

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Original Application No. 498 of 1992

Lucknow this the 7 day of July 1996

Hon'ble Mr. V.K. Seth, Member (Admn.)
Hon'ble Dr. R.K. Saxena, Member (Jud.)

1. Central Command Stationery Depot Workers Union, registered office at 606, Azad Mohal, Sadar Bazar, Cantonment Lucknow through its President Sri. Manjendra Kumar Pandey.
2. Sri. Rameshwar Prasad Sharma, Vice President of the Petitioner No.1 above said and Lower Division Clerk hereafter expressed in brief as LDC, of the Central Command Stationer Depot, thereafter expressed in brief as CCSD, Lucknow.
3. Sri. Pyare Lal, Secretary and Painter in the CCSD, Lucknow.
4. Sri. Ramesh Kumar Verma, Joint Secretary and Daftari of CCSD, Lucknow.
5. Sri. Bhawani Shankar, Organizing Secretary and Daftari of CCSD, Lucknow.
6. Sriyan Lal, Treasurer and Daftari of the CCSD, Lucknow.
7. Huzrasad Bajpayi, Propaganda Secretary and Labour in the CCSD, Lucknow.
8. Hajari Lal, Member of the Executive Committee, and Safaiwala in the CCSD, Lucknow.
9. Jatru, Member of the Executive Committee and Labour in the CCSD, Lucknow.
10. Lal Mohan Misra, Member of the Executive Committee, and Fire Supervisor in the CCSD, Lucknow.
11. J. S. Nanda, Upper Division Clerk, hereafter expressed in brief as UDC, in the Indent Branch of the CCSD, Lucknow.
12. A. K. Verma, UDC in the Indent Branch of the CCSD, Lucknow.
13. R. N. Srivastava, UDC in Accounts Branch of the CCSD, Lucknow.
14. Smt. Shakuntala Devi, UDC in Indent Branch of the CCSD, Lucknow.
15. Sri. R. K. Pant, LDC, in the Indent Branch of the CCSD, Lucknow.
16. Sri. Rakesh Kumar, LDC, Accounts Branch of the CCSD, Lucknow.
17. Sudhakar Kumar UDC, B & O Section of the CCSD, Lucknow.

18. Sri K. N. Pandey, LDC, R&D Branch of the CCSD, Lucknow.
19. Sri Vijai Anand, LDC, R & D Branch of the CCSD, Lucknow.
20. Sri Satish Kumar Singh, Messenger, CCSD, Lucknow.
21. Sri Ram Gulam, Safai Karmi, CCSD, Lucknow.
22. Sri Kishen, Messenger, CCSD, Lucknow.
23. Pappu, Safai Karmi, CCSD, Lucknow.
24. Sumendra Prasad, Typewriter Maintainer, CCSD, Lucknow.
25. Sri Charnjit Singh, Carpenter, CCSD, Lucknow.
26. Sri Shiv Charn, Carpenter, CCSD, Lucknow.
27. Sri Bhagwati Tiwari, Labour, CCSD, Lucknow.
28. Sri Mullu, Labour, CCSD, Lucknow.
29. Sri Ram Khilawan, Labour, CCSD, Lucknow.
30. Sri Jagamba Pandey, Labour, CCSD, Lucknow.
31. Mewa Lal, Labour, CCSD, Lucknow.
32. Sri Jaswant Singh, Labour, CCSD, Lucknow.
33. Sri Ganga Ram, Labour CCSD, Lucknow.
34. Sri Ram Chandra, Labour, CCSD, Lucknow.
35. Sri Mohammad Jalil, Labour, CCSD, Lucknow.
36. Suresh Kumar, Labour, CCSD, Lucknow.
37. Sri Sant Ram Singh, Labour, CCSD, Lucknow.
38. Sri Harish Chandra, Labour, CCSD, Lucknow.
39. Sri Munishwal Pal, Labour, CCSD, Lucknow.
40. Sri Hajrat Din, Labour, CCSD, Lucknow.

APPLICANTS.

By Advocate Sri H. C. Singh.

Versus.

