

0.A. 350/1814/2018

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

Kanika Das, Wife of Bijoy Kumar Das, aged about 54 years, working as Sr. TCA, TG under the overall control of Chief General Manager, West Bengal Telecom Circle, BSNL, at present residing at 28, South Road, Jadavpur, Santoshpur, Pin - 700075.

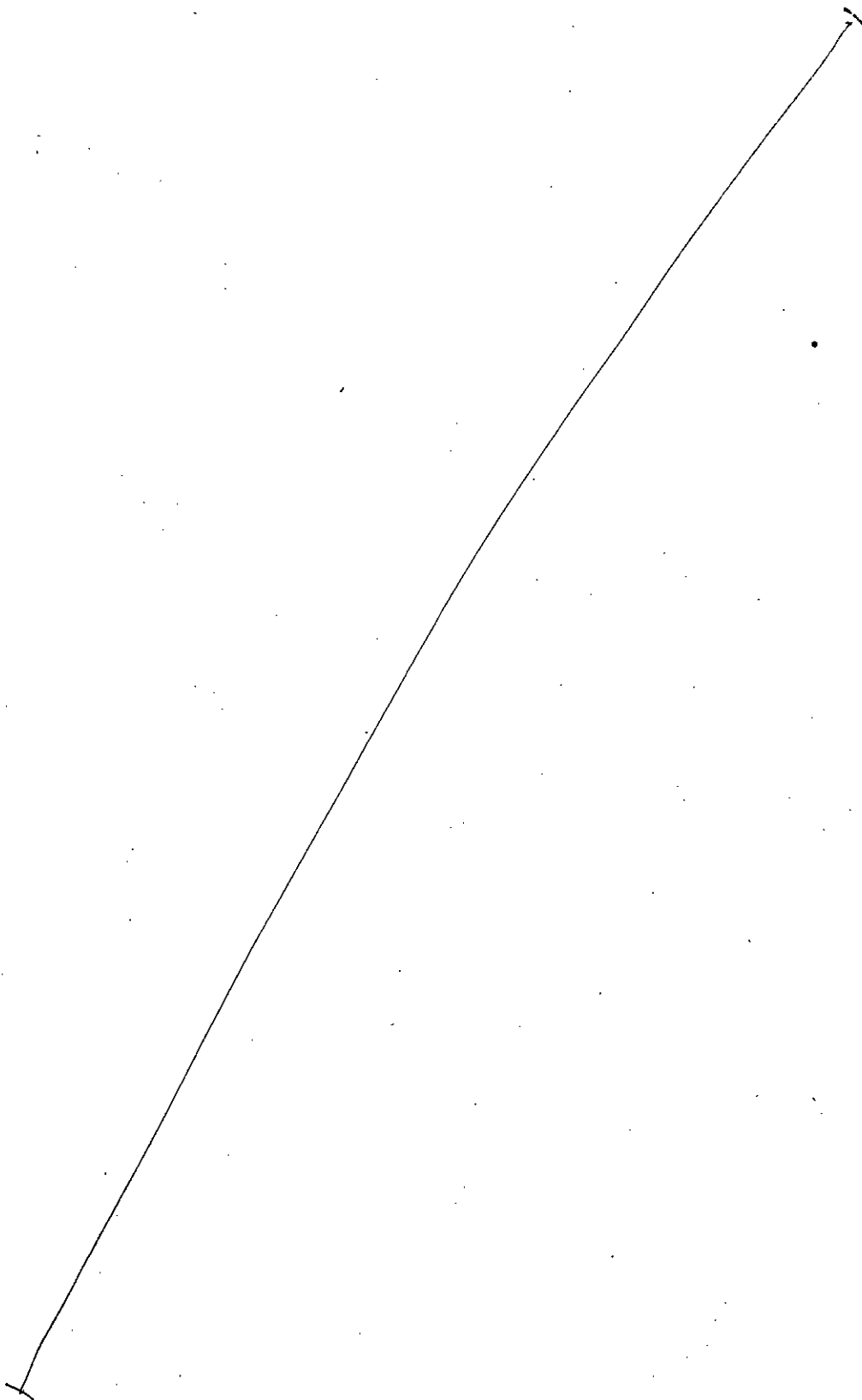
..Applicant

- Vs -

1. Bharat Sanchar Nigam Limited
Service through the Chairman and Managing Director, BSNL,
Bharat Sanchar Bhavan, Harish Chandra Mathur Lane,
Janpath Road, Janpath,
New Delhi - 110001.
2. Chief General Manager,
Bharat Sanchar Nigam Limited,
West Bengal Telecom Circle,
Central Telegraph Office,
Kolkata - 700001.
3. General Manager (HR & Admin)
Bharat Sanchar Nigam Limited,
West Bengal Telecom Circle,
8, Red Cross Road,
Kolkata - 700001.
4. Deputy General Manager (HR & Admin),
Bharat Sanchar Nigam Limited,
West Bengal Telecom Circle,
8, Red Cross Road,
Kolkata - 700001.
5. Asstt. General Manager (HR & Admn),
Bharat Sanchar Nigam Limited,

West Bengal Telecom Circle,
CTO Building, 8, Red Cross Road,
Kolkata - 700001.

.. Respondents



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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A/350/1814/2018

Date of Order: 08.08.2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

KANIKA DAS
VS.

UNION OF INDIA & OTHERS
(BSNL)

For the applicant : Mr. C. Sinha, counsel
For the respondents : Mr. R. Mukherjee, counsel

ORDER

Bidisha Banerjee, Member (J):

The applicant in this O.A. is aggrieved as she has not been allowed to join office since July, 2018 and has been denied salary for the period she served the respondent authorities between August, 2017 to July, 2018.

2. The facts in a nutshell would run thus:-

The applicant who was suffering from Paranoid Schizophrenia from 2002 which aggravated in the year 2010, was unable to attend office w.e.f. 05.03.2010 to 03.08.2017. Vide letter dated 07.07.2017 issued by the JTO(Admn.), CO Unit-II, WBTC, Kolkata the applicant was

directed to join office within 7 days from the issue of that letter "failing which the period of absence will be treated as unauthorised absence." She complied with the direction and on being declared fit by the concerned doctor she joined office on 04.08.2017 and submitted an application for leave w.e.f. 05.03.2010 to 03.08.2017 due to illness. Although she joined office on 04.08.2017 her salary was not released until June, 2018 due to which she was constrained to draw attention of the respondent authorities. On 28.06.2018 the DGM(S& M-II) CO Unit-II, WBTC, Kolkata requested the DGM(HR/Admn.), CO, WBTC, Kolkata as under:-

