

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.28730 of 2018

K.Siva

.. Petitioner

Vs

1.Union of India
rep. by its Director (WM),
Department of Telecommunications,
Wireless Monitoring Headquarters,
New Delhi - 110 062.

2.The Registrar,
Department of Telecommunications,
Wireless Monitoring Organisation,
Kandanchavadi, Perungudi Post,
Chennai - 96.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the Central Administrative Tribunal, Chennai Bench in its proceedings in the impugned order in O.A.No.316 of 2016 dated 31.01.2018 and quash the same and further reinstate the petitioner with all attendant benefits, backwages and other benefits.

For Petitioner .. Mr.S.Ranjithkumar

For Respondents .. Ms.Sunita Kumari,
SPCCG for R1
R2 - No appearance

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Challenging the order of the Tribunal in O.A.No.316 of 2016 dated 31.01.2018 and for a consequential direction to reinstate

the petitioner with all attendant benefits, backwages and other benefits, the present writ petition has been filed.

2.The petitioner was employed as a Driver Grade II in International Wireless Monitoring Station, Chennai. While he was working in Radio Noise Survey Unit (RSNU), Chennai, by the proceedings dated 01.03.2011, he was transferred to Ahmedabad. Not inclined to accept the said order of transfer, a representation was made by him on 06.07.2011. It was accordingly rejected by the office memorandum dated 21.10.2011. The aforesaid representation made on 25.10.2011 was also rejected.

3.The petitioner filed the Original Application before the Tribunal, which was disposed of by directing the respondents to consider the case sympathetically. On such consideration, the request made was once again rejected, confirming the order of transfer. The petitioner thereafter sent a resignation letter. According to him, he has sent a fax message thereafter on 03.01.2013 withdrawing his resignation. It appears that there was no record for receiving the said fax. On the contrary, it was sent on 17.01.2013. In the meanwhile, the competent authority passed an order of approval on 09.01.2013 accepting the resignation. An office memorandum was sent on 16.01.2013, which the petitioner refused to receive.

4.However, after receipt of the letter dated 17.01.2013 and notwithstanding the fact that the petitioner refused to receive the letter dated 09.01.2013, one more opportunity was given to him to join the transferred post at Ahmedabad on or before 28.01.2013. This decision was taken on 22.01.2013. On 23.01.2013, the office memorandum was sent intimating that the letter dated 22.01.2013 was received by fax. The speed post sent to the petitioner was declined to be received. Therefore, it was returned with an endorsement "refused" on 24.01.2013. On the said date, a communication was sent to the Delhi office about the refusal of the petitioner to receive the letter dated 22.01.2013. To be noted, this communication was sent both by speed post and by fax. Thereafter, the relieving order was passed on 28.01.2013.

5.All these factors have been taken note of by the Tribunal. Accordingly, it was held that on both occasions, the petitioner was at fault as against the respondents. However, notwithstanding the earlier order passed, one more opportunity was given to the petitioner to accept it since the order of transfer was not cancelled. It is settled law that the transfer is incidental to service. So long as the service rules governing prescribe for a transfer, an employee cannot refuse to join. In any case, the order was passed on the request made by the petitioner while accepting voluntary retirement. Second chance

given to him was not utilised by the petitioner, perhaps, on the sole premise that the request for reconsideration of his transfer was not considered. Therefore, it is very clear that the petitioner did not want to work at Ahmedabad. Thereafter, the Original Application was filed only challenging the proceedings dated 28.01.2013.

6.In such view of the matter, we do not find any error in the order passed by the Tribunal. Law is quite settled, refusal of a communication sent is a proper service. Thus, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Director (WM),
Department of Telecommunications,
Wireless Monitoring Headquarters,
New Delhi - 110 062.

2.The Registrar,
Department of Telecommunications,
Wireless Monitoring Organisation,
Kandanchavadi, Perungudi Post,
Chennai - 96.

+1 cc to M/s.Sunitha Kumari, Advocate Sr.No.6755

AK(CO)
CSL/05.03.2019

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