

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

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Date of Decision: 14.11.02

OA 139/2001

Manak Singh, EDMP O/o Kaluwas Post Sridungargarh, Distt.Churu.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Communication, Dak Bhawan, New Delhi.
2. Inspector of Post Offices, Sub Division, Sardar Seharshehar, Distt.Churu.
3. Supdt. of Post Offices, Churu Division, Churu.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

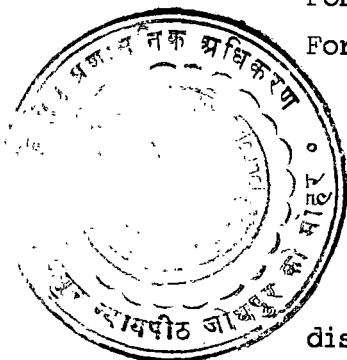
HON'BLE MR.GOPAL SINGH, ADM.MEMBER

For the Applicant

... Mr.B.Khan

For the Respondents

... Mr.Vinit Mathur

ORDERPER MR.JUSTICE G.L.GUPTA

The challenge in this OA is to the order of removal passed by the disciplinary authority and affirmed by the appellate authority.

2. The applicant was initially appointed as E.D.Mail Peon in the year 1979. It is averred that he discharged his duties efficiently and satisfactorily. On 13.8.96, he was faced with a sudden quarrel in which his leg was injured seriously. He submitted an application for the grant of two months' leave on 13.8.96. He was arrested by the Police on 20.11.96 in connection with a case under Section 307, 326 & 324 IPC. He remained in custody till 24.2.97, on which date he was released on bail. He attended the respondents' office on 3.3.97 and put in an application for taking him on duty. He was not taken on duty and certain queries were made. Ultimately, he was taken on duty on 12.4.97.

Thereafter, charge-sheet (Ann.A/1) was served on the applicant vide order dated 5.2.99, in which it was alleged that he remained unauthorisedly absent from duty from 2.8.96 to 11.4.97 and thus he violated Rule 17 of the EDA Conduct & Service Rules, 1964 (for short, the Rules, 1964). The applicant filed his reply and inquiry was held against him. The disciplinary authority held that the charge was proved against the applicant. The penalty of removal was imposed on the applicnat vide order dated 20.9.99. The appeal preferred by the

applicant was rejected by the appellate authority vide communication dated 26/28.2.2000 (Ann.A/3).

The case for the applicant is that he did not remain absent wilfully but he was prevented from attending the office because of his judicial custody for most of the period. It is also stated that the applicant was kept waiting by the respondents from 3.3.97 to 11.4.97 and not taken on duty. It is prayed that the order of penalty be set aside.

3. In the reply, the respondents' case is that since the applicant remained absent for more than 180 days, a charge-sheet was served upon him and he has been rightly removed from service.

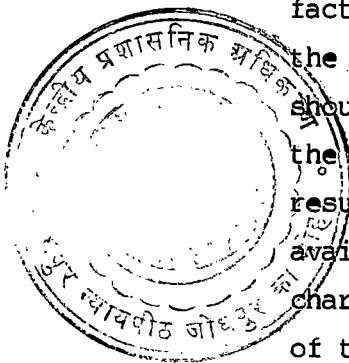
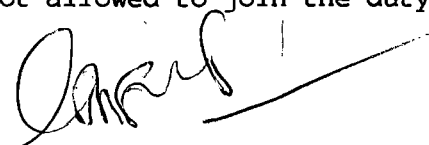
4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. The learned counsel for the applicant contended that from the facts it is made out that the applicant could not attend the office for the circumstances beyond his control, and hence no order of removal should have been passed against him. It was convassed that Rule-5 of the Rules, 1964 could not be applied as the applicant had not failed to resume duty after the sanctioned leave and it was also not the case of availing leave of more than 180 days. His contention was that the charge-sheet could not be issued to the applicant in the circumstances of the case.

6. On the other hand, the learned counsel for the respondents contended that the scope of judicial review in such matters is very limited and the Court cannot be justified to interfere in the order of removal. It was urged that the applicant remained absent wilfully from 13.8.96 to 11.4.97.

7. We have given the matter our thoughtful consideration. A reading of the charge-sheet shows that it was issued under Rule-17 of the Rules, 1964, which says that every employee shall at all times maintain absolute integrity and devotion to duty. It is not the case for the respondents that the applicant did not maintain absolute integrity. What is alleged is that he did not maintain devotion to duty as he absented from duty for a considerable longer period.

8. It is not in dispute that the applicant did not attend the office from 2.8.96 to 2.3.97 and when he attended the office on 3.3.97, he was not allowed to join the duty on the pretext that certain information was



required. When he supplied the required information, he was taken on duty on 11.4.97.

9. It has to be accepted that the respondents kept the applicant in waiting from 3.3.97 to 11.4.97 though the applicant was willing to be on duty for that period. It cannot be accepted that the applicant remained absent from 3.3.97 to 11.4.97 wilfully.

10. So also for the period from 20.11.96 (the date on which the applicant was arrested by the Police) to 24.2.97 (the date he was released on bail), it cannot be said that the applicant remained absent from duty wilfully. As a matter of fact, he was prevented from attending to duty by the process of law.