"Sub : Joining of Smt. Kanika Das Sr TOA(TG) on 04/08/2017 in ERP system.

Smt. Kanika Das, Sr. TOA(TG) has joined on 04/08/2017 as per order of the competent authority. Her previous leave w.e.f. 05/03/2010 to 03/08/2017 has not yet been settled, case is being processed.

Since she has joined on 04/08/2017 and she is not getting her salary till date, her name may be entered in ERP system for effecting salary. Salary may be paid only for those days she was present after joining on 04/08/2017, absence statement i/r/o Smt. Kanika Das, Sr.TOA(TG), is enclosed h/w, addressed to AO(Cash), O/o the CO, WBTC, Kolkata.

The letter is issued with the approval of the competent authority."

Unfortunately, turning absolutely volta face on 26.07.2018 it was the same DGM(S & M-II), CO, WBTC, Kolkata who intimated the applicant as follows:-

*"Sub : Unauthorised absence i.r.o Smt. Kanika Das, SR TOA(TG)
HRMS No.198315910*

It is directed by the competent authority to intimate you that your application for joining has been denied by the competent authority."

On 26.07.2018 the applicant was issued with a show cause notice for her absence from duty without any intimation and without submitting

any leave application and invoking Rule 5(6) of BSNL CDA Rules, 2006, and CCS Leave Rules, the period of her absence was treated as misconduct. Aggrieved with the action on the part of the respondents in not allowing her to join duty and for non payment of salary for the period she had served after she was allowed to join on 04.08.2017, she preferred series of representations.

3. At hearing Id. counsel for the applicant would invite our attention to a speaking order issued on 22.10.2018 which says :-

"The explanation of Smt. Kanika Das in support of her long period of unauthorised continuous absence of about 7 years from duty without any intimation to the department is not tenable and her joining to duty without complying with Rule 12 of CCS(Leave) Rule, 1972 is not acceptable. Therefore, her unauthorised absence from duty for a long period, beyond 5 years attract misconduct according to relevant provisions of Rule 5 of BSNL CDA Rule of 2006. Necessary departmental procedure will be adopted to resolve the issue as deemed fit in compliance with the rules & regulations in due course of time.