1. Union of India through Secretary, Department of Defence, Government of India, New Delhi.
2. Major General Army Ordnance Corps, Head Quarter, Central Command, Lucknow.
3. Officer Commanding, Central Command, Stationery Depot, Lucknow.
4. Ordnance Officer, Civil (Stores), Stationery Depot, Lucknow.

By Advocate Sri A. K. Chaturvedi RESPONDENTS

Q U E R Y

By Hon'ble Dr. R.K. Saxena, Member 'Jud.'

These 40 applicants after seeking permission to file the joint application, have approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking quashment of the orders dated 01.6.1992 (annexure 4) and its amendment annexure-5. Besides, the command to the respondents not to deduct the salary of the applicants from 19.5.1992 to 25.9.1992, has also been sought.

2. The applicant no.1 is the Union named as Central Command Stationery Depot Workers Union while applicants no.2 to 40, are its members. The Union is represented through Narendra Kumar Pandey who is the President of Union. Of these applicants, those who are at serial no.2, 4 to 6, 8, 10 and 11 to 23/pe-
longing to the category of non-industrial employees of Group 'C' and 'D' while applicants no.3, 7, 9 and 24 to 40/ belonging to the category of industrial employees of Group 'C' and 'D'. All of them are serving under the respondent no.1 in the Stationery Depot of Ministry of Defence at Lucknow. The appointing authority of the applicants, according to them, is Major-General of Army Ordnance Corps, Central Command, Lucknow.

3. The facts of the case in brief are that the Lt.-Col. K.K. Misra was Officer Commanding, Central Command, Stationery Depot, Lucknow. He used to employ the employees for his personal work in the farm attached

to his bungalow and for other works such as in the Kitchen etc. It was objected to by the President of applicant no. 1 and others. Lt.-Col. K.K. Misra was then annoyed and placed the President - Narendra Kumar Pandey and applicant no. 7 (Har Prasad Bajpai) under suspension on 08.5.1992 and 07.11.1991 respectively. No disciplinary proceedings were drawn against applicant no. 7 - Har Prasad Bajpai and he had not tendered any apology to Lt. Col. K.K. Misra yet after some time, the order of suspension was revoked. The disciplinary proceedings against Sri Narendra Kumar Pandey were, however, started. The applicants contend that such an action is taken by Lt. Col. K.K. Misra only to over-awe the applicants.

4. The applicants further say that the predecessor Lt. Col. Misra had provided a big hall to the applicant no. 1 where the members of the Union used to assemble, take tea and ^{to sit} leisure at lunch time. Lt. Col. Misra, however, after taking over the charge, had withdrawn the said facility and a very small space was allotted to them. The applicants were compelled to keep standing at the time when they used to take tea. It is further alleged on behalf of the applicants that Lt. Col. Misra asked applicant no. 30- Jagamba Pandey in September, 1991 to work in his kitchen and to clean utensils. The applicant no. 30-Jagamba Pandey had declined. Therefore, Lt. Col. Misra was annoyed and asked Jagamba Pandey and A.A. Khan who were occupying the quarters attached to Depot in the detention barrack to vacate those quarters. Since they could not vacate the quarters, Lt. Col. Misra started making deduction from their salary at the rate of Rs. 300/- per month from Jagamba Pandey and at the rate

of Rs.500/- from M.A. Khan w.e.f. September, 1991.

Those quarters were abandoned quarters and thus, it is alleged that there was no point in deducting any amount of rent from them; and besides, the rent ^{so} determined, was also very heavy.

5. It is also alleged that Lt. Col. K.K. Misra was using for personal gains the crops of fruits in his orchard and jack-fruits, mangoes, guavas etc used to be sold. For agricultural operations, the employees working under the respondents were engaged. The applicant no. 1 made complaint to various authorities, thus, Lt. Col. K.K. Misra was annoyed with the applicants. It is furthered that on 13.5.1992, the jack-fruits and mangoes were got plucked by Lt. Col. Misra in a large quantity and they were dispatched in a mini-truck. The Union made a complaint to Lt. Col. Misra on 14.5.91 and brought to his notice that it amounted mis-appropriation of government property. Lt. Col. Misra was then annoyed with the President of the Union and all the petitioners were kept inside the depot premises. They were not allowed to go ^{to} their residence. Therefore, the complaint was again made on 15.5.1992 and it was alleged that the respondents were being victimised.

