

176 *A2/1* *6*
Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration (O.A.) No. 1218 of 1988

Ahmed Kamal Khan Applicant.

..... Versus

Superintendent Posts, Gonda
and another Respondents.

Hon'ble Justice A. Banerji, Chairman (J).
Hon'ble Ajay Johri, A.M.

By this application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant, who was working as a Extra-Departmental Mail Peon (EDMP) attached to Faqirpur Post Office in district Gonda, has come up with the prayer that his leave application for the period from 6.12.1983 to 2.1.1984 pending with the Sub-Divisional Inspector (Posts) (SDI(P)), Gonda may be sanctioned, although it would be beyond 180 days, on the ground that it was taken under compelling circumstances, and that he may be put back to duty and the period of break from 3.1.1984 till the date of his joining duty may be decided suitably.

2. The applicant's case is that he fell ill during the period 9.6.1983 to 2.1.1984 and that his leave was sanctioned for the period from 26.11.1983 to 6.12.1983 only and he was cautioned to join duty positively on 6.12.1983 failing which, it was said that, he would be contravening the provisions of Rule 5 of the Extra-Departmental Agents (Conduct and Service) Rules (EDA(C&S) Rules). The applicant alleges that he did not receive this letter of 3.12.1983 and continued

A2
2

(2)

on leave beyond 5.12.1983. He was later on put off duty and served with a charge-sheet and a punishment of removal was imposed on him after following due procedures. His Appeal was rejected and he was informed that since he has availed leave beyond 180 days for which he was himself to keep account, he cannot be sanctioned any further leave and he should apply to the Post Master General (PMG), U.P., who had the power to sanction leave beyond 180 days to an ED Agent. The applicant thereafter submitted an appeal to PMG but his appeal was also rejected.

3. The Hon'ble Supreme Court had vide a judgment delivered on 22.4.1977 observed that it was no more possible to remove an ED Agent on the ground of absence beyond the maximum permissible period of 180 days at a stretch without taking disciplinary action and in terms of the same Rule 8 of EDA (C&S) Rules was amended. The Department had followed proper procedure in terms of Rule 8 and the procedure is not under dispute. The applicant is seeking mercy on the ground that he had exceeded his leave because of his sickness which he alleges to be Plueral Effusion and is requesting that the extreme punishment of removal from service imposed on him may be reconsidered.

4. There is no doubt that the applicant had exceeded the period of 180 days which is the maximum period allowed to ED Agents for remaining absent on leave. The applicant has, however, not submitted any certificates from authorised medical authorities in support of his sickness except Annexure 'A-7', which is placed at page 24 of the paper book, which was issued on 14.2.1985 and which indicates that initially the applicant was suffering from Typhoid and since he did not take proper medicines

3)

-: 3 :-

(A2)
(3)

this developed into complications of Plueral Effusion.

5. We do not find that there has been any procedural lacuna in handling of the case of the applicant by the Department. But keeping in view that the applicant has served the Department for a sufficiently long time, we feel that his case does require re-consideration by PMG. Under Rule 5 in the Director General's instruction in para 4 on Delegation of Power to Director of Postal Services, a Government decision has been indicated which shows that the power to condone the period of absence beyond the maximum permissible period of leave can be exercised by the Director of Postal Services in the Circle Office. In view of the fact that provision is available for consideration of absence beyond the maximum permissible limit and if the circumstances are such that a person is not able to attend, this power can be exercised for the benefit of the employee, we feel that the request made by the applicant has some force. We, therefore, remit the case back to PMG for reconsideration of the appeal according to rules and dispose of the same within a month on receipt of this order.

6. A copy of this order may be given to Sri K.C. Sinha, learned Standing Counsel.

SPR/JR
MEMBER (A).

Ad.
CHAIRMAN (J).

Dated: November 15, 1988.

PG.