This is issued as approved by the competent authority."

Inviting our attention to Rule 25 of CCS(Leave) Rules Id. counsel for the applicant would stress that not joining duties would attract disciplinary action but without a disciplinary action the manner in which the applicant has been prevented from joining her duties is illegal, arbitrary and bad in law.

4. Per contra the Id. counsel for the respondent authorities would vehemently oppose the claim for grant of any relief whatsoever in view of the fact that the applicant was on leave for a period exceeding the normal permissible period of 5 years. Id. counsel would submit that the JTO who had permitted her to join did not have the authority to do

so and, therefore, the JTO(Administration) namely Shanta Ghosh has been issued with the show cause and a charge sheet is underway.

5. Ld. counsel at that juncture would also refer to the provision of maximum amount of continuous leave available to a Government servant which says:-

"12. 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,"

to contend that the matter was never placed before the competent authority empowered to regularise the leave of more than 5 years.

6. We heard the ld. counsel for the parties and perused the materials on record:

7.a) We discern that Rule 25 of CCS Leave Rules mandates a disciplinary action for overstaying beyond sanctioned leave and as a consequence of refusal of extension of leave. It stipulates as under:-

"(c) Rule 25 of the CCS Leave Rules 1972

The said provision addresses the situation where an employee overstays beyond the sanctioned leave of the kind due and admissible, and the competent authority has not approved such extension. The consequences that flow from such refusal of extension of leave include that:

i the Government servant shall not be entitled to any leave salary for such absence;

ii the period shall be debited against his leave account as though it were half pay leave to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave

iii wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

With respect to (iii) above, it may be stated that all Ministries/ Departments are requested to ensure that in all cases of unauthorised absence by a Government servant, he should be informed of the consequences of such absence and be directed to rejoin duty immediately/ within a specified period, say within three days, failing which he would be liable for disciplinary

action under CCS (CCA) Rules, 1965. It may be stressed that a Government servant who remains absent without any authority should be proceeded against immediately and this should not be put off till the absence exceeds the limit prescribed under the various provisions of CCS (Leave) Rules, 1972 and the disciplinary case should be conducted and concluded as quickly as possible."

b) A DOPT O.M. dated 22.06.2010 lays down the following:-

"2. As per Rule 25 of the CCS (Leave) Rules 1972.

(1). Unless the authority competent to grant leave extends the leave, a Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave. to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action. Government of India decisions also exist: that a Government Servant who remains absent without any authority should be proceeded against immediately and this should not be put off till the absence exceeds the limit prescribed in Rule 32(2) (a) of the CCS (Leave) Rules, 1972.

3. It is once again stressed that a Govt. servant who remains absent without any authority should be proceeded against immediately. All Ministries/Departments are requested to ensure that in all cases of unauthorized absence by a Government Servant, he should be informed of the consequences of such absence and be directed to rejoin duty immediately within a specified date, say within three days, failing which he would be liable for disciplinary action under CCS(CCA) Rules 1965. If the Government Servant does not join duty by the stipulated date the Disciplinary Authority should initiate disciplinary action against him and the disciplinary case should be conducted and concluded as quickly as possible."

The aforesaid provision inarguably and irrefutably mandates disciplinary action when a Government servant fails to rejoin duties despite notice of disciplinary action whereas in the instant case the applicant rejoined as soon as the notice dated 07.07.2017 was served upon her.

8. We would further decipher a DOPT O.M. dated 28.03.2013 that mentions as under :-

"No. 13026/3/2012-Estt (Leave)
Government of India
Ministry of Personnel, P.G. & Pensions
(Department of Personnel & Training)

New Delhi, the 28th March, 2013.

OFFICE MEMORANDUM

Subject:- Consolidated instructions relating to action warranted against Government servants remaining away from duty without authorisation/grant of leave — Rule position

The undersigned is directed to say that various references are being received from Ministries/Departments seeking advice/post facto regularisation of unauthorised absence. It has been observed that due seriousness is not being accorded by the administrative authorities to the various rule provisions, inter alia under the CCS(Leave) Rules, 1972, for taking immediate and appropriate action against Government servants staying away from duty without prior sanction of leave or overstaying the periods of sanctioned leave. It is reiterated that such absence is unauthorised and warrants prompt and stringent action as per rules. It has been observed that concerned administrative authorities do not follow the prescribed procedure for dealing with such unauthorised absence.

