

(34)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 67/93.

Dt. of Decision : 12-12-95

1. P. Raghupathi Rao
2. B. Narasimha
3. A. Krishna Murthy

.. Applicants.

Vs

1. The Union of India,
Rep. by the Director,
General of Posts,
New Delhi-110 001.
2. The Chief Post Master General,
Andhra Circle, Hyderabad-500 001.
3. The Sr. Superintendent
Railway Mail Service,
Hyderabad Sorting Division,
Hyderabad-500 027.
4. The Head Record Officer,
Hyderabad Sorting Division,
Hyderabad.
5. The Manager,
Mail Motor Service,
Hyderabad-500 195.

.. Respondents.

Counsel for the Applicant,	: Mr. J.V. Lakshmana Rao
Counsel for the Respondents	: Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN
THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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CA 67/93.

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Dt. of Or

(Order passed by Hon'ble Justice Shri V
Vice-Chairman).

This is an unfortunate case of 800 employees being affected by the impugned order dt.18-1-93 passed by the Respondent No.3.

2. It is necessary to refer to the relevant and material facts to appreciate the relative contentions of the parties. On 25-11-92, The Assistant Superintendent of Post Offices, RMS, Hyderabad Sorting Division, on 25-12-92 required the employees to attend to the Registered Mail in the Un-Registered Mail Branch premises by observing that as the work of un-registered mail was over and for the purpose of expeditious delivery of the Mail, the opening of the Registered Mail Bags^{has} to be attended to. Then the Vice-President of the All India RMS & Mail Motor Service Employees Union Class-III, Hyd. Sorting Divn., Hyderabad protested by stating that if the Registered Mail bags are going to be opened in the un-registered Mail Branch premises, the possibility of mix-up with the un-registered mail may arise because by then the un-registered mail bags were not closed, and in such a case the Registered ^{mail} ~~bags~~ delivery may be ^{not totally and thus it} delayed, which may result in Disciplinary Action. But it is pleaded for the Respondents that in view of ^{the manner} way in which the said Vice-President behaved on that day, it felt to take Disciplinary action and accordingly the said Vice-President who was also one of the employees

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of the RMS Hyderabad was suspended by order dt.28-12-92. Thereupon all the 800 employees belonging to Group D and C and Mail Motor Services belonging to the three associations ^{which} of the applicants 1 to 3 are the Divisional Secretaries of the respective Unions resorted to ~~go on~~ strike from 29-12-93, and ^{at} ~~on~~ the intervention of the Assistant Commissioner (Labour), Hyderabad, strike was called off and they resumed ~~to~~ duty from 9.45 pm on 1-1-93 and the ^{order of} suspension of the Vice-President of the Union referred to above was revoked on 2-1-93.

3. The salary for December, '92 including for the 29th, 30th and 31st December, '92 was paid on 2-1-93 on the basis of the pay bill which was prepared and passed earlier to 29-12-92. On 18-1-93 the Respondent No.3 issued the impugned order dt.18-1-93, the relevant portion ^{of which} reads as under :-

"Please find enclosed the list of officials who participated in the recent sit-in-strike and the dates thereof.

Please effect recoveries of Pay & Allowances for the days of strike from the officials and intimate the recovery particulars to this office in the first week of Feb.'93.

The recoveries should be effected from the officials' salary for Ja.'93 payable in Jan. '93.

This is in continuation of the List of MM/ED/CL officials sent to you already.

This recovery is ordered without prejudice to any other disciplinary action that may be taken against the concerned officials."

4. This O.A. was filed praying for cancelling the impugned order No.SSRM/Con/STR/92-93 dt.18-1-93 ^{policy for} of recovery of 4 days pay.

from the salary of January, '93 payable on 31-1-93 to all the ~~Officials~~ of Hyderabad Sorting Division and Mail Motor Services of Hyderabad.