6. It is stated that on 18.5.92, Sri Mohan Lal, Subedar, Security Junior Commissioned Officer called for Narandra Kumar Pandey - the President of the Union - at the gate and wanted to hand over a closed envelope. Sri Pandey asked the Security J.C.O. to deliver him the contents of the envelope. When it was not done, he refused to receive the envelope. The Security J.C.O. misbehaved with the President of the Union. Therefore,

the other applicants no.2 to 40 came out to find out the reasons. The combatant staff was requisitioned and all the applicants were surrounded. The Ordnance Officer, Civil(store) - respondent no.4 was asked by the applicants that Subedar Mohan Lal who had misbehaved with Sri Narendra Kumar Pandey, should apologise but it was not done. Therefore, all the applicants set on Dharna on the spot and demanded that Lt. Col. Misra should reach there in whose presence the security man should apologise but, Lt. Col. Misra failed to reach there and thus, Dharna continued. It is stated that on 19.5.92, all the applicants went to go to resume their duties but, they were not allowed and, therefore, they continued on Dharna. This Dharna continued from 19.5.92 to 29.5.92. The respondents treated this period of Dharna as absence from duty and consequently break in service. Orders to this effect were passed on 01.6.92 which are annexure-4 and 5.

7. The contention of the applicants is that no notice of passing the order of break in service, was given to the applicants and, therefore, the order was illegal. Besides, it is also contended that the order was subsequently converted to an order of dies-non but, it was not passed by the competent authority as is required under Rule 17-A of Fundamental Rules. Because the break in service is shown in the record of the applicants, this O.A. has been filed challenging the same.

8. The respondents have contested the case. The counter-reply of Lt. Col. K.K. Misra and supplementary counter-reply of Lt. Col. Dinesh Kumar Gupta were filed. It is contended that the Union is not in existence and Narendra Kumar Pandey was not the President and, therefore, the O.A. was bad for mis-joiner of Union as party. It is further contended that it was not maintainable. The maintainability is also challenged on the ground that the respondents have not availed ^{of} any departmental remedy before approaching the Tribunal.

9. It is averred that Narendra Kumar Pandey alongwith a few other employees of the Central Command Stationery Depot, were caught stealing government property on 14.5.1993 and Sri N.K. Pandey was subsequently suspended on 18.5.1992. He was ultimately dismissed from service. It is alleged that this Dharna was staged on the behest of Sri N.K. Pandey against whom action was taken by the respondents. The suspension of Har Prasad Bajpai was admitted and it was further stated that the said suspension order was revoked. As regards the quarters of Jagamba Pandey and M.A. Khan, it was pointed out that those persons were claiming house rent which was objected to by the audit^{or} authorities and, therefore, the recovery was made from them.

10. It is contended that the applicant no.2 to 9, 11 to 40 were in fact unauthorisedly absent^{ed} from duty and, therefore, the action was taken against them. It is also claimed that the respondents no.3 in exercising^{ing} of the powers under Fundamental Rule 17-A, passed the

order on 01.6.1992 which was subsequently amended through another order dated 07.7.92 and 04.8.92. It is also averred that the applicants were intimated that their Dharna or Strike out ^{the} the depot would be treated as absence from duty and the principle of 'no work no pay' would be applicable to them. The applicants were further required to submit their representations by 30.5.1992. Since the applicants no. 2 to 9 and 11 to 40 ~~were~~ refused to receive the memorandum dated 19.5.1992, sent through messenger, Sri R.K. Kaithal, Ordnance Officer Civilians alongwith Hawaldar Mahaveer Singh went to the applicants where they were sitting on Dharna. The applicants had again refused to receive the memorandum and, therefore, the contents of memorandum were read over to the applicants. Not only this, a copy of memorandum dated 19.5.1992 was pasted on the wall adjacent to the place where the applicants were sitting on Dharna. Another copy was placed on the Notice Board. During 20.5.1992 and 25.5.92 about 20 of the applicants had received the copies of memorandum. It was made clear in the memorandum that the representations may be submitted till the closing hours on 30.5.1992 but, no representation was received. Consequently, a reminder was given on 30.5.1992 to the applicants no. 2 to 9 and 11 to 40 intimating that the explanations which were not submitted, may be submitted till the closing hours of 01.6.1992. This intimation was received by most of the applicants but still no representation was received. In these circumstances, the impugned order was passed under Fundamental Rule 17-A. It is vehemently denied that no opportunity was given. The impugned order has been justified.

