

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 1453 of 1999

this the 13th day of September 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. S.C. CHAUBE, MEMBER (A)

Heera Lal Dhar Dubey, S/o Sri C.D. Dubey, Cash Overseer,
Head post Office Gorakhpur, R/o Village & Post Bargon via
Shivpuri New Colony, Gorakhpur.

Applicant.

By Advocate : Sri M.K. Upadhyay

versus.

1. Union of India through the Secretary, Ministry of
Communication, Department of posts, New Delhi.
2. The postmaster General, Gorakhpur Region, Gorakhpur.
3. Director of Postal Services, Gorakhpur Region,
Gorakhpur.
4. Sr. Superintendent of post offices, Gorakhpur Division,
Gorakhpur.
5. Abdul Wahid Beg, S/o Mirza Mohd. Sayeg Beg, Assistant
Director of postal Services, R/o Mohalla Chote Kazipur,
Shahar Gorakhpur.
6. Sr. postmaster Gorakhpur, Head office, Gorakhpur.

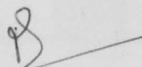
Respondents

By Advocate : Km. S. Srivastava.

ORDER

MRS MEERA CHHIBBER, MEMBER (J)

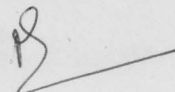
By this O.A., applicant has sought quashing of the
order dated 10.10.1997 (page 12) whereby 6.10.1997 was
declared as 'Dies Non' by the Sr. postmaster, Gorakhpur,
on the ground that even though Sri Heera Lal Dhar Dubey,



Sorting postman, Gorakhpur was relieved and directed in the morning of 6.10.1997 to participate in the enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965, pursuant to Enquiry Officer's memorandum dated 26.9.1997, yet the said official defied the orders and wilfully did not attend the enquiry. He has further sought quashing of the order dated 30.11.1998 whereby his appeal was rejected by the SSPOs.

2. It is submitted by the applicant that he was Divisional Secretary of National Union of Postman Class IVth Union Sorakhpur Division in the year 1995-96, therefore, he had given number of representations to the P.M.G., Gorakhpur, through SSPOs against Sri A.W. Beg for several irregularities committed by him, as a result of which the SSPOs, Gorakhpur, ^{was B} annoyed with the applicant. He was chargesheeted on 17.5.1996 ^{due to} ~~on the ground of~~ malice. More-over, ~~the~~ applicant was also witness against the said Sri W.A. Beg in a criminal case, therefore, he was prejudiced against the applicant. It was as a result of this annoyance with the applicant, he has been given dies non for 6.10.1997 by the said A.W. Beg, SSPO² Gorakhpur on 10.10.1997 when the applicant had already submitted his medical certificate on 6.10.1997 itself. It is submitted by the applicant's counsel that dies non cannot be given without giving any show-cause notice to the person concerned. In support of his contention, he has relied upon the decision reported in 1992 (19) ATC 595 and also the decision reported in 1989 (10) ATC 80. He has, thus, prayed that both these orders be quashed and set-aside.

3. The respondents, on the other hand, have submitted that the enquiry officer had issued show-cause notice dated 26.9.1997 fixing the date of enquiry as 6.10.1997 against the applicant. To fore stall the enquiry against



him, applicant manufactured illness on 6.10.1997 and submitted a medical certificate in the office of the respondent no.4 at 15.00 hours himself. He attended the office on 6.10.1997 at 7.00 hours, but he sneaked away from the office without signing the order book and gave his medical certificate at 15.00 hours, therefore, he has rightly been ^{declared B} dies non on 6.10.1997. The appellate authority considered his appeal and passed the orders in accordance with law, therefore, they have submitted that this case calls for no interference. Counsel for the respondents submitted that under rules, there is no provision for issuing any show-cause notice, therefore, it was not at all necessary. She has, thus, prayed that O.A. may be dismissed.

4. We have heard both the counsel and perused the pleadings as well as judgments referred to by the learned counsel for the applicant.

5. It goes without saying that by declaring dies non, applicant loses salary for the day even if it is not counted ~~as~~ break in service as submitted by the respondents, meaning thereby that ^{this} order does have a civil consequences. It has already been held by the Hon'ble Supreme Court that any order which ~~as~~ civil consequences flowing there-from against the person concerned, the said order cannot be passed without affording an opportunity to the person concerned. The same view has been expressed by the Tribunal in the judgments referred to above by the counsel for the applicant. In both these cases, it has been held as follows :

"Dies non is not a statutory punishment and the elaborate procedure laid down in the CCS (CCA) Rules is not required to be followed. However, the basic principles of natural justice require that before deciding how to treat the absence of one hour, a notice should have been given to the applicant, his explanation obtained and a decision should have been taken only after due consideration of his representation.

Similarly, in the case of S.N. Ramaswamy & Others Vs. K. Thangavelu & Others reported in 1989 (10) ATC 80, the

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impugned orders were quashed on the ground that dies-non was issued without following the principles of natural justice.

6. We respectfully agree with the decisions taken by the Tribunal in the cases referred to above and feel that before deciding the period as dies non, applicant should have been given a show-cause notice calling upon him ^{to} explain the position in this case. Since, admittedly, no show-cause notice has been given to the applicant, orders passed by the respondents suffer ~~ed~~ from violation of the principle of natural justice. Even otherwise, in this case, it is seen that admittedly, applicant had given his medical certificate on 6.10.1997 itself, therefore, the ^{authorities} could not have ~~been~~ ignored the said certificate all together, unless on enquiry it ~~was~~ found to be a fake and manufactured certificate. Once, the medical certificate is submitted by the individual, the authenticity of the said document/certificate cannot be doubted ^{unless writer of the certificate refuses to} ~~have~~ issued the said certificate or is not competent to issue the said certificate.

7. In these circumstances, orders passed by respondents cannot be sustained in law. Accordingly, both these orders are quashed and set-aside. However, liberty is given to the respondents to give a show-cause notice to applicant in case they still feel that the period should be decided as dies non and pass a reasoned and speaking order only after considering the representation given by the applicant. O.A. stands disposed off with no order as to costs.

MEMBER (A)

MEMBER (J)

GIRISH/-