

13

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 30TH DAY OF MAY, 2001

Original Application No.478 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Radhey Shyam Tewari, Son of Ram Ujagar Tewari, Resident of village and post Semra, Via Nagar Bazar, District Basti.

... Applicant

(By Adv: Shri M.K.Upadhyा)

Versus

1. Union of India, through Secretary Ministry of Post and Telegraph, new Delhi.
2. Director Postal Services, Gorakhpur Region, gorakhpur.
3. Superintendent of Post Offices, Basti Division, Basti.

... Respondents

(By Adv: Shri S.C.Tripathi)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 the applicant has challenged the orders dated 9.1.1993 by which Disciplinary Authority passed order of removal of the applicant from service on conclusion of the Disciplinary proceedings. The orders dated 22.2.1993 has also been challenged by which appeal of the applicant was dismissed.

The facts in short giving rise to this application are that on a vacancy of E.D.B.P.M Semra in district Basti names were asked from the employment exchange in

14.

:: 2 ::

February 1989. Applicant's name was sponsored alongwith others. He was selected and appointed by order dated 25.4.1989. The applicant took the charge and continued to discharge duties. Smt. Sharda Devi one of the claimants lodged a complaint against the applicant to Post Master General Gorakhpur who ^{based} ~~made~~ order dated 22.3.1996, ^{and} terminated the applicant's appointment which ^{was} challenged in OA 336/91." The OA was allowed by order dated 1.5.1991 by the following order of termination of the applicant as EDBPM at post office Semra, district Basti is quashed and the respondents are directed to reinstate the applicant on that post within one week of the receipt of copy of this judgment. It will be open to the respondents to institute an inquiry in the matter of validity of applicant's appointment after giving him opportunity."

The inquiry contemplated in the aforesaid order was conducted on 18.12.1991. Complainant Sharda Devi was communicated that after inquiry no irregularity has been noticed in appointment of the applicant. The order is (Annexure 3 to the application). The applicant joined the post on 11.5.1991 and resumed the duties.

By order dated 12.2.1992, however, applicant was served a memo of charge alleging that he went on leave between the period 27.3.1991 to 10.4.1991 without obtaining prior permission. The leave applied by the applicant was on the medical ground.

The second charge was that applicant handed over the charge to one Kapil Dev Tewari as Substitute. It is stated in the order that Sri Kapil Dev Tewari was involved in a case of embezzlement in a saving bank account no.6882582. On the aforesaid two charges the Inquiry officer submitted his report and the Disciplinary Authority by order dated 9.1.1993 passed order of removal from service against the applicant, as punishment. The order was confirmed in appeal on 22.2.1993. Aggrieved by the said orders the applicant has approached this Tribunal by filing this OA.

The learned counsel for the applicant has submitted that it is not denied that applicant had submitted an application together with the medical certificate requesting for leave and then proceeded on leave. Learned counsel has submitted that the circumstances did not permit him to continue on the leave post. Learned counsel has submitted that so far as order dated 22.3.1991 was concerned, its service on the applicant became wholly irrelevant as the order was quashed by this Tribunal in OA No.336/91. Learned counsel has further submitted that under Rule 5 of EDA(Conduct & Service) Rules,1964(hereinafter referred to as Rule) applicant had a discretion to select the substitute while proceeding on leave. No prior permission was required. However the department could raise objection and asked the applicant to change the substitute. At no point of time applicant was required to change the substitute. It is submitted that the charges against the applicant were baseless and the punishment awarded is wholly illegal, arbitrary and excessive.

Learned counsel for the respondents on the other hand submitted that the charges against the applicant

has been fully proved and the impugned orders do not suffer from any error of law.

We have carefully considered the submissions made by the learned counsel for the parties. Before entering into the ~~charges~~ ^{merits}, it would be appropriate to reproduce the Director General's Instructions while giving clarification with regard to the application of Rule 5 of the aforesaid Rules. Clarification no.3 reads as sunder:-

3. APPROVAL OF THE SUBSTITUTES IN PLACE OF ED AGENTS PROCEEDING ON LEAVE.

At present, it appears that the choice of the substitute is left to the ED Agent himself.

In most cases, this arrangement appears to have worked satisfactorily. There are, however, a few cases, where the substitutes appointed, later claim regular appointment as ED Agents and are not prepared to quit when required.

It is provided in the latest instructions that the substitutes should be approved by the appointing authorities. It is not the intention that there should be any elaborate procedure to be followed for according such approval. In cases where leave is not got sanctioned in advance, we may not even insist upon prior approval of the substitute but the department should not be precluded from making such inquiries into the antecedents of the substitutes as considered necessary and to ask an ED Agent to provide another substitute if it is found that the one actually

proposed by the ED Agent is not acceptable."

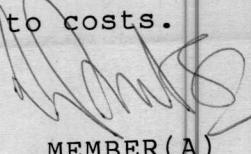
From the aforesaid clarification given by Director General it is amply clear that an ED Agent in compelling circumstances may proceed on leave even without prior sanction. It is also clear that in such situation he may appoint a substitute without prior permission of the department but appointment of such substitute shall be subject to inquiry made by the department and department could insist for change of the substitute. In the present case the only charge against the applicant was that he proceeded on leave without prior permission, though it is not denied that he had proceeded on medical leave and application together with the medical certificate was submitted by him. In our opinion, the punishment of removal for such a charge in the facts and circumstances of the case is wholly unjustified.

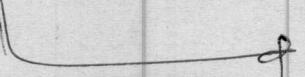
It is also not disputed that before levelling a charge against the applicant Sri Kapil Dev Tewari substitute, he was not asked to change him and provide another substitute. in our opinion, in view of the clarification given by the Director General the applicant could not be held guilty of any misconduct as he never refused to change the substitute. Thus, both the charges mentioned above were frivolous and baseless. It has also been alleged in the memo of charge that applicant refused to accept the order dated 22.3.1991 by which his services were terminated. This order was challenged by the applicant by filing OA No.336/91 which was allowed and the order was quashed. In the circumstances, the alleged refusal of acceptance became meaningless and in any case could not be termed a misconduct for awarding a major penalty of removal.

18
:: 6 ::

In our opinion for the charges framed the impugned orders are wholly illegal, arbitrary and unjustified.

For the reasons stated above this OA is allowed. The impugned order dated 9.1.1993 passed by respondent no.3 and order dated 22.2.1993 passed by respondent no.2 are quashed. The applicant shall be reinstated on the post within a period of one month from the date a copy of this order is filed. The applicant shall be entitled for all consequential benefits including the continuity of service except the backwages. There will be no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: 30.5.2001

Uv/