11. It is significant to point out that the applicant was not arrested in connection with his duties as E.D. Mail Peon. He was arrested in connection with a quarrel that took place between him and some other persons. In our opinion, the period of absence from 20.11.96 to 24.2.97 in the circumstances could not be said to be a period of wilful absence from duty.



12. This was the stand taken by the applicant in his reply to the charge-sheet. The vital facts do not seem to have been considered by the respondents. Once the period from 20.11.96 to 24.2.97 and 3.3.97 to 11.4.97, during which the applicant was prevented from joining duty is excluded, the total period of alleged wilful absence from 13.8.96 to 19.11.96 and 25.2.97 to 2.3.97 comes to 105 days only.

13. It is averred in the application that the applicant had applied for leave on 13.8.96 for a period of two months. A copy of the leave application Annex. A.4 is placed on record. In the reply this fact is not denied in specific terms. At para 4.2. of the reply it is stated that the contentions raised in para 4.2. of the O.A. are denied. It is only a vague denial when the applicant specifically stated that he had submitted leave application Annex. A.4 and it is not stated in categorical terms in the reply that such an application was not received in the office of the respondents, it will have to be presumed that the respondents did receive the application for leave submitted by the applicant. It is significant to point out that even in the subsequent application dated 9.5.97 (Ann.A/9) it was stated by the applicant that he had sent the application for leave for two months on 13.8.96.

14. A reading of the order of the disciplinary authority shows that

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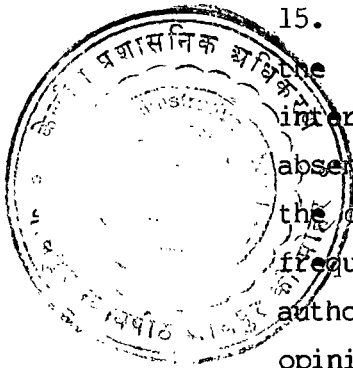
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the matter has been decided only on the basis of absence from duty for more than 180 days. In the report of the Enquiry Officer dated 16.6.99 (Ann.A/10) it was observed at the last para as under :

"If an E.D.Agent remains on leave for more than 180 days at a stretch, he will be unable (?) to be proceeded against under Rule-8 of EDAS (Service & Conduct) Rules, 1964."

In the order of the disciplinary authority dated 20.9.99 (Ann.A/2) it is stated that the applicant is not fit to be kept in service because there is a provision that if an E.D.Agent is found to have taken leave at frequent intervals for a period of 180 days or more in a period of one year, he shall cease to be an E.D.Agent.

It is evident that the disciplinary authority has relied on para 3(6) of the circular printed at page 35 under Rule-5 of the Rules (Swamys Compilation of Service Rules for Postal ED Staff (2000 Edition)).



15. However, it is certainly not the case for the respondents that the applicant had taken leave for more than 180 days at frequent intervals. The charge against the applicant was that he wilfully absented from duty for the period from 12.8.96 to 12.4.97. Para 3(6) of the circular applies only to the case where an E.D.Agent takes leave at frequent intervals in a year for more than 180 days. The disciplinary authority's order passed under para 3(6) of the circular, in our opinion, cannot be sustained for the simple reason that it was not the case of taking leave at frequent intervals.

16. It is noticed that the appellate authority has also not considered the matter in right perspective. The appellate authority has affirmed the decision of the disciplinary authority observing that the applicant remained absent unauthorisedly for more than 180 days and that the plea of applying for leave for two months on 13.8.96 is an afterthought.

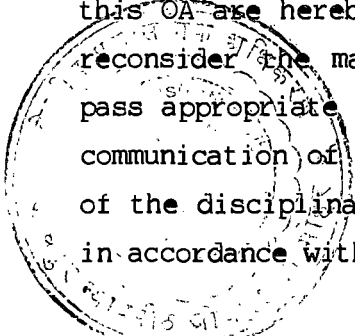

We have already held that the applicant's absence from duty from 20.11.96 to 24.2.97 (custody period) and from 3.3.97 to 11.4.97 (waiting period) could not be treated as wilful, and if this period is excluded from the total period of absence, the absence period is of 105 days only. We have further held that the applicant had applied for leave for two months vide his application dated 13.8.96. In such circumstances, it could not be found by the disciplinary authority or the appellate authority that the applicant remained absent without

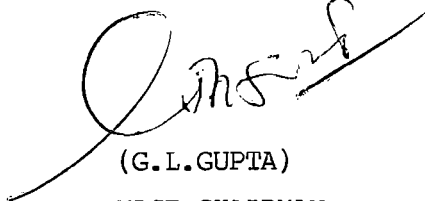
applying for leave.

17. Having considered the entire material on record, we find it difficult to uphold the orders impugned in this OA. The matter is required to be sent to the disciplinary authority for taking fresh decision.

18. Consequently, the OA is allowed in part. The orders impugned in this OA are hereby quashed. The disciplinary authority is directed to reconsider the matter in the light of the observations made above and pass appropriate order within a period of four months from the date of communication of this order. The applicant, if aggrieved by the order of the disciplinary authority, shall be entitled to challenge the same in accordance with rules.

19. No order as to costs.

  
  
(GOPAL SINGH)  
MEMBER (A)

  
(G.L.GUPTA)  
VICE CHAIRMAN