

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

O.A./T.A./CCA No. 1602/03

Date of decision 25/5/86

H.W. Dewi Applicant(s)

Sri T.C. Pandey Counsel for the applicant(s)

Versus.

U.O.I and Ors. Respondents(S)

Sri S. Singh counsel for the respondent(s)

CORAM

Hon'ble Mr. K.B.S. Rajan V.C./Member(J)

Hon'ble Mr. A.K. Singh Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?


SIGNATURE

Manish/-

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No. 1602 of 2003.

Allahabad, this the 25th day of May, 2006.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Smt. Hirawati Devi w/o late Bali Ram Singh resident
of Village and Post Bhawanipur, Chunar District
Mirzapur.

...Applicant.

(By Advocate :Sri I.C Pandey)

Versus

1. Union of India, through Secretary Ministry
of Communication, Post and Telegraph, New
Delhi.
2. The Superintendent of Post Offices, Mirzapur
Division Mirzapur.
3. The Inspector of Post Offices, Chunar
District Mirzapur.

...Respondents.

(By Advocate :Shri S. Singh/Sri S. Srivastava)

O R D E R

By Hon'ble Mr. K.B.S. Rajan, Member (J)

The brief facts as contained in the OA are as under:-

- (i) The applicant was working as Extra
Departmental Delivery Agent (E.D.D.A) posted
as Bhawanipur Post Office since 19.1.1970.
- (ii) In April 1999, the applicant suffered from
Paralysis and through proper channel, he
sent application to the Inspector Post Offices,
Chunar Mirzapur for leave on Medical ground

GN

and also sent the same of his nephew namely Muralidhar Singh for approval so that he may work on his behalf till regular appointment is made.

- (iii) However the Inspector Post Offices, Chunar did not engage Muralidhar Singh and recruited some other persons of his choice.
- (iv) The Inspector Post Offices, Chunar Mirzapur vide his order dated 24.5.1999 sanctioned the leave of the applicant for 90 days from 24.2.99 without pay though the applicant has submitted application for leave from 28.4.1999.
- (v) Further the leave (from 25.5.1999 to 22.8.1999) of the applicant was duly sanctioned by the Superintendent of Post Offices, Mirzapur vide his order dated 16.8.99, who had also directed that Murlidhar Singh would work on his place on his responsibility.
- (vi) However the Inspector of Post Offices did not allow to instituted Sri Murlidhar Singh to work on the place of applicant. The petitioner moved an application dated 19.6.2001 to Post Master General for his redressal grievances.
- (vii) The respondents did not consider the request of the applicant for allowing the substitute to work and on very incorrect fact started



disciplinary proceedings against the applicant issuing a chargesheet dated 21.8.2000.

(viii) As the applicant is not in position to move a request was made on behalf of the applicant through his representative to adjourn the proceeding. However, the Enquiry Officer vide his order dated 01.02.2001 directed the applicant to appear in the next date fixed otherwise the enquiry would be completed ex-parte.

(ix) Aggrieved against the disciplinary proceedings, the applicant had filed an original application NO. 1981 of 2001 which was finally decided vide order dated 22.11.2001.

(x) The Hon'ble Court directed the applicant to prefer his representation before the Superintendent of Post Offices. The applicant preferred his representation.

(xi) However, the Enquiry Officer completed an enquiry in gross violation of principle of natural justice and submitted the enquiry report on 17.6.2001 ex parte.

(xii) On the basis of the said Enquiry Report the respondent vide his order dated 4.7.2002 removed the applicant from ~~service~~.

(xiii) Against the said order the applicant preferred an appeal to the opposite party No.2 vide

which was dismissed by order dated
 appeal dated 16.8.2002, Orders dated 16.12.02
 4.7.2002 as well as the order dated
 16.12.2002 are ex-facie bad in law and facts
 besides arbitrary.

