

Re served

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1185 of 1992

Allahabad this the 30 day of July 1997

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

Shri Shatrughan sone of Shri Ram Dass Jaiswal, residing at 1143/22, Old Katra, Allahabad.

Applicant

By Advocate Sri A.B.L. Srivastava

Versus

1. The Director General, Department of Tele-communication, Sanchar Bhawan, New Delhi.
2. The Senior Superintendent, Telegraph Traffic Division, Allahabad.
3. The Superintendent In-Charge, Central Telegraph Office, Allahabad.

Respondents

By Advocate Sri Prashant Mathur.

O R D E R

By Hon'ble Dr. R.K. Saxena, Judicial Member

This is an original application moved by Shatrughan under section 19 of the Administrative Tribunals Act, 1985 for seeking relief that the impugned orders dated 30/3/92 (annexure A-12) passed by the Advisor (Human Resources Development) of Department of Telecommunication, order dated 17.8.88 (annexure A-7) passed by the Senior Superintendent, Telegraph Traffic Division, Allahabad and order dated 2.6.88

(annexure A.5) passed by the Superintendent-Incharge Central Telegraph Office, Allahabad be strucked down because they were passed in violation of principle of natural justice and against the rules. Further relief claimed is that the applicant be treated on duty on the dates of alleged absence ~~and~~ which period was treated as dies-non. The increment which was stopped for one year, is also prayed to be released with retrospective effect and with all consequential benefits. Further promotion is also prayed.

2. The brief facts of the case are that the present applicant was working as Senior Section Supervisor(Operative) in the Central Telegraph Office. It is stated that on 6.6.87, the applicant was discharging duties in the Instrument Room of the Central Telegraph Office, Allahabad during 10.00-18.00 hours. He managed to proceed to Departmental Telegraph Office, Allahabad Kutchery and requested Sri Jagram Singh Yadav, Section Supervisor(Operative) to hand over the attendance register to him. It is stated that when the applicant obtained the attendance register, he put his signatures over the cross mark which were ⁸ ~~were~~ already made against the name of the applicant for his absence. It is stated that the applicant was shown as absent on 2nd, 4th, 8th, 10th and 13th of April, 1987 and

:: 3 ::

14th
9th, 16th, 17th, 20th, 21st, 22nd and 23rd of May, 1987. The columns of these dates of signature on attendance were crossed and the applicant had put his signatures over those ~~cross~~ marks. It is contended that because the applicant had violated the rules, he was served with a charge-sheet on the report of Sri Jagram Singh Yadav. The said charge-sheet was served on 27.6.87 and corrigendum thereof dated 02.7.87, was also served. The applicant requested for examination of the relevant records and thereafter submitted the explanation which not found satisfactory. Therefore, the disciplinary authority passed the order on 02.6.88 (annexure A-5) whereby the next increment of the applicant was stopped for one year and the absence on the dates 2nd, 4th, 8th, 10th and 13th 14th in April, 1987 and 9th, 16th, 19th, 20th, 21st, 22nd and 23rd in May, 1987 was treated as dies non. The order was appealed against and the said appeal was decided on 17.8.88 (annexure A-7) and was rejected. The applicant then preferred another appeal to the Director, Telecommunication but the same was not found maintainable and therefore, he was suggested by letter dated 09.11.89 (annexure A-9) to file review application. It appears that the applicant accordingly filed the review application to the Director General which was decided by the Advisor (Human Resources Development) on 30/3/92 and rejected the same. Feeling

....pg. 47

:: 4 ::

aggrieved by these orders, this O.A. has been preferred to seek the reliefs hereinbefore mentioned.

3. The respondents have contested the case. It is claimed that the applicant was marked absent by placing the cross-marks before his name on 2nd, 4th, 8th, 10th and 13th in April, 1987
14th and 9th, 16th, 17th, 20th, 21st, 22nd and 23rd in May, 1987 but the applicant after obtaining the attendance register, put his signatures over these marks and thus, he had committed misconduct which was punishable. It is, therefore, contended that the applicant was rightly charge-sheeted, he was rightly punished, and his appeal including second appeal and review were rightly rejected.

4. The applicant filed the rejoinder-affidavit reiterating the facts as mentioned in the O.A. It has been contended that the order of punishment was illegal in as much as that he had worked on those days and he was paid salary of those days.

