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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.795 of 1986

Murlidhar Yadav           .....           Applicant

Versus

Union of India & Others.....           Respondents

Hon.Mr.Justice Kamleshwar Nath, V.C.

Hon.Mr. M.M. Singh, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing an order dated 11.2.86, Annexure-5 by which the applicant Murlidhar Yadav was removed from the post of EDBPM Sub Post Office Bahdura, District Ballia appurtenant to Post Office of Maniar. There is also a prayer to quash the appellate order dated 30.7.86, Annexure-7.

2.           The applicant was working as EDBPM from 30.10.76. His case is that since he became unwell he made an application for leave from 7.5.84 to 15.6.84 and after handing over charge to one Lallan Yadav at his own risk left the post office on 7.5.84. He said that on 8.5.84 one Ram Naresh Verma was appointed in place of Lallan Yadav and on 16.5.84 Jagjitan Rai mail O/S took charge from Ram Naresh Verma. It is submitted that the applicant had sent a medical leave application to Jagjitan Rai who refused to take it but ultimately on 16.6.84, respondent No.3 put him off duty instead of sanctioning leave. His grievance is that although

92

he had made application for leave no orders were ever passed thereon.

3. The disciplinary proceedings under Rule 8 of the E.D. Agents (Conduct and Service) Rules, 1964 were instituted. On 7.12.84 he was served with a chargesheet, Annexure-1 for unauthorised absence from the period from 7.5.84 to 10.11.84 resulting in violation of Rule 5 of the Rules and amounting to misconduct under Rule 17 of the Rules. One R.C. Shastri was appointed as Inquiry Officer on 4.1.85. The applicant submitted a reply. Evidence from both sides was brought on record before the Inquiry Officer who made a report, Annexure-4 dated 13.10.85 holding that the charge was not proved. The enquiry report was examined by the disciplinary authority, respondent No.3 who disagreed with the findings of the Inquiry Officer and ordered removal of the applicant by Annexure-5 dated 11.2.86. His finding is that the applicant remained unauthorisedly absent from 7.5.84 to 10.11.84. Annexure-7 is the appellate order dated 30.7.86 dismissing the appeal.

4. This Original Application was filed on 19.12.86 and the applicant's case is that on account of illness he proceeded on leave on 7.5.84 after filing a leave application upto 16.6.84 and appointed a substitute on his own risk namely Shri Lallan Yadav. He says that the failure of the authorities concerned to pass any order on the leave application was improper and illegal and therefore the order dated 16.6.84 whereby he was put off duty was also illegal. The case of the

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respondents is that the applicant did not make any application on 7.5.84 and remained absent without permission and that even the appointment of the so-called substitute Lallan Yadav was without any authority. It is admitted that Ram Naresh Verma was appointed as substitute during the absence of the applicant since 8.5.84 who was replaced by Jagjitan Rai on 16.5.84.

5. The first point urged by the learned counsel for the applicant is that the finding of the disciplinary authority rests on an erroneous interpretation of the documents adduced in the course of the enquiry. We have gone through the enquiry report, Annexure-4 dt. 13.10.85 and the findings of the disciplinary authority dated 11.2.86, Annexure-5 and we notice that disciplinary authority has given a consideration to the evidence on the record and has recorded reasons for holding that the applicant had not given any application for leave till he made an application for the entire period of absence on returning to the village on 10.11.84 and which was received in the office of the Inspector of Post Offices on 11.11.84. The sheet anchor of the applicant's case in this regard seems to be the statement of Ram Naresh Verma that the applicant had left some application on 7.5.84 which he had despatched by ordinary post to the Inspector of Post Offices but the clear finding is that no application of the application was received by the Inspector before 11.11.84. The disciplinary authority had disbelieved the statement of Ram Naresh Verma in the circumstances. It does not really stand to reason that an application made on 7.5.84 and despatched by ordinary post would have remained undisbursed for six months. As a matter of law, this Tribunal will not

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scrutinise, ~~the~~ record appreciation of, the evidence which was led before the Inquiry Officer. All that has to be seen is whether the competent authority applied his mind to the facts and circumstances of the case and has recorded a speaking order. Those conditions are satisfied in the impugned order of removal and therefore the order does not call for any interference by this Tribunal.

6. We may refer <sup>to</sup> certain provisions and instructions on the Rules. It would appear from Suamy's Compilation of Service Rules for Extra Departmental Staff, 1987 at page 18 that according to the Director General's letter No.43/15/65-Pen dated 7.6.68, authorised leave/absence is a period during which an E.D.Agent is permitted not to attend personally to the duties by providing a substitute with the approval of the appointing authority. In this case the applicant's own statement is that he had handed over charge of his post to Lallan Yadav on his own risk. In other words, Lallan Yadav had not been approved by the competent authority as a substitute for the applicant during the period of his absence. There is also a mention of the Directorate's letter No.43/48/64-Pen dated 21.4.69 mentioning that unauthorised absence/leave is a period during which an E.D.Agent himself does not perform his duties personally but entrusts them to some other person without the approval of the appointing authority. It is clear therefore that the applicant had unauthorisedly placed one Lallan Yadav Incharge of the Post Office. There is


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nothing to show that Lallan had forwarded any application of the applicant for leave. Ram Naresh Verma was appointed as substitute for the applicant on 8.5.84. It is not likely that he could have found the application of the applicant made on 7.5.84.

7. The applicant has made a grievance of the order dt. 16.6.84 by which he was put off duty. The power of the competent authority to put off duty is not disputed and indeed is contained in Rule 9(1) of the E.D.Agent Rules. It is significant that an order to put off duty is open to appeal under Rule 10. Admittedly, the applicant did not file any appeal against the order of being put off duty.

8. On a consideration of all the matters carefully we are of the opinion that there is no force in this case which therefore must fail. The petition is dismissed. Parties shall bear their costs.

M. M. Singh  
Member (A)

  
Vice Chairman

Dated the 12<sup>th</sup> Feb 1991.

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