2. The applicant has prayed for the following relief (s):

- (i) That this Hon'ble Tribunal may graciously be pleased to quash/set aside the impugned orders dated 4.7.2002 and the order dated 16.12.2002 passed by the respondent NO.3 and 2 respectively (Annexures 1 and 2 to the original application with the compilation NO.1).
- (ii) That to issue a suitable ad-interim mandamus to the opposite parties to re-instate the applicant in service with all consequential benefit in the interest of justice.

3. Respondents have filed their counter. Certain dates and facts as given in the counter would suffice to show that the Department has acted thoroughly wrongly in penalizing the husband of the applicant. The same are as under:-

- (i) उक्त श्री बलिराम सिंह ने अनाधिकृत रूप से अपनी जगह श्री मुरलीधर नामक व्यक्ति को कार्यभार सौंप दिया था। उप मण्डलीय निरीक्षक (डाक) चुनार मिर्जापर द्वारा पुछताछ करने पर पता चला कि श्री बलिराम सिंह गत कई महीनों से उक्त श्री मुरलीधर से

अपनी जगह पर अनधिकृत रूप से कार्य करा रहे थे। यहाँ यह भी उल्लेखनीय है कि श्री मुरलीधर डाकघर के अभिलेखों पर श्री बलिराम सिंह का फर्जी हस्ताक्षर करते थे, और यहाँ तक कि प्रधान डाकघर से आये वेतन चिट्ठों पर श्री बलिराम सिंह का फर्जी हस्ताक्षर करके वेतन भी ले रहे थे।

(ii) उप मण्डलीय निरीक्षक (डाक) चुनार मिर्जापुर द्वारा उपरोक्त व्यवस्था को समाप्त कर दिया गया क्योंकि श्री बलिराम सिंह बिमारी के कारण कार्य करने में असमर्थ थे। फलतः शाखा डाकघर में कार्यरत इ० डी० रनर श्री मिश्री प्रसाद सिंह को दिनांक 29.4.99 से इ० डी० डी० ए० के पद पर कार्य करने का आदेश दिया गया और श्री मिश्री प्रसाद सिंह को अपनी जिम्मेदारी पर किसी को उ० डी० रनर के पद पर लगाने की अनुमति दी गयी।

(iii) पूनः उक्त श्री बलीराम सिंह द्वारा 28.4.99 से 18.5.99 तक चिकित्सा प्रमाण पत्र के आधार पर अवकाश स्वीकृत करने का अनुरोध किया गया था जो सक्षम अधिकारी अर्थात् उप मण्डीय निरीक्षक (डाक) चुनार को दिनांक 23.8.99 को प्राप्त हुआ, उक्त श्री बलिराम सिंह द्वारा चिकित्सा प्रमाण के आधार पर आवेदन किये गये अवकाश का विवरण निम्न है।

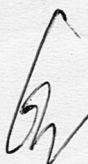
मांगे गये अवकाश की अवधि	आवेदन पत्र प्राप्ति की तिथि
-------------------------	-----------------------------

28.4.99 से 10.5.99

23.8.99

11.5.99 से 10.6.99

24.8.99



11.6.99 से 6.7.99	27.8.99
7.7.99 से 22.11.99	13.9.99
23.11.99 से 22.5.2000	23.12.99
23.5.2000 से 23.6.00	1.6.00
24.6.00 से 23.7.00	30.6.00
24.7.00 से 23.8.00	28.7.00

(iv) चूँकि उक्त श्री बलिराम सिंह दिनांक 28.4.99 के पहले से ही अनाधिकृत रूप से अनुपस्थित चल रहे थे और जैसा ही पता चला गया था कि वे दिनांक 24.2.99 से ही अनुपस्थित थे, अतएव उनके अनुरोध पर दिनांक 24.2.99 से दिनांक 24.5.99 तक 90 दिन का अवकाश उप मण्डलीय निरीक्षक (डाक) चुनार मिर्जापुर द्वारा स्वीकृत कर दिया गया तत्पश्चात दिनांक 25.5.99 से दिनांक 22.8.99 तक 90 दिन का अवकाश तत्कालीन अधीक्षक डाकघर मिर्जापुर द्वारा दिनांक 16.8.99 को स्वीकृत किया गया। इस प्रकार एक ई0 डी0 कर्मचारी को अधिकतम स्वीकृत किये जाने वाले अवैतनिक अवकाश के 100 दिनों की अवधि दिनांक 22.8.99 को समाप्त हो गयी और कर्मचारी उसके बाद भी अपनी अनुपस्थिति बनाये निदेशक डाक सेवा इलाहाबाद द्वारा स्वीकृत किया जाता है उक्त श्री बलिराम सिंह नें इसके लिए आवेदन नहीं किया।