2. In view of this, attention of all Ministries/Departments is invited to the various provisions of the relevant rules, as indicated in the following paragraphs for strict adherence in situations of unauthorised absence of Government servants. It is also suggested that these provisions may be brought to the notice of all the employees so as to highlight the consequences which may visit if a Government servant is on unauthorised absence. The present OM intends to provide ready reference points in respect of the relevant provisions, hence it is advised that the relevant rules, as are being cited below, are referred to by the competent authorities for appropriate and judicious application. The relevant provisions which may be kept in mind while considering such cases are indicated as follows:

(a) Proviso to FR 17(1)

The said provision stipulates that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

(b) FR 17-A

The said provision inter alia provides that where an individual employee remains absent unauthorisedly or deserts the post, the period of such absence shall be deemed to cause an interruption or break in service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession and eligibility for appearing in departmental examinations, for which a minimum period of service is required.

(c) Rule 25 of the CCS Leave Rules 1972

The said provision addresses the situation where an employee overstays beyond the sanctioned leave of the kind due and admissible, and the competent authority has not approved such extension. The consequences that flow from such refusal of extension of leave include that:

i the Government servant shall not be entitled to any leave salary for such absence;

ii the period shall be debited against his leave account as though it were half pay leave to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave

iii wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

With respect to (iii) above, it may be stated that all Ministries/ Departments are requested to ensure that in all cases of unauthorised absence by a Government servant, he should be informed of the consequences of such absence and be directed to rejoin duty immediately/ within a specified period, say within three days, failing which he would be liable for disciplinary action under CCS (CCA) Rules, 1965. It may be stressed that a Government servant who remains absent without any authority should be proceeded against immediately and this should not be put off till the absence exceeds the limit prescribed under the various provisions of CCS (Leave) Rules, 1972 and the disciplinary case should be conducted and concluded as quickly as possible.

(d) Rule 32 6 of the CCS (Leave) Rules 1972

This provision allows the authority competent to grant leave, to commute retrospectively periods of absence without leave into extraordinary leave under Rule 32(6) of CCS (Leave) Rules, 1972. A similar provision also exists under rule 27(2) of the CCS (Pension) Rules, 1972. It may please be ensured that discretion allowed under these provisions is exercised judiciously, keeping in view the circumstances and merits of each individual case. The period of absence so regularised by grant of extraordinary shall normally not count for the purpose of increments and for the said purpose it shall be regulated by provisions of FR 26(b) (ii).

3. All Ministries/ Departments should initiate appropriate action against delinquent Government servants as per rules.

4. Hindi version will follow.

(Mukesh Chaturvedi)
 Deputy Secretary to the Govt. of India"

9. In the aforesaid backdrop, we note that rightly or wrongly the applicant has been allowed to join after her prolonged leave of more than 7 years which leave without a sanction invites disciplinary action, but the manner in which the applicant has been prevented from attending her duties and denied salary, in view of the legal position enumerated supra, could neither be comprehended nor countenanced. In the event the respondents desired to get rid of her, they could have invoked the provisions of service rules by initiating appropriate

O.A. with

disciplinary proceedings against her and even denied her salary or
 imposed a break in service, for the period she was on leave and did not
 serve them. But in no manner they were authorised to prevent her
 from joining her duties or terminate her services without any show
 cause, notice or proceedings. The respondent authorities have also
 failed to show that such long leave could result in automatic
 termination requiring no show cause notice or initiation of disciplinary
 action or that she could be termed as a "deserter".

10. In such view of the matter, we dispose of the O.A. with a
 direction upon the authorities to allow the applicant to join the post
 that she joined on 04.08.2017, pay her salary for the period she had
 served from 04.08.2017 and thereafter take appropriate action in
 accordance with law, if they so desire. In the event the respondents
 propose to take disciplinary action against the applicant, they may even
 resort to appropriate service rules by putting her on suspension in
 terms of Rule 10 of the CCS(CCA) Rules or corresponding BSNL (CDA)
 Rules whichever is applicable. No costs.

(Dr.Nandita Chatterjee)
 Administrative Member

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(Bidisha Banerjee)
 Judicial Member