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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 615 OF 1992.

Cuttack, this the 21st day of May, 1999.

Jagdal Bag. Applicant.

- Versus -

Union of India & Others. ... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH S.
(SOMNATH S.)
VICE-CHAIRMAN
21.5.99

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Central Administrative Tribunal
Cuttack Bench: Cuttack.

Original Application No. 615 of 1992.

Cuttack, this the 21st day of May, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

....

Jagdal Bag, aged about 52 years,
Son of Gobardhan Bag, Resident of
Chopria, PO/PS. Borda, Dist. Kalahandi. Applicant.

By legal Practitioner: Mr. A. C. Das, Advocate.

-Versus-

1. Union of India represented by
Secretary to Government of
India, Department of Posts,
Dak Bhawan, New Delhi.
2. Superintendent of Post Offices,
Kalahandi Division, Bhawanipatna.
3. Sub-Divisional Inspector (Postal),
Kalahandi Sub Division, Bhawanipatna. ... Respondents.

By legal Practitioner: Mr. B. Dash, Additional Standing Counsel
(Central).

— O R D E R —

MR. SOMNATH SOM, VICE-CHAIRMAN.

In this Original Application u/s.19 of the
Administrative Tribunals Act, 1985, applicant has prayed
for a direction to the Respondents for payment of his
wages during the put off duty period. The second prayer is
for quashing the order of removal from service passed by
the Sub-Divisional Inspector (Postal), Kalahandi, Respondent
No. 3, with all consequential financial and service benefits.

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2. Facts of the case, according to the Applicant, are that he has been working as Extra Departmental Mail Carrier, Mahaling Branch Post Office in the District of Kalahandi from 22-8-1972. While working as such, he was served with a Memo dated 28-12-1989 by the Respondent No. 3 and was put off duty w.e.f. 28.12.1989. Superintendent of Post Offices, Kalahandi, Respondent No. 2 approved the order of puttoff duty on the same day but it was communicated to the applicant only on 16-2-1990. Applicant represented on 11-1-1990 to Respondent No. 2 to re-instate him in service. Chargesheet was issued on 16-4-1990 and Inquiring Officer was appointed on 22-5-1990. Subsequently, the Inquiring Officer was changed and fresh Inquiring Officer was appointed on 29.1.1991 who completed the enquiry on 03.1.1992 and submitted a report on 30-1-1992. Applicant has stated that according to the instruction of DG of Posts, proceedings against an ED Agent, should be finalised within 45 days but in this case, inspite of such instructions of DG of Posts, order of removal from service of the applicant, has been passed by Respondent No. 3 after delay of 709 days. Applicant preferred an appeal against the order of removal which is at Annexure-3. But the same was rejected in order dated 24-7-92 by Respondent No. 2 at Annexure-4. Applicant has stated that the findings of the Inquiring Officer that the applicant remained absent from duty without submitting the leave application is perverse, mala fide and not tenable in law. He has also stated that he always provided substitutes during the period of his absence as provided under the EDA (Conduct and Service) Rules, 1964. The Departmental Authorities accepted the substitutes and utilised their services and there was

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no dis-location in the work of the applicant. It is further stated that having accepting the substitutes, it is not open for the Department to take the stand later that they do not have the knowledge about the applicant going on leave. It is also submitted that the applicant informed the Branch Post Master, whenever he went on leave. On the above grounds, applicant has come up with the aforesaid prayers.

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3. Respondents, in their counter affidavit have stated that the duty of the applicant was to carry and convey the mail in the area under his jurisdiction. Charge against the applicant was that as Mailscarrier, he remained absent unauthorisedly and entrusted his work to an outsider without any authority on a number of days between 7.8.1989 to 27-12-1989 in different spells. Applicant was required to apply for leave, obtain permission for availing leave and then to give a substitute but applicant remained absent according to his sweet will. Because of this, he was put off duty on 28.12.1989 and was proceeded under Rule-8 of EDA (Conduct & Service) Rules, 1964. It is further alleged by the Respondents that the applicant sent unauthorised persons for conveying Mails without any intimation to the Postal Department and when he was questioned, he did not hesitate to quarrel with and threatened them. After getting such allegations, Respondent No.3 visited the Branch Post Office on 27.09.89 and found the applicant absent but a lenient view was taken and the applicant was cautioned. Again, when Respondent No.3 visited the Branch Post Office on 27-12-1989 applicant was also found absent. Besides, he failed to attend the duty on various other dates and that is how, he was put off

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duty immediately. It is further stated that the representation received from applicant regarding his reinstatement was not considered as action had already been taken to proceed against the applicant under Rule-8 of the EDA(Conduct & Service) Rules, 1964. It is further stated that during the enquiry, applicant perused the enlisted documents and was also allowed ~~five days~~ ^{five days} time on 23.3.1991 to give a list of additional documents to be relied on by him. But reply from applicant regarding additional documents was received only on 1.5.1991. It is stated by the Respondents that the enquiry has been conducted despatch. with all reasonable ~~xxxxxx~~ Report of the enquiry Officer has also been supplied to the applicant directing him to show cause. Ultimately, final order was passed on 9.3.1992. It is further stated that in course of the enquiry, applicant was duly supplied with all necessary documents and was heard in person. He was also allowed to be assisted by a Government servant and was also given opportunity to submit defence witnesses and statement. He was also allowed adjournment when asked for by him. Respondents have made further averments with regard to rules regarding sanction of leave to the ED Agents. It is stated that against the order of Disciplinary Authority, applicant has filed an appeal but the Appellate Authority, after considering his representation rejected the appeal. Against that order, applicant has filed a petition before the Member(A), Postal Board, New Delhi this was forwarded through the Post Master General Berhampur (GM) Regon on 21.10.1992 and orders on this are still awaited. In the context of the above facts, Respondents have opposed the prayer of the Applicant.

