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(5)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

....

Registration O.A. No. 1104 of 1988

Jagdish Prasad ... .. Applicant.

Versus

Assistant Superintendent Posts

Firozabad Agra and another ... .. Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.  
Hon'ble Mr. K. Obayya, Member (A)

( By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who was working as 'Extra Departmental Delivery Agent at Firozabad Head Post Office was served with a memo of charges by the disciplinary authority i.e. Assistant Superintendent of Post Offices Firozabad Agra on 30.4.1986. The charge against the applicant was that he absented from duty with and without permission for a total period of 203 days during the spell of 1 year beginning from 1.9.1984 and ending on 30.9.1985 and therefore, he has breached the provisions of rule 17 of E.D.A. (C&S) Rules, 1964. The various spells of leave taken as per memo of charges are as Under;

|                        |                 |
|------------------------|-----------------|
| 01.09.84 to 10.9.1984  | 10 days         |
| 10.10.84 to 31.10.1984 | 22 days         |
| 13.11.84 to 30.11.1984 | 18 days         |
| 14.02.85 to 31.03.1985 | 46 days.        |
| 01.05.85 to 30.6 .1985 | 61 days         |
| 15.08.85 to 30.09.1985 | 47 days.        |
| Total                  | <u>204 days</u> |

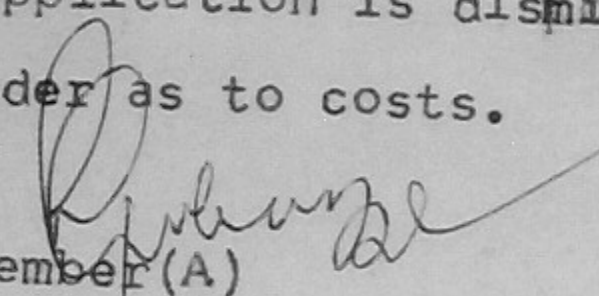
Although the applicant has not stated it, but from the reply which has been filed by the respondent, it appears that the full-fledged enquiry took place and thereafter

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the disciplinary authority came to the conclusion that the applicant was unauthorisely absent for more than 180 days and as such he breached the provisions of Rule-17 of the E.D.A (C & S) Rules, 1964, and as such, he was removed from service. The applicant has challenged the said order on the ground that the reasonable opportunity to defend his case was not given to him in as much he has demanded 9 documents to be shown before cross-examining the state witness but his request was not heeded to, and further the statement of witnesses was not correctly read and applies.

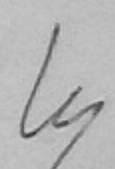
2. So far as the enquiry is concerned, we have noticed the relevancy of the documents which according to the applicant was not given to him, it was the case of simple charge of unauthorised absence. If a party desired documents which are not relevant, the disciplinary authority is within its rights to refuse such documents being wholly irrelevant. As far as leave is concerned, learned counsel contended that it came only 174 days and an action under rule 17 of E.D.A. (C & S) Rules, 1964 could have taken if the employee has unauthorisedly from duty more than 180 days. According to the respondents, the calculation given by the applicant is not correct as the calculation should have been made only in accordance with rule- 5 & 17 of E.D.A. ( C & S ) Rules, 1964, and the Director General's insturction which has been issued under rule-5. It has been pointed out by the respondents that the assertion made by the applicant that although during the last 13 months, absence the last 30 days will not be included, is not correct. The applicant remained absent from duty to 194 days i.e. the period which commenced from 1 year from 10.10.1984 to 30.9.1985. This indicates that although the period which

has been given by the respondents is not correct but at the same time, it exceeded 180 days, as such, the respondents have right to terminate the services of the applicant. As the opportunity was given to the applicant and the charge against the applicant is proved, there appears to be no good ground for interference in the same, therefore, the application deserves to be dismissed. The learned counsel for the applicant contended that as a matter of fact, there is no mala fide intention on the part of the applicant and as he was ill, he could not join, as such, his case for re-employment can be considered. It is for the applicant to approach the department and the department, <sup>and if</sup> wishes to re-employ him, it can do so. The application is dismissed with the above observations. No order as to costs.

  
Member (A)

Dated: 28.3.1992

(n.u.)

  
Vice-Chairman