(v)

इस प्रकार दिनांक 24.2.99 से लगातार अधिकत सीमा से अधिक दिन तक अनुपस्थित रहने के कारण श्री बलीराम सिंह के विरुद्ध

दिनांक 21.8.2000 से विभागीय कार्यवाही प्रारम्भ की गयी और उन्हें बचाव हेतु सभी अवसर प्रदत्त कराते हुए उपमण्डलीय निरीक्षक (डाक) चुनार मिर्जापुर द्वारा दिनांक 4.7.02 को सेवा से निष्कासित करने का दण्ड दे दिया गया, अपने सेवा से निष्कासन के विरुद्ध उक्त श्री बलीराम सिंह ने अधीक्षक डाकघर मिर्जापुर को अपील भी किया था जिसे तत्कालीन अधी० डाकघर मिर्जापुर द्वारा दिनांक 16.12.2002 को निरस्त कर दिया गया।

- (vi) यह कि मुल आवेदन के पैरा 4(6) स्वीकार नहीं है, क्योंकि वादी मेडिकल प्रमाण पत्र विलम्ब से प्रस्तुत किया था।
- (vii) वादी को नियमानुसार एक सौ अस्सी दिन से अधिक छुट्टी नहीं स्वीकृत की जा सकती थी, जिसे 22.8.99 तक के लिये स्वीकृत कर दिया गया था, और इससे आगे की छुट्टी स्वीकृत कराने हेतु वादी को राय दिया गया था, कि वह इसे निदेशक डाक सेवा इलाहाबाद की सेवा में प्रेसित करें।
- (viii) यह कि मुल आवेदन के पैरा 4 (9) स्वीकार नहीं है, वादी के विरुद्ध कार्यवाही नियमानुसार की गई थी।

4. Now the charges leveled against the applicant's husband vide the Disciplinary authority's order of removal dated 04-07-2002 are extracted below:

अनुच्छेद 1:

यह कि उक्त श्री बलीराम सिंह ई०डी० एम० सी० भवानीपुर ने दिनांक 27.4.99 से अब तक लगातार अपनी ड्यूटी से अनुपस्थित रहकर

डाकतार अति०वि०एजेन्ट्स (आचरण एवम् सेवा) नियमावली 1964 के नियम 5 का उल्लंघन किया है।

अनुच्छेद 2

श्री बलिराम सिंह ई०डी० एम० सी० भवानीपुर दिनांक 27.4.99 को अपनी ड्यूटी पर उपस्थित नहीं हुए। उन्होंने न तो शाखा डाकपाल भवानीपुर को कोई प्रार्थना पत्र दिया और न ही अपने पद का कार्य सम्पादन हेतु कोई एवजी दिया। इस प्रकार वे दिनांक 27.4.99 से 10.5.99 तक अनाधिकृत रूप से ड्यूटी से अनुपस्थित रहे और इस अवधि का चिकित्सा प्रमाण पत्र दिनांक 19.8.99 को आवेदन पत्र के साथ भेजा। दिनांक 11.5.99 से 10.6.99 का चिकित्सा प्रमाण पत्र भी उन्होंने इसी प्रकार काफी देर से दिनांक 10.6.99 को प्राप्त कर आर० एल० न० 4652 दिनांक 2.8.99 द्वारा मं० का० सीधे भेजा। इसी प्रकार 11.6.99 से दिनांक 6.7.99 को चिकित्सा प्रमाण पत्र भी उन्होंने काफी देर से रजि० सं० 9402 दिनांक 24.8.99 द्वारा भेजा। इस प्रकार श्री बलिराम सिंह हके नियमानुसार अवकाश स्वीकृत न कराकर तथा अनधिकृत रूप से अनुपस्थित होकर अति०विभा० एजेन्ट (आचरण एवं सेवा) नियमावली 1964 के नियम 5 का उसके नीचे ए जी एस इन्स्ट्रक्शंस सं० 2 का भी उल्लंघन किया है।