11. The supplementary counter-reply was filed in reply to the rejoinder and it was contended that the break in service of seven applicants was condoned and they were granted special casual leave vide order dated 03.2.1993. Subsequently, the said special casual leave was cancelled on 17.4.1993 and ultimately the break in service of those seven applicants and eight more total fifteen was condoned, for the period of Dharma from 19.5.1992 to 29.5.1992. It is also averred that the applicants no.3, 4, 9, 13, 18, 19 and 21 never represented against the order treating the period of Dharma as break in service. As regards applicant no.10 Lal Mohan Misra, it was stated that he was on duty. It is also clarified that the impugned order was passed by the competent authority.

12. The respondents through this Supplementary Counter-reply have also averred that the salary bill of all the employees of the Central Command Stationery Depot is sent for payment by 10th of the month to which the salary pertains so that the payment could be made by the last working day of the month. It is, therefore, urged that the order of deduction of salary passed on 01.6.1992 could be implemented in the month of June, 1992 and the salary of eleven days of Dharma (19.5.92 to 29.5.92) was actually deducted from the salary of June, 1992.

13. The applicants filed rejoinder, stating that the Central Command Stationery Depot Workers Union was duly registered with the Registrar of Trade Union, Kanpur or given registration no. as 3266 of the year 1968-69. It is denied if 15 applicants no.6, 8, 11, 12, 14, 15, 17, 20, 23, 26, 32 to 34, 39 and 40 had made representations

against the impugned order. It is also averred that the exercise of power under Fundamental Rule 17-A by respondent no.3, was without jurisdiction and void ab-initio. It is further claimed that amendment of the same would not validate the order. It is also claimed that the payment of salary for the period of Dharaz was already made and thus, the order of deduction passed by the respondent no.3, was illegal, arbitrary and violative of principle of natural justice.

14. The allegation of N.K. Pandey and others being involved in the theft of government property, was refuted and the facts which were mentioned in the O.A., were reiterated.

15. We have heard the learned counsel for the parties and have perused the records.

16. First of all we shall take up the objections which have been raised about the maintainability of the O.A. This O.A. has been filed by the Central Command Stationery Depot Workers Union as applicant no.1 and others applicants no.2 to 40 who are the members of the Union. The contention of the applicants is that this Union is registered body and N.K. Pandey is elected President. The contention of the respondents on the other hand is that there was no Union at all and thus, the O.A. was not maintainable. We do not want to go into the controversy whether it is recognised or non-recognised Union. The question before us is whether the O.A. can be filed even by un-recognised Union or Association. This aspect was considered by pg. 11/-

Justice K.N. Goel in his book 'Commentaries on the Administrative Tribunals Act, 1985' published in the year 1990. He has referred to the speech of the Minister in charge of the Bill in Lok Sabha made on 29.1.1985 wherein it was made clear that Trade Union and Association may continue to approach the Courts while this Tribunal were made for only individual servants grievances. This aspect was also considered in Akhil Bhartiya Shashit Karamchari Sangh Vs. Union of India and Others 1981 S.C.C.(L&S) 50 and it was held by their Lordships of Supreme Court that the petitions even when filed by un-recognised Association, were maintainable. In view of this legal position, it is clear that the maintainability of the present O.A. cannot be disputed on the ground that applicant no.1 was not a recognised Union.

17. The respondents have also raised the question that the applicant no. 10 - Lal Mohan Misra did not participate in Dharna and no order either ^{of any kind} break of service or having the effect of dies-non was passed. This O.A. was filed by Lal Mohan Misra alongwith ^{other} applicants. Even if the fact comes that no adverse order was passed against Lal Mohan Misra - applicant no. 10, the O.A. does not become bad because there are 39 other persons who have come with certain relief. In our opinion, these technical objections which have been raised on behalf of the respondents, carry no weight.

