

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 46/91

this the 31st day of October, 2000

HON'BLE MR. D.C. VERMA, MEMBER (J)

HON'BLE MR. A.K. MISRA, MEMBER (A)

Goverdhan Prasad aged about 36 years s/o Surya Bali
r/o village and Post Office-Bathuwa Khas, P.s. Gurbax
Ganj, Tahsil and District- Rae Bareli.

....!Applicant

By Advocate: C.B. Verma.

Versus

1. Union of India, through the Secretary, Ministry of Communication, Govt. of India, Deptt (Post), New Delhi.
2. The Post Master General, UP Circle, Lucknow.
3. The suptd. of Post Offices, Rae Bareli.
4. The SDI (Post Office), South sub Division, Rae Bareli.

....Respondents.

By Advocate: Sri S.P. Tripathi.

ORDER

A.K. MISRA, MEMBER (A)

The applicant to this O.A. has prayed for issue of directions to quash the removal order dated 8.4.88 alongwith appellate orders dated 20.7.88 and 20.10.89.

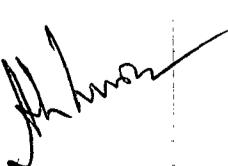
2. Pleadings on record have been perused and Counsel for the parties have been heard.
3. The applicant was working since 8.8.78 on the post of Extra Departmental Mail Peon (EDMP in short) at Bhuje Mau, District Rae Bareli. On date 28.9.87



a charge sheet was served upon the applicant for unauthorised leave beyond the permissible period of 180 days. According to the applicant, he submitted his reply to the charge sheet on 21st March 1988 but the same was not considered by the enquiry officer or by SDI, Post office, South Sub Division, Rae Bareli (Respondent No. 4). According to the applicant, he was not given any chance of cross examination also. His application for condonation of the excess period of leave beyond the period of 180 days was also not forwarded to PMG, UP Circle, Lucknow (Respondent No. 2) who was the competent authority. The case of the applicant is that he was suffering from paralysis and therefore, the period of leave availed by him in excess of 180 days should have been regularised by respondent No. 4. The applicant has submitted that neither the provisions of Rule 5 nor the provisions of Rule 8 of the ED (Conduct and Service) Rules, 1964 have been observed by the respondents. The applicant has also stated that the respondents No. 4 passed the removal order mechanically on the basis of the report of the Enquiry Officer and the Appeal was also disposed of by Respondent No. 3 mechanically without considering the fact that neither a copy of the enquiry report was furnished to the applicant nor any show cause notice was given to him before passing the impugned order of removal dated 8.4.88. On behalf of the applicant reliance has been placed on the decision in the case of Kuber Nath Vs. Regional Director, Postal Services (1992) 1 UPLBEC 45 (Trib), decided by this bench of the Tribunal on 17.2.92 by placing reliance on the decision of the Apex Court in the case of Union of India Vs. Md. Ramzan Khan AIR 1991, Supreme Court page 471.

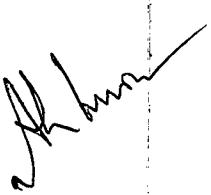
4. Having regard to the factual position discussed above, we are of the view that no

interference is called for in the order of removal dated 8.4.88, in the Appellate order dated 20.7.88 and revision order dated 20.10.89. The applications for condonation of the excess period of leave beyond 180 days were admittedly sent under certificate of posting. It has been held by the Supreme Court in the case of *Shiv Kumar & Others Vs. State of Haryana* 1994(2) AISLJ page 151 that it is not difficult to obtain such postal certificates at any point of time from the Post office, and accordingly no credence can be given to such applications/letters sent under certificate of posting. The applicant has filed, alongwith the Rejoinder copy of an application dated 9.3.88 stating that he was seriously ill and had to remain absent from duty beyond 180 days. Copy of the application dated 9.3.88 was not found in the departmental records produced before us by the Counsel for the repondents during the course of the hearing. Therefore, it is very much doubtful whether the application dated 9.3.88 was at all submitted. The medical certificate dated 1.9.87 from a private doctor of Rae Bareli is of doubtful authenticity having been issued about seven months after the applicant's illness commenced, and which in fact is a certificate of fitness. Copy of the application dated 27.3.89 filed as Annexure to the O.A. requesting that the period in excess of 180 days may be condoned in view of the serious illness of the applicant also appears to be an after thought because this application was made much after the date on which the removal order was passed against the applicant. Further it was found that by the enquiry officer that the applicant was neither ill nor was confined to bed. The enquiry officer also found that no certificate in respect of the applicant's illness was ever furnished.



5. The Appellate authority (Respondent No. 3) found that the applicant remained absent from duty for 197 days between 23.1.86 and 31.12.86. Besides he also remained absent from duty from 1.1.87 to 31.8.87. He also found that the applicant could not furnish any evidence of having sent any application for leave. The Chief Post Master General in his order dated 20th October, 1989 rejecting the applicant's petition has observed that in the application for leave dated 3rd December, 1986 and in the application dated 1.1.87, the applicant had mentioned that his wife was ill. Reference may be made in this regard to paragraph 5 of DG P&T letter No. 43/38/72 PEN dated 24.4.72 which provides that if an ED agent remains on leave for more than 180 days at a stretch, he will be liable to be proceeded under Rule 8 of the EDAs (Conduct and Service) Rules, 1964. In the instant case, the applicant remained absent from duty for a total period of 197 days between 23.1.86 to 31.12.86 and again from 1.1.87 to 31.8.87. Accordingly, the applicant was proceeded against under Rule 8 of the EDAs (Service and Conduct) Rules, 1964 by issue of charge sheet in pursuance of which an order of removal dated 8.4.88 was passed which was confirmed by Appellate order dated 20.7.88 and by revision order dated 20.10.89 passed by the CPMG.

6. As regards the decision of this Tribunal delivered on 17.2.92 in the case of Kuber Nath Vs. Regional Director, Postal Services, 1992, 1 UPLBEC page 45 (Trib) in which a reference has been made to the decision of the Apex Court in the case of Union of India Vs. Md. Ramzan Khan AIR, 1991, Supreme Court page 471, it may be stated that the decision in the case of Md. Ramzan Khan was delivered by the apex court on 29.11.90 which has only prospective operation. It was clarified by the apex court in the case of Managing Director, ECIL, Hyderabad and others

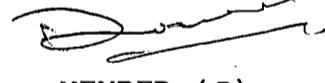


Vs. B. Karunakar and Others, 1993, 4 SCC, page 727, that the decision in the case of Md. Ramzan Khan will not have any retrospective operation. Accordingly the decision in the case of Mohd. Ramzan Khan would not be applicable to the facts as obtaining in the present O.A., because the penalty of removal from service in the case of applicant to the present O.A. was levied on 8.4.88, the appellate order was passed on 20.7.88 and the revision order was passed on 20.10.89. Therefore, the failure to furnish a copy of the enquiry report before imposing penalty of removal from service would by itself not constitute a sufficient ground to quash the order of removal from service unless any prejudice is shown. In the present case, no prejudice due to non supply of copy of enquiry report has been shown.

7. In the light of the above facts, no interference is made in the impugned orders dated 8.4.88, 20.7.88 and 20.10.89.

8. The O.A. is accordingly dismissed with no order as to costs.


MEMBER (A)


MEMBER (J)

LUCKNOW: DATED: 31st Oct 2000

HLS/-