अनुच्छेद 3

श्री बलिराम सिंह ने इस प्रकार समय पर अपनी अनुपस्थिति का आवेदन पत्र व चिकित्सा प्रमाण पत्र न देकर तथा अपना एवजी भी न देकर कर्तव्य के प्रति पूर्ण निष्ठा का निर्वाह न करके अति० विभा० एजेन्ट (आचरण एवं सेवा) नियमावली 1964 के नियम 17 का भी उल्लंघन किया है।

5. According to the respondents vide the charge sheet, the absence of the applicant was from April, 1999, whereas vide para 'Dha', the Inspector of Post Offices (even without an application) granted leave from 24-02-1999! Again, vide para ibid, the Superintendent of Post of had duly sanctioned leave from 22-05-1999 to 22-08-1999 by order dated 16-08-1999 and in the very same order, annexed as Annexure 3, Shri Murlidhar Singh had been permitted to perform the duties of EDDA as a substitute under the responsibility of the applicant's husband,

whereas the charges leveled against the applicant contains that the applicant was on unauthorized absence even for this period!.

6. Thus, leave upto 22-08-1999 had been duly sanctioned. The balance leave, for which though according to the respondents leave application had been received later, vide para 'Da' of the Counter, was neither sanctioned nor refused by the authorities.

7. The charge sheet was issued in August, 2000 to which the applicant's husband through his reply denied. It was thereafter that the inquiry officer was appointed and as the applicant was immobile due to paralytic attack, he pressed for time but the same was stated to have been not allowed by the Inquiry Authority, which has furnished its report, on the basis of which the applicant was removed from the service. The disciplinary authority has, thus taken into account the period of unauthorized absence. This is illegal.

8. Again, it has been fully admitted that the applicant's husband was not able to attend the office due to his critical illness. Yet the penalty order of removal has been passed. Of course, the reason given for imposition of penalty is that the applicant's husband had been absent for a very long period in excess of the permissible period, as contained in rule 5 of the GDS Rules.

9. The inconsistency thus could be summarized as under:-

- a) Whereas the absence was from April, 1999, the Inspector had taken the same as from February, 1999.
- b) Whereas the period of absence up to 22-08-1999 had been duly sanctioned, the charges levelled against the applicant's husband included that the applicant had been unauthorized absentee from April, 1999.
- c) Though the fact of illness of the applicant's husband had been admitted by the Disciplinary authority, his decision is based on the premises that the unauthorized absence is right from April, 1999, which is illegal. On this ground itself, the disciplinary authority's order and consequently the order of the appellate authority are liable to be set aside.

Now, when the disciplinary authority admits the physical condition of the applicant's husband, whether the authority was right in imposing the penalty? Unauthorised absence is one thing; willful unauthorized absence is another. For the later the absentee is to be blamed, while for the former, there could be plausible reason for absence, as in the present case. In fact, upto August, 1999, it cannot be said that the applicant's husband was on unauthorized absence, as leave had been duly sanctioned. For the rest, his physical condition was the reason and the same had been ~~appreciated~~ by the Disciplinary authority. However, the question that remains to be answered

is what about the absence beyond the normal permissible period.

10. Here exactly comes the discretionary power of the authority and the expectation of the authority to invoke the same judiciously. In this regard, a reference to the decision of the apex Court in the case of **Clariant International Ltd. v. Securities & Exchange Board of India, (2004) 8 SCC 524** is appropriate, wherein the Court has held as under:-

27. In *Kruger v. Commonwealth of Australia* (1997) 146 Aus LR 126 it is stated:

"Moreover, when a discretionary power is statutorily conferred on a repository, the power must be exercised reasonably, for the legislature is taken to intend that the discretion be so exercised. Reasonableness can be determined only by reference to the community standards at the time of the exercise of the discretion and that must be taken to be the legislative intention...."

