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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

OA 538/92.

Dt. of Order:18-3-94.

K.Bhaskara Sarma

....Applicant

Vs.

1. The Supdt., of Post Offices,
Medak Division, Medak.
2. The Post Master General,
Hyderabad Region, Hyd-1.

...Respondents

Counsel for the Applicant : Shri K.L.N.Rao

Counsel for the Respondents : Shri N.V.Ramana, Addl.CGSC

CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI A.B.GORTHY : MEMBER (A)

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I AS PER SHRI V. NEELADRI RAO, VICE-CHAIRMAN I

Heard Shri K.L.N. Rao, learned counsel for the applicant and also Shri N.V. Ramana, learned standing counsel for the respondents.

2. Charge memo. dated 25.9.89 was issued to the applicant who was ED BPM of Yerraballi village for unauthorised ^{absence} ~~leave~~ for a period of 56 days during the year commencing from 23.1.87 to 22.1.88 as the said period of unauthorised absence including the leave period of 124 days during that year has come to 180 days. After enquiry, the applicant was removed from service on the ground that the charge is proved, as per order dated 30.5.91 and the same was confirmed by the appellate authority on 29.5.92. The same is challenged in this OA.

3. One of the contentions raised for the applicant is that unless unauthorised absence including the period of leave during the year exceeds 180 days, the ED BPM cannot be subjected to disciplinary proceedings on the ground of unauthorised absence, and in support of the said contention, rule 5(b) of the ED Conduct & Service rules is relied upon.

4. But the learned standing counsel for the respondents referred to sub-para 6 of Para 1 of DG P&T General circular No. 23 dated 24.2.70

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and letters No.43/63/69-Pen. dt. 27.5.70, No. 5-5-72-ED
Cell dt. 18.8.73 and D.G(P) lr.No. 12-10788/EDC & Trg.
dated the 12.9.88.

To appreciate the respective contentions,
it is necessary to read Rule 5(b) of ED Agents
Conduct & Service Rules and para 1(6) of DG P&T
circular referred to above and they are as under:

5 (b) Where such an employee 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 other-
wise decides, be removed from service after
following the procedure laid down in Rule 8.

Para 1(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 fre-
quent intervals for a total period of 180
days or more in a period of one year he shall
cease to be an ED Agent.

5. It is stated for the respondents that
maximum entitlement of the leave by ED Agents
in one year during the relevant period ^{was} 180 days.
It is manifest from proviso (b) of Rule 5 that
an ED Agent shall be removed from service after
following the procedure laid down in Rule 8 unless
it is an absence in exceptional circumstances if the
period of unauthorised absence including the period
of leave granted during the year exceeds the limit
upto which an ED Agent could have been granted
leave and thus an ED Agent can be removed from
service under provision (b) of Rule 5 if an ED
Agent is unauthorisedly absent ~~for the period~~
if ^{The} ~~that~~ ^{of absence} period and the leave granted in the
year exceeds 180 days.

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6. It is true that para 1 (6) of DG (P&T) circular dated 24.2.70 and other connected letters state that 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. ~~Of course,~~ ^{the} Supreme Court held that services of an ED Agent cannot be terminated on the mere ground that he was absent for more than 180 days including the sanctioned leave, and even in such cases an enquiry has to be conducted under Rule 8. of EDAs (Service & Conduct) Rules, 1964.

7. But the question as to whether action for removal can be taken when the total period i.e. unauthorised absence, overstaya and the leave sanctioned in a year is only 180 days ^{up} has not come ^{before} for consideration ^{by} the Supreme Court.

8. It is well settled that Executive instructions cannot over-ride the statutory instructions. Proviso (b) of Rule 5 of ED Agents Conduct Rules ~~which was formulated under article 311 of the constitution~~ is explicit to the effect that the action for removal can be taken only when the period of unauthorised absence including the leave sanctioned in the year exceeds 180 days. It means that any action under ^{the} said proviso ^{including leave} cannot be taken for the period of absence ^{for}

^{if it is} less than 180 days. Para 1 (6) of DG P&T circular ^{an} and other connected letters state that ^{an} ED Agent ceases to be an ED Agent if that total period of absence and leave sanctioned in the year is 180 days. ~~As~~ it is not in consonance

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with proviso (b) of Rule 5 of CCS Conduct & Service Rules of ED Agents, the said para 1 (b) of the D.G.P&T Circular to ^{the} ~~that~~ extent that action can be taken against the ED Agents for removal if the total period i.e. the unauthorised absence and the ^{leave} ~~granted~~ in the year is 180 days ^{has to be less} ~~is~~ void.

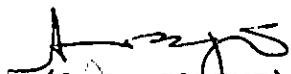
9. But the learned standing counsel submitted that proviso (b) of Rule 5 is applicable only in cases where leave was granted ~~only for once~~ but not in a case where leave was taken at frequent intervals. But when it is not specifically stated in the proviso (b) that the reference to the leave granted is only in regard to the leave granted at a stretch and not in regard to the leave granted at frequent intervals, it is not just and proper to construe that proviso (b) of Rule 5 is applicable only in regard to leave granted at a stretch. Hence we find that as the charge is to the effect that including period of leave sanctioned in the year, the unauthorised absence was only for 180 days, action cannot be taken under proviso (b) of Rule 5 of ED Agents Conduct & Service Rules and as such, the charge has to be quashed and the order of removal which was confirmed by the appellate authority has also to be set aside.

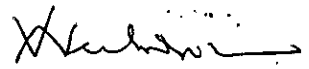
10. Accordingly, the order of removal dated 30.5.91 as confirmed by the appellate

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authority is set aside. The applicant has to be reinstated by the end of April. But ~~these~~ in ~~xxxx~~ circumstances, there will not be any direction for the payment of the remuneration from the date of removal till the date of reinstatement. No costs.


(A.B. GORTHI)
Member (Admn.)


(V. NEELADRI RAO)

Dated 18th March, 1994
Open court dictation

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Deputy Registrar (Judl.)

Copy to:-

1. The Supdt of Post Offices, Medak Division, Medak.
2. The Post Master General, Hyderabad Region, Hyd-1.
3. One copy to Sri. K.L.N.Rao, advocate, CAT, Hyd.
4. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
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