

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A.No.94/97

Dt. of Order: 13.2.2002.

Present: Hon'ble Mr. B.P. Singh, Member(A)
Hon'ble Mr. M.L. Chauhan, Member(J)

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ALL INDIA POSTAL EMPLOYEES
UNION(POST)

VS

D/O POST

...

Counsel for the Applicants: Mr. Samir Ghosh

Counsel for the Respondents: Ms. U. Sanyal

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ORDER

The learned counsels for both the sides have been heard.

2. In this application, different Postal Employees' Unions, who represent Extra Departmental Agents(EDAs) also have filed this OA against recovery of allowances, paid for the period from 23rd to 29th October, 1996, when all the Unions proceeded on All India Strike.

3. It has been stated that like departmental employees, EDA employees also proceeded on strike during the said period. The Department of Post issued a letter on 6.12.1996 (Annexure-D) by which orders were issued for regularisation of the period of absence of regular employees and EDAs of the Department of Post. Certain clarification to this order was further issued by another letter dated 20.12.1996, (Annexure-E). By the above communications, direction was given for recovery of

the allowances if any already paid to the EDAs for the period of strike. The applicants' Association have come against these orders and prayed for the following reliefs:

- (i) Leave be given to the applicants to file this joint application in terms of rule 4(5)(b) of the CAT (Procedure) Rules, 1987;
- (ii) To direct the respondents to cancel, withdraw and/or rescind the purported Memos. dated 6.12.96 & 20.12.96 as contained in Annexures-D & E hereof;
- (iii) to direct the respondents not to deduct and or recover any wages from the pay packets of the members of the applicants No.1 to 4 associations and other applicants herein in respect of period of absence due to strike from 23rd to 29th Oct.1996.
- (iv) to direct the respondents to deal with and/or dispose of the representation of the applicant No.1 association of 22.12.96 as contained in Annexure-G hereof in its correct perspective;
- (v) to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue."

4. The learned counsel for the applicant submitted that the departmental employees were given opportunity to apply for admissible leave for the period of strike which the administration will consider sympathetically for treating the period of absence. But so far as the EDAs are concerned, because of the different service conditions, they do not earn any leave of any kind and there is no balance of leave at their disposal. Therefore the EDAs will not be able to avail the benefit of regularisation of the period of absence by submitting application for admissible leave.

5. The learned counsel for the applicants further submitted that the EDAs have already been paid allowances for the period of strike and this payment was made by the respondents' authorities on their ^{own} without any representation or other action on the part

of the EDAs. Therefore, in view of the decision in Shyam Babu Verma Vs. UOI & Ors. reported in 1994 (27) ATC 121, the recovery should not be ordered.

6. The learned counsel for the respondents took the plea that the OA is not maintainable and the other plea that a similar case was filed by the EDAs before the Madras Bench of the CAT as OA No.1298/96 for similar relief and the same was dismissed by the Madras Bench vide their order dated 19.9.97. The applicants are similarly placed in this OA and therefore their applications also deserves to be dismissed.

6. The learned counsel for the applicants submitted that the case is maintainable because different serviceunions of the department of Post are authorised to include EDAs also as members of their Union and therefore on this ground, the plea of the learned counsel for the respondents is not maintainable and therefore this particular OA/^{cannot be} faulted on this score.

7. So far the decision of the Madras Bench of the CAT is concerned, the submission of the learned counsel for the applicant was that the point which he is raising was not considered by the Madras Bench of the CAT and therefore that decision cannot be made applicable in this case.

8. The main contention of the learned counsel for the applicant was that EDAs,like the regular departmental employees were on strike during the said period. According to the decision of the Supreme Court, both the sets of employees were treated initially on the principle of 'no work

no pay'. Subsequently the respondents authorities considered the matter and took a lenient view for regularisation of the strike period. They decided that the employees can apply for admissible leave for the period and the grant of such leave shall be considered by the competent authorities. In other words, the employees were given option to take leave for the period and the competent authorities were directed to consider these applications ^{each and} sympathetically in ~~the~~ cases. When this benefit was given to the employees, it appears that they forgot to visualise the position of EDAs who are governed by separate service conditions as per which EDAs do not earn any kind of leave and therefore they cannot apply for any leave for the period of strike for regularisation.

9. The learned counsel for the applicant stresses this particular point that the intention of the respondent authorities was humanitarian and very lenient towards the employees and therefore ~~ordered~~ for the relief in the form of regularisation of the strike period by applying for leave ~~due~~ ^{due} ~~relief~~. But this relief and this lenient view could not be availed of by the EDAs as they do not earn any type of leave. Therefore, the learned counsel submitted that it would be adviseable for the respondent authorities at the highest level to reconsider the matter and find out ways and means

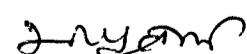
to give similar relief to the EDAs for regularisation of the strike period as had been done in the case of departmental regular employees.

10. The learned counsel for the respondents has drawn our attention and reiterated the decision of the Madras CAT as stated above. She was not in a position to throw light on the above submission of the learned counsel for the applicant that the benevolence shown to the departmental regular employees by the respondents is not available to the EDAs, which was equally made for them.

11. In view of the above observations, we are of the view that there is merit in the submission of the learned counsel for the applicant and the whole case of the EDAs for regularisation of the period of strike requires to be reconsidered by the respondents authorities with the same indulgence and leniency which has been shown to the departmental regular employees. We are agreeable with this view.

12. On the basis of the above, we like to allow this application and direct the respondent authorities, especially respondents No.1 and 2 to reconsider the whole matter and take decision in such a way that the flow of their benevolence is also available in equal measures to the EDAs within a period of four months from the date of communication of this order. The interim order granted earlier shall continue till the compliance of the above direction. The OA is disposed of.


(M.L. CHAUHAN)
Member (J)


(B.P. SINGH)
Member (A)

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