

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 339/91
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~~199~~

DATE OF DECISION 30.6.92

M.K.Sathyan Applicant (s)

Mr.P.Santhoshkumar Advocate for the Applicant (s)

Versus

Union of India represented by the
Secretary, Ministry of Communications, Respondent (s)
NEW DELHI and four others.

Mr.Geroge Joseph,ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr.N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 27.2.1991 the applicant who has been working as Extra Departmental Messenger under the Senior Superintendent of Post Offices, Ernakulam Division^s, has prayed that the impugned orders dated 6.6.88 at Annexure-III and dated 24.11.90 at Annexure-VI refusing to condone the break in his service and reckoning his continuous service only from 6.6.88 be set aside and that the respondents directed to regularise the break in service and give him seniority from the date of his initial engagement. The brief facts of the case are as follows.

2. The applicant was initially appointed as Extra Departmental Letter Box Peon on 17.11.1979. He was selected and promoted to the post of Extra Departmental Telegraph Messenger with effect from 14.1.1982. On his representation the 4th respondent vide the order dated 19.4.1983 at Annexure-I allowed his previous service as Letter Box Peon for determining his total length of service. On 11.3.88 he applied for two days leave which was sanctioned. However, due

to rheumatism he was unable to submit the leave application thereafter when he was laid up from 12.3.88 to 5.6.88. While so, he received an order dated 1.6.1988 of the 5th respondent informing him that his services should be deemed to have been terminated with effect from 18.4.1988 on the ground that the period of absence including period of leave without allowance exceeded 180 days with effect from 18.4.1988. He was directed to file a representation which he submitted on 6.6.1988 enclosing the medical certificate. On the basis of his reply and the certificate, he was reinstated with effect from 6.6.88 by the impugned order but the break in his service was not condoned. He submitted a representation for regularising the break in service seeking seniority from 17.11.79 but the same was rejected by the impugned order at Annexure-VI. He has argued that since he had not taken leave for 180 days at a stretch and had not exceeded the maximum limit, Rule 8 of the Extra Departmental Agents Conduct and Service Rules does not apply and his services cannot be terminated. He has also mentioned that the earlier absence was for carrying out the duties of Class IV and ⁹Postman and also for the treatment of his mother who was a cancer patient and who later expired. He states that the period of leave during which he attended to the duties of Class IV posts like Postman, should not be taken into account.

3. In the counter affidavit the respondents have stated that in accordance with the DG's instruction (1) below rule 5 of ED Agents (Conduct and Service) Rules, if an ED Agent is found to have taken leave at frequent intervals for a total period of 180 days or more in a period of one year he shall cease to ^{be} an ED Agent. Since the applicant exceeded 180 days, the applicant cannot be retained in service. The applicant remained continuously absent after the expiry of his leave on 12.3.88 without applying for leave or nominating a substitute, but as he applied for leave subsequently with a medical certificate, he was not removed from service though he could have been so removed under Rule 8 of the rules.

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Since his period of absence including leave exceeded 180 days in one year he ceased to be an ED Agent but taking a lenient view he was reinducted afresh from 6.6.88. He completed 180 days of absence with or without leave on 17.4.88 and he exceeded the limit beyond 18.4.88. He was given full opportunity to explain his position and there has not been any violation of the rules of natural justice.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The relevant portion of D.G's instructions No.1 below Rule 5 of the E.D.A Conduct and Service Rules read as follows:-

"(4) No ED Agent should be permitted leave of absence for more than 90 days at a stretch which may be extended up to 180 days in exceptional circumstances by the Divisional Superintendent of Post Offices. The maximum period of leave which may be sanctioned to an ED Agent in a single stretch shall not exceed 180 days. Leave of absence in excess of 180 days may be granted by Heads of Circles only in cases where the necessity for leave arises due to ED Agent officiating in a departmental post. The Heads of Circles have been delegated powers to sanction leave to EDAs beyond 180 days on account of genuine illness (effective 12.9.1988).

(5) If an ED Agent remains on leave for more than 180 days at a stretch, he shall cease to be an ED Agent.

(6) Leave shall not ordinarily be availed by an ED Agent at frequent intervals. If an ED Agent is found to have taken leave at frequent intervals for a total period of 180 days or more in a period of one year he shall cease to be an ED Agent."