28. The discretionary jurisdiction has to be exercised keeping in view the purpose for which it is conferred, the object sought to be achieved and the reasons for granting such wide discretion. (See *Narendra Singh v. Chhotey Singh* (1983) 4 SCC 131.)

11. Provision exists for extension of leave vide order dated 25th November 1993 appended to Rule 5 of the GDS Rules which is reproduced below:-

"(5) Divisional Heads may sanction leave in excess of 180 days in certain cases- The instructions in force at present, no ED Agent can be permitted leave of absence for more than 90 days at a stretch. In exceptional circumstances, leave of absence can be extended up to 180 days by the Divisional Superintendents. According to the existing instructions, leave of absence in excess of 180 days can be granted by the Director of Postal Services only in cases where the necessity for leave arises due to an ED Agent officiating in a Departmental Post. The Heads of Circles can sanction leave to the ED Agents in excess of 180 days on account of genuine illness.

2. References have been received from certain quarters stating that past experience shows that in most of the

cases, the ED Agents avail of leave without allowance in excess of 180 days only to officiate in the leave vacancies of Group 'D'/Postman cadres due to the ban on employment of outsiders. Since at present powers to grant Leave without Allowance in excess of 180 days in such cases are exercised by the Director of Postal Services, this results in considerable delay. Since no discretion is now exercised by the Director of Postal Services in sanctioning Leave Without Allowance exceeding 180 days in such cases, suggestion has been made that the powers which are now exercised by the Director of Postal Services may be delegated to the Divisional Heads which will quicken the pace of issue of sanction, settlement of gratuity cases etc.

3. The above suggestion has been examined in this office carefully. Having regard to all relevant factors including pressing demands from the service unions for expeditious settlement of ex gratia cases, etc. it has been decided that power of sanction of Leave Without Allowance in excess of 180 days taken to officiate in the leave vacancy of Group 'D'/Postman cadres by the ED Agents, will now be exercised by the Divisional Heads instead of the Director of Postal Services as at present. However, the power to condone the absence in excess of 180 days on genuine illness grounds will continue to be exercised by the same authority as hitherto before. While exercising the powers now delegated to the Divisional Heads, they will ensure that such officiating arrangements of ED Agents in Group 'D'/Postman cadres for periods exceeding 180 days are allowed to continue in exceptional circumstances only and not as a matter of rule. This is essential as during such long uninterrupted officiating arrangements, the regular incumbents of the posts of ED Agents are required to provide their substitutes and if such arrangement is allowed to continue for periods exceeding 180 days as a matter of rule, this will legitimize the claims of all the ED substitutes for regularization of their services as ED Agents thereby creating lot of administrative problems. It has to be ensured that the powers now delegated are exercised judiciously with full sense of responsibility.
4. These orders will come into force from the date of issue.
5. The contents of this letter may kindly be brought to the notice of all concerned for compliance/guidance".

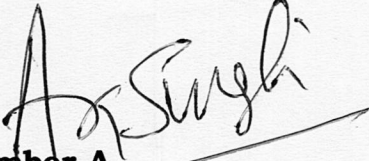
12. In view of the above, it is appropriate that the authorities invoke the above rule and consider regularization of the period of absence and on the basis of the decision so arrived at also consider grant of terminal benefits due to the applicant. Consequently, the impugned orders dated 04-07-1992 and 16-12-2002 are quashed and set aside. Respondents are directed to consider invoking the provisions of Rule 5 of the GDS Rules,

Gh

in the light and findings as contained above and pass suitable orders in regard to finalization of the disciplinary case and the consequences thereof.

13. This be performed within a period of four months from the date of communication of this order.

No cost.


Member-A


Member-J

Manish