27/11/2005 to 31/11/2005	Absent
4.	01/12/2005 to 17/12/2005	Absent
5.	27/12/2005 to 31/12/2005	Absent
6.	01/01/2006 to 15/03/2006	Absent
7.	01/05/2006 to 12/05/2006	Absent
8.	23/05/2006 to 24/06/2006	Absent
9.	05/07/2006 to 26/07/2006	Absent
10.	01/08/2006 to 24/07/2007	Absent

In the aforesaid period, Sh. H.K. Jain (TK-5903) has not performed any duty and the said period be treated as Dies-Non without pay and allowances break-in-service for the purpose of pension and other service benefits as per CCS CCA Rule 27.”

2.1 According to the applicant there are several errors, including illegalities which are apparent on the face of impugned order as against the aforesaid periods, the applicant submits as under:-

S.No.	Period of absence	Status
i)	20.09.2005 to 22.09.2005	On leave
ii)	23.09.2005 to 26.11.2005	Performed duty
iii)	27.11.2005 to 30.11.2005	On leave
iv)	01.12.2005 to 30.11.2005	On leave
v)	18.12.2005 to 26.12.2005	Performed duty
vi)	27.12.2005 to 31.12.2005	On leave
vii)	01.01.2006 to 15.03.2006	On leave
viii)	16.03.2006 to 30.04.2006	Performed duty
ix)	01.05.2006 to 22.05.2006	On leave
x)	13.05.2006 to 22.05.2006	Performed duty

xi)	23.05.2006 to 24.06.2006	On leave
xii)	25.06.2006 to 04.07.2006	Performed duty
xiii)	05.07.2006 to 04.07.2006	On leave

2.2 The applicant further stated that for the aforesaid leave periods, the applicant has submitted his applications. Unfortunately, the respondents have not taken any trouble of perusing the service record of the applicant and have wrongfully decided the duty/leave period as also absent.

2.3 Applicant further contended that respondents have illegally treated the period as mentioned in the impugned order as dies-non. He further contended that respondents have wrongly treated the period from 10.8.2001 to 21.8.2005 as absent although the applicant after having recovered from illness, he had reported for duty on 10.8.2001 and had produced all the medical certificates and the respondents have not allowed him to join his duty on the ground that the matter had been referred to the higher authorities and he will be allowed to join his duty when necessary orders are received from the higher authorities. In this view of the matter, the applicant had been waiting patiently for any decision of the respondents to allow him to join duty and also had been making representations orally as well as in writing but ultimately the respondents called the applicant to join duty on 22.8.2005.

3. Counsel for the respondents submitted that the issue of pay and allowances for the period from 2001 to 2005 had earlier been raised by the applicant in OA 3498/2012 and later he had not pressed the prayer before this Tribunal as is evident from the Order of this Tribunal dated 20.5.2014 passed in the said OA and as such the instant OA is barred by principles of res-judicata qua the said period.

3.1 Counsel for the respondents by referring the counter reply submitted that the decision taken by the respondents is in accordance with rules on the subject.

4. However, this Court finds that when applicant has raised his objection by stating that the periods as quoted above has wrongly been treated by the respondents by impugned order, the respondents ought to have given their reply specifically with reference to the said periods as alleged by the applicant by stating the reasons for treating the said periods as absent. But after going through the counter reply, this Court is unable to find the specific stand of the respondents on the aforesaid objection of the applicant.

5. From the applicant's own submission with regard to the period of absence, he has accepted that he has absent for a long period but has also averred that he was intermediately present for duty for very some portion.

6. In view of the above facts and circumstances of the case, this Court feels that ends of justice would be met in this case, if a direction is issued to the respondents to consider the aforesaid submissions of the applicant with regard to the periods as mentioned in the paras 2.1 to 2.3 above and pass a specific order giving the reasons for their decision with regard to the said periods. Thereafter, if any amount is found payable to the applicant, they shall also pay the same. This exercise shall be completed within a period of three months from the date of receipt of certified copy of this Order.

7. This OA is disposed of in above terms. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

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