5. It is contended for the applicants as under :-

(i) The then Vice-President made the representation to the Assistant Superintendent of Mail Motor Services in the interest of preserving the insured and registered articles and Money Orders in tact and the same is in consonance with the rules in vogue, and as it is a case of vindictive suspension, the strike was justifiable, and hence they have to be paid wages for the strike period especially when it was being paid to the Postal employees working in Assam for the Strike period;

(ii) When the Respondent No.3 orally conceded the payment of the salary for four days of strike at the time of conciliation proceedings before ACL-I, it is not just and proper on his part to order the recovery. In any case the recovery has to be held as illegal as no notice was issued before the issuance of the impugned orders.

6. It was pleaded for the Respondents as per the reply statement filed by Assistant Post Master General, that the impugned order was issued as the employees are not entitled to the salary for the strike period on the principle of 'no work no pay'. It is further stated therein that the Assistant Superintendent RMS issued instructions to the employees after they finished their work in regard to the opening of the unregistered

mail with a view to deliver the registered articles at an early date, and the competent authority was constrained to issue the order of suspension to maintain the discipline and Respondent No.3 had not made any concessions than what is referred to in the proceedings dt.1-1-93, which was recorded on conclusion of the conciliation proceedings before ACL-I.

7. No employee is entitled to pay for the days for which he is absent without permission. It is for the employee to apply for the leave or otherwise in case he is absent without prior permission. The Apex Court held in (1994) 5 SCC 572 (Syndicate Bank & Another Vs. K.Umesh Nayak) that the employee is not entitled to the wages for the strike period unless the strike is just and legal. It is further held therein that if there is dispute as to whether the strike is just and legal, it is for the Industrial Tribunal, on reference being made under section 10 of Industrial Disputes Act to decide about it. It is not competent to the Respondent No.3 or even for Chief Post Master General to treat the strike period as leave to which employee is entitled to or the leave for which the employee may make a request. As such it is not open to this Tribunal at this stage to decide as to whether these employees are entitled to the salary for the leave period from 29-12-92 to 1-1-93.

8. On perusal of the impugned order, it can be stated that it is a case of ordering recovery of salary for the three days in December, 1992, which was erroneously paid and of with-holding the salary for 1-1-93 as the employees had not attended to the duties on those 4 days. At best it can be stated that it is not


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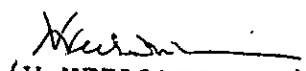
happily worded. The question of issual of notice does not arise in such a situation.

9. In the above view, we are not adverting to the other pleas raised for both the sides in this C.A. as they are not genuine for consideration for the relief claimed in this C.A.


10. The C.A. is thus liable to be dismissed with an observation that the employees or their associations if so advised, ^{or} free to make a representation to the Government to treat the strike period as on leave due or to refer the matter to the Industrial Tribunal under section 10 of the Industrial Disputes Act.

11. In the result this C.A. is dismissed. But it does not debar the applicants or their Associations or concerned employees to make representation to the Government to treat the strike period as leave due or to refer the matter to Industrial Tribunal under section 10 of the Industrial Disputes Act. O.A. ^{is} ordered accordingly. No costs.//


(R. RANGARAJAN)
Member (A)


(V. NEELADRI RAO)
Vice-Chairman

Dated: 12th December, 1995.
Dictated in Open Court.


Deputy Registrar (J) Ed

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- To General of Posts,
1. The Director, Union of India, New Delhi-1.
 2. The Chief Postmaster General, Andhra Circle, Hyderabad-1.
 3. The Sr. Superintendent, Railway Mail Service, Hyderabad Sorting Division, Hyderabad-27.
 4. The Head Record Officer, Hyderabad Sorting Division, Hyderabad.
 5. The Manager, Mail Motor Service, Hyderabad-195.
 6. One copy to Mr. J. V. Lakshmana Rao, Advocate, CAT. Hyd.
 7. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
 8. One copy to Library, CAT. Hyd.
 9. One spare copy.

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*C.O Sec
Received
a/s/14/5*

TYPED BY

*Urgent
18/12*

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. VEELADRIMO
VICE CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN :M(A)

DATED: 12-12-1995

~~ORDER~~/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No.

67/93

T.A.No.

(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

~~Dismissed.~~

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm.