18. The Dharna had taken place but, the cause of the said Dharna has been differently mentioned by the applicants on the one hand and by the respondents on the other. According to the applicants, pg. 12/...

Lt. Col. K.K. Misra was indulging himself in the activities which were irregular and oppressive to the employees particularly the applicants working under him and, therefore, they had grievance against him. The incident of misbehaviour with N.K. Pandey-the President of the Union-compelled the applicants to adopt the course of Dharna. Besides, Lt. Col. Misra added fuel to the fire by not reaching the spot to pacify the matter. The ground disclosed in the counter-reply is different one. According to the respondents, the Dharna was stayed by Narendra Kumar Pandey, who was suspended and, therefore, this step was taken by the applicants. It is also averred that false and incorrect allegations were made against the respondents in general and Lt. Col. K.K. Misra in particular.

19. We are not concerned about the real reasons which sparked off the situation of Dharna. The main point in the pleadings of both the parties is that the applicants(excluding the applicant no. 1 and 10) sat on Dharna which started on 19.5.1992 and continued till 29.5.1992. During this period, the applicants did not work although they were reminded that the salary would be deducted if they did not work. The warning was also given that there may be a break in service. The question here arises whether this period of Dharna should be considered as cessation of work and legality or illegality of the same should be examined. The same matter came for consideration before their Lordships of Supreme Court in "Bank of India and Others Vs. T.S. Kalawale & Ors. 1990 (3) S.L.J. No. In that case,

Their Landships considered whether an employer was entitled to deduct the wages for the period that employees refused to work although the work was offered to them. It was held that deliberate refusal to work might be the result of various actions on the part of the employees such as sitting in or set in strike at the work place or a strike whether legal or illegal or go-show tactics. It was further observed that legality of the strike does not always exempt the employees from the deduction of their salaries for the period of strike. It could only save them from a disciplinary action since a legal strike was recognised as a legitimate weapon in the hands of the workers to redress their grievances. What appears from this observation is that the deduction of salary could not be saved whether the strike was legal or illegal. Here in this case, the applicants had staged Dharna which was one of the ways in which the cessation of work took place. Anyway, no legitimate reason can be assigned for the said Dharna. If the applicants had any grievance against Lt. Col. K.K. Misra or any functionary, it did not and could not permit them to stage a Dharna and thereby to stop work.

20. In the case "Miles Vs. Wakefield Metropolitan District Council (1989) 1 LLJ 335", it was observed " that in a contract of employment wages and work go together. The employer pays for the work and the worker works for his wages. If the employer declines to pay, the worker need not work. If the worker declines to work, the employer need not pay."

This view was adopted by their Lordships in the case "Bank of India and Others Vs. T. S. Kelawala and Others (supra)" and it was then that the observation was made to the effect that it was not a mere presence of the workmen at the place of work but the work they did according to the terms of the contract which constituted the fulfillment of the contract of employment and for which they were entitled to be paid.

21. It is, therefore, emerged that the main thrust should be as to whether the work was done by the employee or employees during the working hours because doing work shall entitle him or them for payment of salary. We have already mentioned that the deduction of salary for not working during the working hours, shall be legal and the legality or illegality of strike or Dharna for that matter, would not be taken into consideration. Here in this case, Dharna was staged by the applicants and during that period of Dharna for eleven days, no work was done by them. For these factual and legal reasons, the respondents were entitled to pass an order about deduction of salary and about the break in service.

22. The learned counsel for the applicants argued that the principle of natural justice demanded that the notices should have been given to the applicants and an opportunity to explain the situation, should have been offered. The respondents have come forward with the statement that when the applicants (excluding applicant no. 1 and 10) were sitting at Dharna at the gate of Depot, they were warned that they were likely to lose pay and allowances for