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4. Applicant has filed a rejoinder in which he has re-iterated the averments made in his Original Application. By way of detailed, it has been explained by him that for the days of absence, he submitted application in the proper form with a suitable substitute as required under Rule-5 of the EDA(Conduct & Service) Rules, 1964. It is also stated that the punishment of removal from service is disproportionate to the lapse alleged to have been proved against him. In this connection, he has referred to the other punishments which could have been imposed on him. It is also stated that the Appellate Authority has not properly dealt with the points raised by him in his Appeal petition. On the above grounds, he reiterated his prayers made in the Original Application.

5. This matter was posted to 1-4-99 for hearing. On that day, learned counsel for the applicant was absent nor was any request made on his behalf seeking adjournment. As this is a 1992 matter where pleadings have been completed long ago, the matter was posted to 21.4.99 for peremptory hearing. On that day also learned counsel for the petitioner did not appear nor any request was made on his behalf seeking adjournment. In view of this, we have heard Shri B. Dash, learned Additional Standing Counsel(Central) appearing for the Departmental Respondents and have perused the records.

6. Applicant has annexed the copy of the order of the Disciplinary authority (Annexure-2) in which the single article of charge against the applicant has been mentioned. The charge against the applicant is that he remained on unauthorised absence from 7-8-89 to 9.8.89, 20.9.89, 27.9.89,

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4.10.89, 11.10.89, 25.10.89, 28.10.89, 1.11.89, 4.11.89, 8.11.89,
11.11.89, 18.11.89, 22.11.89, 29.11.89, 4.12.89 to 6.12.89,
8.12.89, 12.12.89 to 13.12.89, 16.12.89, 20.12.89 and 27.12.89.

From the report of the Disciplinary Authority it appears that applicant received the chargesheet on 18.4.1990 but he did not submit any written statement of defence. Thereafter, enquiry was conducted and the Inquiring Officer submitted his report. Applicant has not annexed a copy of the report of the Inquiring Officer which was supplied to him. It is seen from the order of the Disciplinary Authority that the I.O. came to the conclusion that applicant was actually absent from duty on all the days mentioned in the Memo of charge. It was also held that applicant could not give any proof of handing over any leave application or intimation regarding his absence. It is also held that applicant entrusted his work to unauthorised persons. Accordingly I.O. has held that charge is proved against the applicant. Disciplinary Authority accepted the findings of the Inquiring Officer and held that applicant is not a fit person to continue in service and accordingly penalty of removal from service with immediate effect was imposed in this order at Annexure-2.

7. Rule-5 of EDA(Conduct and Service) Rules, 1964 deals with regard to leave. This rule provides that ED employees shall be entitled to such leave as may be determined by the Government. It is also provided that when an employee fails to resume duty, on the expiry of the maximum period of leave admissible and granted to him or where such an employee who is granted leave for a period less than the maximum period admissible to him under these rules remains absent from duty for any period which together with the leave

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granted exceeds the limit upto which he could have been granted such leave, he shall, unless the Government, in view of the exceptional circumstances of the case, otherwise, decides, be removed from service after following the procedure laid down in Rule-8. According to the instruction issued by the Director General of Posts, in different circulars, gist of which have been printed at pages 26 and 27 of Swamy's Compilation on service rules for ED Staff (6th edition), the expression 'leave' as applicable to ED Agents means period during which with the approval of the Appointing Authority, an ED Agent is permitted not to attend personally to the duties assigned to him. It is also provided that during leave, every ED Agent should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him. Such approval should be obtained in writing. These instructions also provide for application form for leave which has to be filled in, in quadruplicate by the ED Agent and how these copies are to be treated. From this it is clear that ED Agents have to get their leave sanctioned by the competent authority before availing this leave. It is also provided that before availing leave he has to provide a substitute who has to be approved by the authority competent to sanction leave. Applicant has stated that for all the days for which he has been charged with unauthorised absence, he actually submitted his leave application and because of urgency, he availed leave without the same being sanctioned. The Inquiring Officer, has noted that applicant failed to prove that he submitted any leave application for all the days of absence as mentioned in the charge. It is, therefore not possible

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for us to hold that applicant did submit leave application for all the days.

8. As regards his contention that because of urgency, as per the usual practice, he availed leave without the same being sanctioned, the Appellate Authority in his order has noted that applicant remained absent frequently and repeatedly for 25 days within a short period from 7.8.89 to 27.12.1989. Appellate Authority has held that frequent and repeated absence for 25 days within a short period can not be taken as urgent on all these days. We find no reason to differ from the above approach of the Appellate Authority. This contention of applicant is also therefore, held to be without any merit and is rejected.

9. The next contention of applicant is that during his period of absence the work was managed by substitutes and there was no dislocation of work and therefore, no fault should have been found with him. This contention is also without any merit because applicant got the work done, if at all, repeatedly through unauthorised persons who were not appointed as substitutes. Therefore, getting the work done by ~~an~~ unauthorised persons can not absolve the applicant of his liability. The last contention of applicant is that the punishment of removal from service is disproportionate to the lapse proved against him. We are unable to accept this contention. The applicant was working as Extra Departmental Mail Carrier. It was his job to carry mails within the jurisdiction of his area. By remaining absent frequently, he has shown scanty regard to his responsibility.

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10. In consideration of this, we are unable to hold that the penalty of removal from service is disproportionate to his lapse. This contention is also rejected.

11. In the result, the Original Application is rejected but in the circumstances, there would be no order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN
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