5. We have heard the learned counsel for the applicant and the respondents and have perused the record including the attendance register for those months and the inquiry file.

:: 5 ::

6. The first question for consideration is if the charge-sheet was rightly served on the applicant. The case, as has been put up by the respondents, is that this applicant was absent on 2nd, 4th, 8th, 10th and 13th in April, 1987. Similarly it is pointed out that he was absent on 14th 09th, 16th, 19th, 20th, 21st, 22nd and 23rd in May, 1987. This fact finds corroboration from the attendance register which has been put up before us during arguments. This fact has not not been denied even by the applicant. The learned counsel for the applicant contended that the applicant was late but he had worked through out the day and he was paid salary therefor. He admits that cross marks ~~were~~ put against his name on the days mentioned hereinbefore but because he had arrived in the office, he had put his signatures and there was no other way out to put ² signatures except to sign ~~over~~ over and above the cross marks. After going through these averments of the rival parties, we find that there was no illegality in framing the charge-sheet against the applicant.

7. The next argument advanced by the learned counsel for the applicant is that because

D

the applicant had worked for while of the day when he was marked absent by placing cross ^{mark} and he had also signed on that date, the order of punishment treating those days as dies-non is incorrect and illegal. We have already discussed and held that the charge-sheet was rightly framed. The attendance register loudly speaks that the applicant had put his signatures over and above the cross marks and without obtaining any written or oral permission of the authority concerned. Once a person has been marked absent by putting the cross against his name on a particular date or dates, there can be no justification for putting his signatures over the cross marks. If the concerned authority permits, the signature can be put only on one side thereof. The concerned authority should also write in the remarks column that the permission was accorded and the employee was allowed to put his signatures. Nothing of this sort was done. It is, therefore, clear that the applicant did not follow the procedure or the norm which was expected. The mere fact that the delinquent employee is paid salary of the date on which he was marked absent, cannot altogether negate the factum of his ^{misconduct} ~~evidence~~. The payment of salary may be ^{connected} ~~acted~~ closely with the presence and absence of

an employee but to draw disciplinary proceedings and to reach a conclusion which is final, takes sometime. In the present case, not only that the order was passed by the disciplinary authority but the appeal was rejected by the appellate authority. The applicant then preferred second appeal and review which were decided and communicated to the applicant. All of them went against him. The disposal of all these petitions, appeal review had consumed sometime. The result is that the salary cannot be detained for the period till the final decision is arrived at. Thus, we are not convinced with this argument that because the salary was paid to the applicant, the order of dies-non cannot be passed.

8. In this case, the entries in the attendance register are speaking themselves. Besides, the disciplinary authority found the explanation of the applicant not convincing one. He, therefore, recorded order of punishment whereby the increment was stopped for one year and the days of absence were treated as dies-non. The stoppage of increment is a minor punishment. We do not see any illegality therein. The disciplinary authority has also treated the days of absence as dies-non. The treatment of

absence as dies-non is neither a penalty nor is prescribed anywhere as penalty. We can understand it in a better way if we go and try to find out as to what is the connotation of dies-non. This term 'dies-non' is a latin term and is the short form of DIES-DOMINICUS-NON-EST-JURIDICUS. Meaning of this phrase, according to the book 'A Selection Of Legal Maxims' by 'Herbert Broom', is that Sunday is not a day for judicial or legal proceedings. In the Black's Law Dictionary, this term is shown as abbreviation of dies non judicious, which means a day not judicial. It is defined in Legal Glossary issued by Government of India to mean a day on which general business may not lawfully be transacted. In the Concise Oxford Dictionary, this term has been defined as a day that does not count or cannot be used. Thus, by the various definitions which are given in different books, it is concluded that the term 'dies-non' indicates a day which does not count. It is in this sense that the term 'dies-non' has been used by the disciplinary authority. The factual matrix also tends to show that the applicant was marked absent on those days and if those days are treated as dies-non, the order is perfectly valid.

2

.....p9/-

:: 9 ::

9. In view of these facts and circumstances, we do not find any illegality or infirmity in the orders passed by the disciplinary authority and confirmed by the appellate or revisional authorities. Thus, we find that there is no force in the O.A. preferred by the applicant. It stands dismissed. No order as to costs.

S. Hawa J
Member (A)

D. D. D.
Member (J)

/ M. M. /