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the entire period of Strike/Dharna on the basis of 'no work no pay'. They were further warned that the said period of Strike/Dharna may effect break in service/ discontinuance of those persons. The memorandum which was prepared with this warning, has been brought on record, as annexure S.C.H.-26. There is a note on this memorandum of one Kalloa indicating that he went with the memorandum at the gate alongwith the list of persons who were required to be given the memo but, they refused. The list of 39 persons is attached with this memorandum ^{as is} annexure S.C.H.-26. There is another note on this memorandum that Sri Kaithal had gone to the gate alongwith the Havaldar Mahaveer to give the copies of the letter to all those persons who were sitting on Dharna but, they refused to take the letter. Thereupon Sri Kaithal read over the contents of the memorandum to the persons sitting on Dharna (the applicants). Thereupon, Pyare Lal - applicant no.3 replied that they knew well and there was no need to tell anything. Sri Kaithal then pasted one copy on the wall outside the gate and another copy on the main gate. It is thereby pointed out that the notice was given to the applicants and they were directed to address their representations by 30/5/92. Further contention of the respondents is that despite this fact that the notice of memorandum was given to the applicants, firstly by reading out openly then placing the copy on the wall and the main gate, a demand was made to serve the copy individually on the applicants during this period of Dharna. In this connection, reliance has been placed on annexure G-18 and G-20 which were placed on record alongwith the counter-replies. In these two lists, the signatures

have been obtained and some of the signatories had put the date below their signatures which was 25.5.92 on annexure C-18 and 30.5.92 on annexure C-20. It is contended that the applicants were again given one day's more time to give their representations and the date which was earlier fixed as 30.5.92, was extended to 01.6.92. On the basis of these documents, it has been contended on behalf of the respondents that an opportunity to explain as to why the salary be not deducted and the break in service/days non be recorded in the service book, was given but it was not availed of. The learned counsel for the applicant on the other hand argued that neither any opportunity was given nor it could be called reasonable opportunity. He went a step further by saying that these documents were manufactured subsequently in order to give the shape of an opportunity having been offered to the applicants.

22. In view of these rival contentions, the question for determination arises whether any opportunity was needed and given to the applicants. We again refer to the case Bank of India and Others Vs. I.S. Kelawal and others (supra), in which this point was also considered. The observation on the point is given below:

It is necessary to clear yet another misconception. There is no doubt that whenever a worker indulges in a misconduct such as a deliberate refusal to work, the employer can take a disciplinary action against him and impose on him the penalty prescribed for it which may include some deduction from his wages. However, when misconduct is not disputed but is, on the other hand admitted and is resorted to on a mass scale such as when the employees go on strike, legal or illegal, there is no need to hold an inquiry. To insist on

an inquiry even in such cases is to pervert the very object of the inquiry. In a mass action such as a strike it is not possible to hold an inquiry against every employee nor is it necessary to do so unless, of course, an employee contends that although he did not want to go on strike and wanted to resume his duty he was prevented from doing so by the other employees or that the employer did not give him proper assistance to resume his duty though he had asked for it.*

24. A perusal of this observation makes it quite clear that whether the strike or Dharna is legal or illegal, there remains no need to hold an inquiry. The participation of all the applicants(excluding applicant no.1 and 10) in the present case before us is not in dispute. Therefore, in view of this decision of the Hon'ble Supreme Court, there remains no need to hold an inquiry. In an inquiry even the order of removal from service can be passed. Admittedly, the order of break in service/dies non passed under Rule 17-A of Fundamental Rules is not a punishment. Even if it is assumed for the sake of argument that notice of the action which was taken against the applicants was given to them, we find that it was not necessary. The learned counsel for the applicant relied on the decision in Writ Petition no. 3728/82 Chandra Bhan Tripathi Vs. Union of India and Others decided on 23.1.1983 by Lucknow Bench of Allahabad High Court, in which it was held that if there is violation of principle of natural justice, the order of dies non passed under Rule 17-A does not remain sustainable in law. The principle of natural justice referred to in the above judgment are of notice and hearing. In view of the decision in the case of 'Bank of India and Others (supra), we find that the proposition has altogether been

changed by this decision. When the employees are admittedly sitting at Dharna, they refused to work and thus, the employer is entitled to deduct the wages for the relevant period. It was observed by their Lordships in the Bank's case in para 13 that when workers resort to ~~it~~(strike/dharna), they did so knowing full well its consequences. During the period of strike/~~Dharna~~, according to their Lordships, the contract of employment continued but the workers withheld their labour. Consequently, they could not expect to be paid. As regards holding of any inquiry, it was observed that to allow the management to hold disciplinary proceedings even in such cases was neither necessary nor proper. The result, therefore, is that the law which was laid down by the Lucknow Bench of Allahabad High Court remains no more good law. Consequently, the impugned orders cannot be challenged on this ground.

