

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No.254/2010

Reserved on 9.9.2014

Pronounced on 17/09/14

HON'BLE SHRI NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER(A)

Pradeep Kumar aged about 30 years son of Sri Ram Prasad resident of Village Belsara Post Office Revali, District Bahraich (appointed as Gramin Dak Sewak, Branch Post Master at Turhani Rajjab, District Bahraich.

Applicant

By Advocate: Sri Prashant Kumar Singh

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. Post Master General, Gorakhpur Circle, Gorakhpur.
3. Director, Postal Services, Office of the Post Master General, Gorakhpur Circle, Gorakhpur.
4. Superintendent of Post Offices, Bahraich Division, Bahraich.

Respondents

By Advocate: Sri Pankaj Kumar Awasthi for Sri R. Mishra

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- a) Issuing/passing of an order or direction to respondents , particularly the respondent No. 4 who is the appointing authority, to accept his joining with effect from 18.3.2009, allow him to resume duty and pay him salary regularly every month.
- b) Issuing /passing of an order or direction to the respondents to consider the regularization of his absence period on medical grounds and to issue appropriate orders within a specified period of two months.



c) Issuing/ passing of any other order or direction to the respondents as this Hon'ble Tribunal considers appropriate in the circumstances of the case.

d) Allowing this original application with cost.

2. The brief facts of the case are that the applicant joined the respondents organization as Gramin Dak Sewak vide O.M. dated 7.2.2005. While working in respondents organization in 2005 itself, the applicant remained unauthorizedly absent on account of serious illness of his daughter, for which the applicant remained himself out of duty since 17.5.2005. After a period of 4 years, the applicant submitted his joining on 18.3.2009. After the submission of the joining, the respondents issued a charge sheet upon the applicant on 6.7.2010 and vide order dated 7.2.2011, the applicant was put off from duty. Subsequently, the respondents have passed an order on 1.8.2012 through which the applicant was debarred for a period of 3 years from appearing in any departmental examination. The applicant has not challenged the said order dated 1.8.2012. Not only this, the applicant has also not challenged the order dated 7.2.2011 through which he was put off from duty. It is also indicated by the learned counsel for applicant that after 1.8.2012, the applicant was allowed joining and thereafter, he was paid salary regularly. By means of the present O.A., the applicant is claiming salary w.e.f. 18.3.2009 since the date when the applicant has submitted his joining and respondents have not taken any decision and also not issued any charge sheet to the applicant during the period of his unauthorized absence.

3. On behalf of the respondents, reply as well as Supple. Counter reply is filed and through reply as well as Supple. Counter reply, the respondents have indicated that the applicant remained un-authorized absent without any information or prior permission w.e.f. 12.5.2005 and has also retained cash and postage balance amounting to Rs. 6792.90 and all records of Post offices as well as insured letters,

registered letters and money orders received for payment. Subsequently, on 31.5.2005, one relative of the applicant handed over records of Branch Post Office, Turhani through application dated 31.5.2005 in which he has mentioned that whereabouts of the applicant is not known to his family members. Subsequently, the brother of the applicant handed over cash and postage balance along with other postal articles retained by the applicant. Not only this, it is also submitted on behalf of the respondents that from 12.5.2005, the applicant had never submitted any information about his absence upto 17th March, 2009 and he has submitted his application on 18.3.2009 with a concocted and false story of illness of his daughter. However, no proof of illness is submitted by the applicant, as such, the applicant was not allowed to join. The learned counsel for respondents has also relied upon Rule 7 of GDS (Conduct and Employment) Rules, 2001 and indicated that a GDS cannot be granted leave for more than 180 days at a stretch except in exceptional circumstances.

4. On behalf of the applicant, Rejoinder Reply as well as Supple. R.A. is filed and through rejoinder reply as well as Supple. R.A., mostly the averments made in the O.A. are reiterated and denied the contents of counter reply as well as Supple. Counter reply.

5. Heard the learned counsel for parties and perused the record.

6. The applicant was appointed in the respondents organization as GDS BPM, Turhani Rajjab, Bahraich vide Memo dated 7.2.2005 and in pursuance of the said, the applicant joined the duty on 7.2.2005. While working on the said post, the applicant did not report for duty w.e.f. 12.5.2005 without any information or prior permission and without handing over the charge of office to any nominated or authorized person. Apart from this, it is also indicated that cash and postage balance amounting to Rs. 6792.90 and all records of post office as well as insured letters, registered letters and money orders

received for payment in the branch post office. The said document was subsequently handed over by one Arvind Kumar claiming brother of applicant on 31.5.2005 as well as on 1.6.2005. It is also to be pointed out that the applicant remained absent from his office without any intimation upto 17.3.2009 and he submitted his application on 18.3.2009. Undisputedly, the applicant was served with the charge sheet vide charge sheet dated 6.7.2010 and vide order dated 7.2.2011, the applicant was put off duty. Thereafter the respondents have passed an order dated 1.8.2012 debaring the applicant for a period of 3 years from appearing in any of the departmental examination. Since 1.8.2012, the applicant is allowed to join and he is performing his duty and salary is also being paid to him regularly.

7. Now, the question which required determination is whether the applicant is entitled to allow joining w.e.f. 18.3.2009 and other benefit from 18.3.2009 till 1.8.2012.

8. Rule 7 of GDS (Conduct and Employment) Rules deals with the leave, which provides as under:-

“7. Leave

The sevaks shall be entitled to such leave, as may be determined by the Government from time to time:

Provided that-

(a) Where a Sevak fails to resume duty on the expiry of the maximum period of leave admissible and granted to him, or

(b) Where such a Sevak 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 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 10.

9. Apart from this, there is a Director General's instruction dated 17th December, 1998 and as per clause 2(6), leave shall not ordinarily be availed by any ED agent at frequent intervals. The relevant provision reads as under:-

“2 (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.”

10. Since the applicant remained unauthorisedly absent w.e.f.12.5.2005 till 18.3.2009 without any intimation, as such in terms of DG's instructions, the applicant is ceased to be an ED agent. Apart from this, Rule 8 of GDS (Conduct and Employment) Rules deals with termination of employment which reads as under:-

“8. Termination of Employment

(1) The employment of a Sevak who has not already rendered more than three years' continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak;

(2) The period of such notice shall be one month:

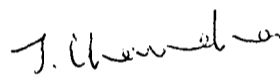
Provided that the employment of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowances plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his employment or, as the case may be, for the period by which such notice falls short of one month.”



11. The respondents showed the mercy upon the applicant and only given the charge sheet to the applicant in 2010 and has passed an order debarring the applicant for a period of 3 years from appearing in any of the departmental examination and has not terminated the services of the applicant in terms of Rule 8 of GDS (Conduct and Employment) Rules. It is also to be pointed out that the applicant joined the respondents organization on 7.2.2005 and remained absent w.e.f. 17.5.2005 as such he was absent only after three months from the date of his joining.

12. Considering the submissions made by the learned counsel for the parties and after perusal of the record, we do not find any reason to interfere in the present O.A. and pass any order in regard to relief as claimed for by the applicant and O.A. is fit to be dismissed.

13. Accordingly, the O.A. is dismissed. No order as to costs.


(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER(J)

HLS/-