The above will show that even though leave of absence at a stretch even beyond 180 days is permitted by the Heads of Circles, but if an ED Agent remains on leave for more than 180 days at a stretch, he shall cease to be an ED Agent. He shall cease to be an ED Agent if the total period of leave in a period of one year exceeds 180 days. These provisions seem to have been withdrawn by D.G,P&T's instructions abstracted in sub-para 6 of para 2 below Rule 5 of the rules (page 25 of Swamy's Compilation of Service Rules for Extra-Departmental Staff, Fourth edition) which reads as follows:-

"6. Procedure to be followed for terminating the services of an ED Agent who takes leave frequently or for more than 180 days at a stretch - In view of the revision of Rule 8, following the Supreme Court's judgment of 22nd April, 1977, it is no more possible to remove an ED Agent on the ground of absence beyond the maximum permissible period of leave of 180 days at a stretch without taking disciplinary action against him."

Though the aforesaid clarification applies to cases where the leave at a stretch exceeds 180 days, the ratio of this decision applies with greater force where the leave has been applied for intermittently and not at a stretch.

5. The respondents have given the particulars of the periods of leave or absence between 18.4.87 and 17.4.88 at Annexure R1 to their statement dated 30th April 1992. The periods of absence of applicant ^{are} ~~is~~ indicated as follows:-

| <u>Sl.No</u> | <u>Period of LWA/ Unauthorised absence.</u> | <u>No. of days</u> | <u>Purpose</u> |
|--------------|---|------------------------|--------------------------|
| 1. | 18.4.87 to 30.4.87 | 13 | Domestic affairs |
| 2. | 4.5.87 to 31.5.87 | 28 | To act as Class IV |
| 3. | 1.6.87 to 6.6.87 | 6 | To officiate as Postman. |
| 4. | 9.6.87 to 13.6.87 | 5 | |
| 5. | 15.6.87 to 30.6.87 | 16 | Domestic affairs |
| 6. | 13.7.87 | 1 | " |
| 7. | 27.8.87 to 29.8.87 | 3 | " |
| 8. | 21.9.87 to 26.9.87 | 6 | " |
| 9. | 7.10.87 to 29.8.87 | 11 | " |
| 10. | 16.11.87 to 21.11.87 | 6 | " |
| 11. | 22.11.87 to 28.11.87 | 7 | " |
| 12. | 7.12.87 to 11.12.87 | 5 | " |
| 13. | 14.12.87 to 26.12.87 | 13 | " |
| 14. | 27.12.87 to 31.12.87 | 5 | " |
| 15. | 18.1.88 to 20.1.88 | 3 | " |
| 16. | 29.1.88 to 30.1.88 | 2 | " |

| | | | |
|-----|--------------------|----|------------------|
| 17. | 7.2.88 to 29.2.88 | 23 | Housework. |
| 18. | 4.2.88 to 6.2.88 | 3 | Domestic affairs |
| 19. | 11.3.88 to 12.3.88 | 2 | " |
| 20. | 13.3.88 to 17.4.88 | 35 | Absent. |

193 days "

From the above statement it is clear that between 18.4.87 and 17.4.88 the applicant remained absent for 193 days of which 39 days between 4.5.87 and 13.6.87 were spent by him when he was acting as Class IV or as a Postman. The clarification in sub-para 4 of para 2 of Swamy's Compilation on page 25 clarifies that when an ED Agent takes leave when he is appointed against a regular post such as postman, packer etc., it would not be correct for the EDA to be considered as being on leave. If we exclude these 39 days, the period of absence during one year comes to 154 days. Since the respondents have not been able to prove that the applicant has been absent on leave or without leave excluding the period of official duties for a period exceeding 180 days during any twelve months, the stand taken by them that his previous appointment as EDA automatically terminates, is not valid. The ruling of the Supreme Court referred to in sub-para 6 indicated above also points against such automatic termination.

6. In the circumstances we allow the application, set aside the impugned orders dated 6.6.88 at Annexure A-III and dated 24.11.90 at Annexure A-VI so far as termination of his service with effect from 18.4.88 is concerned and direct that the applicant's service should be reckoned from the date of his original appointment with effect from 17.11.79. The respondents, however, will be at liberty to take such action as deemed fit for his unauthorised absence in accordance with law. There will be no order as to costs.

N. Dharmadan
30.6.92

(N.DHARMADAN)
JUDICIAL MEMBER

S.P. Mukerji
30.6.92

(S.P.MUKERJI)
VICE CHAIRMAN