

94-56137
RESERVED

CENTRAL ADMINISTRATIVE TRIBUNALS, ALLAHABAD BENCH,
ALLAHABAD.

(13)

Dated: Allahabad, the 12th day of April, 2001.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, VC

Hon'ble Mr. S. Dayal, A.M.

ORIGINAL APPLICATION No. 1130 OF 1997

Rajendra Prasad,
aged about 39 years,
s/o Satiram Ram,
working as Mail-Man,
Railway Mail Service 'G' Division,
Ghazipur, r/o village Gulal Sarai,
P.O. Birbalpur, Distt. Ghazipur.

. Applicants

(By Advocate Sri Swarajya Prakash)

Versus

1. Union of India, through the Secretary,
Ministry of Communication (Deptt. of Posts),
Ashok Marg, New Delhi.
2. Regional Director,
Gorakhpur Region, Gorakhpur.
3. Sr. Supdt., R.M.S. 'G' Division,
Gorakhpur.

. Respondents

(By Advocate: Km. Sadhna Srivastava)

O R D E R

(RESERVED)

(By Hon'ble Mr. S. Dayal, AM)

This application under Section 19 of the
Administrative (Tribunals) Act, 1985, has been filed

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seeking the relief of setting aside the orders of disciplinary and appellate authority retrospectively with all consequential benefits.

2. The case of the applicant is that he started his career as a casual labour in Sub Record Office of Railway Mail Service at Ghazipur in 1976. He appeared in literacy test in 1981 and was successful and appointed as Mailman in R.M.S. Ghazipur in 1981. He was served with a Memo of charges dated 26.5.92 and an enquiry under Rule 14 of C.C.S.(C.C.A.) Rules was conducted. Enquiry report was submitted on 24.2.95. The charge against the applicant was that in his application to appear at the literacy test held on 29.3.81, he had mentioned that he had worked for 259 days in 1979, while he had rendered only 168 days service, while minimum eligibility to appear at the test was 240 days. The Enquiry Officer held that a day could be eight hourly or less than eight hourly, while the disciplinary authority divided the total number of working hours in the month by eight and arrived at number of days. The applicant was given the penalty of reduction of his pay by five stages for five years without cumulative effect.

3. The arguments of Sri Swarajya Prakash for the applicant and Km. Sadhna Srivastava for the respondents have been heard. The pleadings have been taken into account. The learned counsel for the respondents had produced original file of Oral Enquiry (without daily order-sheet and the Departmental Proceedings file, which have been perused.

4. We find that the sole issue is whether the departmental enquiry established that the applicant had worked only for 168 days in 1979 or whether he had worked for 259 days as claimed by him in his application for literacy test. The relief to the applicant would solely depend on the answer to this question.

5. The charge against the applicant was that he sent his application on 17.2.81 for examination for recruitment to Group 'D' service and showed the days of work in 1979 as 259 and certified the correctness of all information contained in his application form. He was successful in getting appointment illegally on the basis of his eligibility claimed on declaration of days of work against rules. He is actually said to have worked only for 168 days.

6. It is clear from the statement of Prosecution Witness Sri Inayatullah that he had prepared the chart showing 168 working days and that he had calculated the total number of working hours and then calculated the no. of days of work by dividing the total of working hours per month by figure of eight which denoted eight hours of work per day. Thereafter, the wages have been calculated by multiplying the daily rate by the number of days of work. The statement was prepared by Sri Inayatullah in connection with an enquiry against Sri Pati Ram Ram.

7. The next prosecution witness Sri Shyam Narayan Sharma, who worked as Office Superintendent in a Circle Gorakhpur, had signed the combined duty

chart of Sri Shanker Ram, Sri Rajendra Prasad and Sri Malai Ram, which was prepared by the then Office Assistant Sri Inayatullah. According to the witness, the chart shows the amount paid to the applicant and talies with the amount shown in Payment Register. He had signed this chart on 27.2.82. He does not know why this chart was prepared but admits that this chart was based on Payment Register and the rate of payment was Rs.9/-paise 80 per day for duty of eight hours. He admitted that there was no practice of giving any duty card to casual labour at that time in 1979 [✓] now at the time of giving this statement in December, 1992, [✓] he was unable to say why payment for work of 18 days in the month of June was only Rs.117/-paise 80 ~~per day~~ for duty of eight hours, which was equal to wages for 12 days. He was unable to state whether this chart was verified from any other register besides Payment Register.

