

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 8/90
T.A. No.

199

DATE OF DECISION 16.8.1990.

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| Shri Lallan Prasad | Petitioner Applicant |
| Shri Sant Lal | Advocate for the Petitioner(s) Applicant |
| Versus | |
| Chief Postmaster Genl., Delhi | Respondent |
| Circle, and Another | |
| Smt. Raj Kumari Chopra | Advocate for the Respondent(s) |

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Member)

The applicant, who is working as a Postal Assistant, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the impugned order dated 16.10.1987, whereby the respondents directed that the period of his service from the date of termination to the date of reinstatement in service be treated as dies non under Rule 62 of the P & T Manual, Vol. III for all purposes, for declaring him to be in service during the period from 19.2.1987 to 1.11.1987 for all purposes and for granting consequential benefits of full pay and allowances for the said period.

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2. The pleadings in this case are complete. We feel that the application could be disposed of at the admission stage itself.

3. The issues involved in the application are such that they require adjudication. Therefore, we admit the application. The facts of the case in brief are that the applicant was appointed as Postal Assistant in Delhi Circle during May, 1978 in the pay-scale of Rs.260-480. The Senior Postmaster, Lodhi Road Head Office, issued an order on 15/24.10.1986 declaring him unsuitable for appointment in quasi-permanent capacity in the post/grade of Rs.260-480. Soon thereafter, his services were terminated without giving him any notice on 19.2.1987 under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. He was relieved on the same day.

4. The applicant submitted a representation to the Postmaster General on 2.4.1987 which was allowed and he was directed to be reinstated in service by order dated 13.10.1987. The Senior Postmaster, Lodhi Road Head Office, ordered his reinstatement vide his Memo. dated 16.10.1987. He was, however, reinstated only on 2.11.1987. While reinstating him, the Senior Postmaster, Lodi Road H.O., also ordered vide Memo. dated 16.10.1987 that the period from the date of termination to the date of reinstatement in service, should be treated as dies non under the provisions of Rule 62 of the P & T Manual, Vol.III for all purposes.

5. The applicant submitted a representation to the Postmaster General on 3.10.1987 against the impugned order of dies non. He has not received any reply to the same.

6. The respondents have stated in their counter-affidavit that the applicant was reinstated in service only due to reasons of non-compliance with the requirement of Article 311(2) of the Constitution and further enquiry was proposed to be held. According to them, the applicant could not be treated as fully exonerated and the intervening period was decided rightly. Disciplinary action under Rule 14 of the C.C.S. (CCA) Rules, 1965, is being taken against him and enquiry proceedings are in progress.

7. We have carefully gone through the records of the case and have considered the rival contentions. In our opinion, Rule 62 of the P & T Manual is not applicable to the instant case. This Rule reads as follows:-

"62. Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in office, they refused to perform the duties assigned to them in subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as 'dies-non' i.e. they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices."

8. The aforesaid Rule deals with cases of absence of employees without permission. In the instant case, the absence of the applicant was due to the termination of his services which was set aside by the respondents themselves. In view thereof, the absence cannot be construed as deliberate or intentional on the part of the applicant.

9. There is another aspect of the matter. The Chandigarh Bench of this Tribunal has held in Ramji Dass Vs. Union of India, A.T.R. 1986 (2) C.A.T. 455,

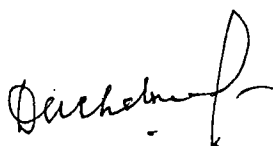
that it is incumbent upon the authorities to issue notice to the applicant before declaring the period of absence as dies non. The same view has been reiterated by the Madras Bench of this Tribunal in S.N. Ramaswamy Vs. Union of India, 1989(10) A.T.C. 80.

10. As the respondents had quashed the termination of the applicant and reinstated him, we are of the opinion that he would be entitled to full pay and allowances from the date of termination to the date of his reinstatement.


11. In the facts and circumstances of the case, we set aside and quash the impugned order dated 16.10.1987 and direct that the applicant shall be treated to be in service during the period from 19.2.1987 to 1.11.1987, and that the said period will count as duty for all purposes. The applicant would also be entitled to full pay and allowances for the said period.

12. The respondents shall comply with the above directions within a period of two months from the date of communication of this order.

The parties will bear their own costs.


(D.K. Chakravorty)
Administrative Member

16/8/89


16/8/90
(P.K. Kartha)
Vice-Chairman(Judl.)