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O.A. No. 628 OF 2004.

Order dated : 14-08-2006.

Applicant (Jagannath Nayak) is the son of Ex-EDDA (Late Janardhan Nayak). Said Janardhan was in the Extra Departmental Organization of the Postal Department since 01-03-1979. It is the grievance of the Applicant that although his father expired prematurely on 14-04-2002 while in service, no retirement dues have been released in spite of several representations; for which he has approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 praying the following relief:-

“(i) The Original Application be allowed;
(ii) to declare that the Applicant’s father’s service came to an end w.e.f. 14.04.2002 with his death while he was in service;
(iii) Arrear dues including salary payable to the Applicant’s father as per law be paid to the Applicant;
(iv) All terminal benefits as admissible under the Rules including gratuity be paid to the Applicant along with interest;
(v) Any other order/orders as would be deemed fit and proper under the circumstances to give complete relief to the Applicant be passed in the interest of justice”.

2. Respondents have filed their counter submitting that the Applicant is not entitled to any of the relief claimed in his

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Original Application on the grounds that Janardhan submitted his resignation under Annexure-R/4 dated 20-12-2000 through the Branch Postmaster of Langaleswar Branch Post Office to the Respondent No.4 expressing his unwillingness to discharge his duties being aged about 65/66 years. He also prayed for payment his retirement dues. On receipt of such request, the papers(record of service) were called for from the Postmaster, Chatrapur HO for processing his gratuity case. On scrutiny it was found that there were corrections and over writings in the SCL produced by the Janardan; for which the matter was enquired into and it was found that the said certificate is/was not a genuine one as per the report under Annexure-R/6. When this fact was made known to the EDDA, he remained unauthorizely absent and expired on 14-04-2002. It has been submitted by the Respondents that as the Ex-EDDA abstained from duty beyond a period of 180 at a stretch, as per the Rules, he is not entitled to exgratia gratuity.

3. Applicant has filed a rejoinder stating therein that his father did not submit any such letter expressing his inability to discharge the duties. The Respondents obtained the signature of his father on a blank paper and utilized the same as per their own will. He has also stated that no intimation was given till the death of his father with regard

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to any enquiry stated to have been undertaken by the Respondents with regard to the genuineness of the SLC produced by his father. He has also submitted that his father never abstained from his duty unauthorizedly and this is an after-thought of the Respondents only to deprive him the legitimate dues of his father.

4. During the hearing, Learned Counsel appearing for the parties have reiterated their stands taken in the pleadings. Having heard, perused the papers produced by them.

5. Neither in the counter nor during oral submission, it has been spelt out that the retirement notice/voluntary retirement application was acted upon by the Respondents. It is also clear from the record that before taking action on the report under Annexure-R/6, the Ex-EDDA breathed his last. It is also not in dispute that the Ex-GDS had put in the requisite years of service to be eligible for exgratia gratuity. From Rule - 4 of the EDA Conduct and Service Rules it is clear that ED Agents as defined in P & T Extra-Departmental Agents (Conduct) Rules, 1964, whose services are terminated otherwise than (i) for unsatisfactory work or (ii) as a measure of disciplinary action or (iii) in consequence of their being appointed in a regular post under the P & T Department may be sanctioned monetary grants termed as 'Gratuity', provided they have put

in not less than ten years of continuous satisfactory service as ED Agent. Sub rule 2 of Rule 4 provides "Continuous Service" shall mean only such continuous service rendered in any capacity as an ED Agent and sub rule 3 of Rule 4 provides that in determining the period of continuous service, periods where an ED Agent himself does not personally attend to the duties assigned to him shall be treated as break in service unless each such period is of a duration of 90 days or less and the absence from his duties is authorized by the written order of the appointing authority. Further rule 4(4) provides that unauthorized absence or authorized absence in excess of 180 days shall constitute a break which will have the effect of forfeiting all past service for the grant of gratuity. However, it is seen that the Divisional Heads of the Postal Department are empowered to sanction leave beyond 180 days to an EDA/GDS. They have also competency to condone the break in service, if leave taken by EDA/GDS at a stretch beyond 180 days for granting exgratia gratuity.

6. Law is also well settled that letter of resignation/voluntary retirement takes effect from the date it is accepted by the authorities. In the present case from the record it is evident that the application of the Applicant for voluntary retirement has not been accepted by the Respondents. But for the reason of the unauthorized

absence beyond 180, the ex-gratia amount has not been sanctioned in favour of the legal heirs as required under Rule. Unless the break in service is condoned, the Applicant is not entitled to the ex-gratia gratuity of his father. The Applicant has also not prayed before the Respondents for sanction of the gratuity amount of his father by condoning the delay.

7. In this view of the matter I find no wrong in the action of the Respondents in not sanctioning of the retirement dues of the Ex-EDA/GDS in favour of his legal heirs. Hence this OA stands dismissed. No costs.

8. However, dismissal of this Original Application shall not cease the right of the Applicant to approach the Respondents seeking condonation of break in service due to unauthorized absence beyond 180 days by invoking the Rules/Circular/Instructions available in the field on the subject and in case such a request is made by the Applicant, the Respondents should also examine such grievance on merit, without being influenced by the order of dismissal of this OA and grant necessary relief to the Applicant as due and admissible under the Rules.

B.B.MISHRA
MEMBER(ADMN.)