25. It has come in the pleadings particularly in counter-reply and supplementary counter-reply that the order of break in service with respect to 15 applicants (no. 6, 8, 11, 12, 14, 15, 17, 20, 23, 26, 32 to 34, 39 and 40) was reviewed on the representations being made by them but the order of break in service/dies non continued in respect of other applicants because no such representations were made by them. The emphasis laid by the learned counsel for the applicants is that review was possible only when representations were made. It has been argued on behalf of the applicants that the respondents manipulated subsequently to obtain the representations of some of the applicants. We are not entering into this controversy as to whether the representations were given by some of the applicants named above on

their own will or under some pressure. What appears from the facts as disclosed is that the impugned order was reviewed and the break in service/dies non was condoned in respect of 15 persons. The question for consideration arises if it is not a discriminatory act on the part of the respondents. We have gone through the Book "Swamy's Compilation of F.R. S.R. part 1 General rules" in which Government of India's order and of Director General Post and Telegraph department are given below. It appears that the Director General of Post and Telegraph vide letter no. 14/12/82-Vig.III dated 23.9.82 directed the officers of his department that the question of condonation of break in service for the purposes of Pension Rules may be considered suo moto without waiting for a representation from the affected officials and orders issued so that the retired employees were not put to financial hardship. It appears from this reading that suo moto consideration about condonation of break in service is obtaining in some of the departments particularly in the department of Posts and Telegraph. What appears to us is that the approach which has been made by Post and Telegraph department is quite reasonable and valid. The order about condonation of break in service/dies non is after all to be passed by the controlling authority if it intends the benefit to be given for purposes like pension and others. A reading of F.R. 17-A also indicated the same interpretation because it is mentioned after sub-clause (III) that unauthorised absence shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of

leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations, for which a minimum period of continuous service is required. Thus, decision is to be taken by the competent authority. Even if no representation is made, the competent authority cannot escape from this obligation of taking a decision with respect to leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations. In view of these facts, the contention of the learned counsel for the respondents that the condonation of break in service could not be allowed with respect to other applicants than applicants no.6, 8, 11, 12, 14, 15, 17, 20, 23, 26, 32 to 34, 39, 40, 01 and 10) because of absence of representations, does not hold good. The respondents are expected to act as model employer. If the sympathetic view is taken with respect to 15 persons who were equally involved in the Bharna, there remains no justification to make a distinction between those 15 persons and rest of the applicants. If this distinction is allowed to continue, it would be discriminatory and violative of principle of natural justice. We, therefore, find that the matter be remanded back to the respondents to re-consider the impugned orders and to pass on the same lines on which it was passed in respect of applicants no.1, 10, 6, 8, 11, 12, 14, 15, 17, 20, 23, 26, 32 to 34, 39 and 40.

25. Learned counsel for the applicants have also challenged the impugned order they were not passed by the competent authority. The word "competent authority" has been defined in Explanation-2 of F.R. 17-A to mean the appointing authority. The learned counsel for the respondents have brought on record the notification

signature S.C.R.-24 whereby powers of punishment were given to two authorities in respect of locally controlled civilian employees in Command Stationery Depots. All penalties could be inflicted by Brigadier, Army Ordnance Corps or by Major General Army Ordnance Corps of the respected command while penalties no. I to IV of Rule 11 of C.C.S. (C.C.A) Rules, 1965 could be passed by O.S.C. of the respective Stationery Depots. We have already held that the order passed under Fundamental Rule 17-A is not an order of penalty. Even if it is assumed for the sake of argument that such an order may be equated with minor penalty, the O.S.C. is competent to inflict the minor penalty. In such a situation, the impugned orders do not suffer from the defect of competency.

27. On the consideration of the facts and legal position as discussed above, we come to the conclusion that the O.A. is partly allowed. The matter be sent back to the respondents to pass the same order by the competent authority as was passed with respect of 15 applicants, within a period of three months. The O.A. is disposed of accordingly. No order as to costs.

2010-02-15

Member (J)

Member (A)

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