8. The third prosecution witness Sri Sharda Prasad Pandey, the then A.S.R.M. 'G' Division, stated that he had received a complaint against Sri Pati Ram Ram, Sub Record Office, Ghazipur that Sri Shanker Ram and Sri Rajendra Prasad had worked for less than 240 days but had shown more than 240 days in their application forms. Exhibit P-1- the statement of duty for the year 1979 was prepared by Sri Inayatullah at his instance as he was entrusted with the enquiry of the complaint by Senior Superintendent, Railway Mail. He admits that exhibit D-1, which is a statement, showing datewise duties of 252 days and 298 days respectively done by Sri Rajendra Prasad in 1979 and 1980 was also signed by him. He mentioned that he

signed both in his capacity as Enquiry Officer. How D-1 got changed to P-1 cannot be explained by him without seeing his enquiry report. He was unable to say whether he conducted any enquiry against Sri Rajendra Prasad. He admitted that he had verified 252 days of work in 1979 and 298 days of work in 1980 performed by the applicant by verifying it from arrangement register. The work in 1979 was reduced from 259 days to 252 days, because some of the dates were shown twice and they were encircled.

9. The fourth prosecution witness Sri Pati Ram Ram has stated on 29.3.93 that the Arrangement Register of Sub Record Office, Ghazipur recorded duties by casual labour performed against vacancies of Group 'D' and that the duties of casual labour performed at the places were not entered in this register. He has stated that days of work were shown by the applicant on the basis of information given by him. He has stated that some number of working days can be seen, if daily report and attendance register are seen. He mentioned that D-1 was prepared by him and was verified by I.R.M. Man with reference to record shown by him. He has stated that the days worked cannot be counted on the basis of wages paid because for wages per day eight hours work was considered.

10. The defence witness Sri Gulab Chandra Gupta, who had forwarded the application of the applicant in 1981 when he (Sri Gupta) was working as Inspector G-I Man had stated that at that time even one hour duty was considered as one day's duty for computation of days of work of casual labour, although there were no written instructions about it.

11. The other defence witness Sri Sonai, who was working as staff at the relevant time has also stated that one hour to 24 hours duty was considered to be day's duty for purposes of computation of days of work for the eligibility for examination.

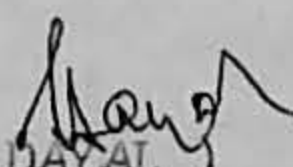
12. It is clear from the above that the findings of enquiry office are clearly perverse. This is further confirmed by the conclusion ^{drawn} ~~down~~ by the disciplinary authority, who has drawn his conclusion regarding days of work in his impugned order dated 25.7.95 as below:-


" The official in his defence has challenged the ground on which statement of duty and wages Exp.1 was prepared as the vouchers might have been sent to Audit by then. The defence appears well versed with the working procedures of a/c branch. He knows well how duty particulars in detail are noted and maintained with wages-bill and amount drawn by the SPS & the amount for the whole year was much below the wages for full days working of 240 days in the year. As such ground on which the Exp.1 could be prepared is not a mystery. In the light of this, it creates no difference was not shown or not explained by the PW Shri Inayatullah Siddiqui due to long passage of time. Few days found twice noted the investigating authority Sri S.P. Pandey deducted them and noted 252 days instead of 259 days. These are the actual number of days irrespective of considering duty hours of each day. On commutation into 8 hourly duty days, it becomes 168 days much below 240 days as confirmed by wages drawn. Thus, there is no harm if E.O. did not express his opinion of exact duty days done by S.P.S."

13. This makes it clear that no. of days of work have been reduced to 168 by dividing them by eight hours. The requirement in the circular dated 22.7.80 against which the applicant had applied was completion of 240 days of service in each of two years as on 1.7.80. The requirement is clearly fulfilled as Exhibit D-1 shows 252 days of service in 1979. If reduction to 168 days on account of days of work computed on the basis of eight hours of work each day is clearly a misinterpretation of the requirement of days of service. Similar conclusion drawn by the appellate authority in its order dated 31.7.96 is also faulty for the same reason.

14. In effect, we set aside orders dated 25.7.95 of the disciplinary authority and order dated 31.7.96 of the appellate authority. The applicant shall be granted all consequential benefits within three months from the date of receipt of a copy of this order from the applicant.

15. The applicant shall be paid cost of Rs.650/- for this application by the respondents.


(S. DAYAL)
MEMBER (A)


(R.R.K. TRIVEDI)
VICE- CHAIRMAN

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