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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

D.A. 1395/93.

Dt. of Decision : 08-10-95.

M. Narayan Reddy

.. Applicant.

Vs

1. Senior Superintendent of
Post Offices,
Nizamabad Division.
2. Director of Postal Services,
Hyderabad Region, Hyderabad.

.. Respondents.

Counsel for the Applicant : Mr. S.Ramakrishna Rao

Counsel for the Respondents : Mr. V.Bhimanna, Addl. CGSC.

CGRAM:

THE HON'BLE SHRI JUSTICE V.N.ELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

OA.1395/93

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, V.C.)

Heard Sri S. Ramakrishna Rao, learned counsel for the applicant and Sri V. Bhimanna, learned counsel for the respondents.

2. The applicant who was EDBPM, Chinnoor, Nizamabad division applied for leave from 16-4-1990 to 30-4-1990; 3-5-90 to 13-5-90; 15-5-90 to 30-5-90 and 1-6-90 to 28-10-90 and they were sanctioned by Senior Superintendent of Post Offices. The applicant resumed duty on 29-10-90. Charge memo dated 23-8-91 was issued to the applicant by alleging that there was misconduct on his part in availing more than 180 days leave in 1990 in controvention of instruction No.1(6) of the DGP&T (Referred to at page 22 of Swamy's Compilation of Service Rules) for ED Staff in Postal Department, under Rule 5 of EDA (Conduct and Service) Rules. After inquiry the applicant was dismissed from service by order dated 30-1-1993 passed by the Superintendent of Post Offices (i.e.R-1), Nizamabad. The same was modified as removal order by the Director of Postal Services, Hyderabad, the Appellate authority. The same is assailed in this OA.

3. It is stated for the applicant that it had become necessary for him to avail leave on various spells in 1990 as he had undergone Hernia operation. The said plea of the applicant was not challenged for the respondents.

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4. Rule 5 of EDA (C&S) Rules reads as under :

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

Provided that -

- a) where an employee fails to resume duty on the expiry of the maximum period of leave admissible and granted to him, or
- 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 otherwise decides, be removed from service after following the procedure laid down in Rule 8."

Instruction 1(6) of DGP&T under the above Rule 5 is as follows :

"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 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."

5. It is not in dispute that the leave for 192 days in different spells applied for in 1990 by the applicant was ^{granted} sanctioned by the concerned Senior Superintendent of Post Offices. It does not come either under proviso a) or b) of Rule 5, ^{as} when the applicant resumed duty on the following date after the expiry of his leave in each spell.

6. It is not in controversy that as per DGP&T instructions the maximum leave that can be sanctioned in a ^{an} calendar year was 180 days during the relevant period. But it is a case where the applicant applied for more than the requisite period during the last spell in 1990, ^{but} and the same was sanctioned. The Senior Superintendent of Post Offices was competent to sanction only the maximum leave that can be availed

and if it is necessary to avail leave beyond 180 days, the higher authority i.e. the Director of Postal Services, was competent, during the relevant period, to sanction it. But probably without noticing that the total leave including the leave during the last spell exceeded 180 days, the same was sanctioned by the Superintendent of Post Offices. Be that as it may, this case of the applicant availing the entire sanctioned leave eventhough it exceeded rules that could have been sanctioned, does not come under either a) or b) of Rule 5 of EDA(C&S) Rules.

7. Instruction 1(6) of DGP&T relied upon by the respondents is as under :

"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 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."

It states that the applicant ceased to be an ED agent if he avails more than 180 days in a period of one year. But where rule 5 of EDA(C&S) Rules framed under Article 309 of the Constitution, stipulates disciplinary action, only in cases of overstaying after expiry of the leave granted, as referred, then any instruction or letter whereby removal of ED agent in case of availment of leave over and above the days of 180 that could be sanctioned has to be held as inconsistent with Rule 5 of EDA(C&S) Rules. It may be noted that Rule 5 b) of EDA (C&S) Rules stipulates that action can be taken only in case of overstaying after the expiry of the leave granted. The period of overstaying including the leave granted is far more than the total period of leave to be sanctioned i.e. 180 days during the relevant period. Hence, the disciplinary action cannot be taken even if one overstays the leave granted if the total period referred

180 days. Then it means that even in case of overstayal after the expiry of the leave action can be taken if only the total period is for more than 180 days and no action can be taken if it is less than 180 days. Thus Rule 5 contemplates action only in regard to the cases which are in violation of the said rules but not in regard to any other contingency. Rule 5 (Proviso) is thus exhaustive; but not merely illustrative.

Hence, no instance other than instances with reference to leave as mentioned in Proviso to Rule 5, can be subject to disciplinary action. As EDA Conduct and Service Rules were promulgated in exercise of power under Article 309 of Constitution, no other act of misconduct with reference to leave can be added by executive instructions. Hence, the Instruction 1(6) has to be held as void.

8. As the case of the applicant does not come under Rule 5 Proviso of EDA (C&S) Rules as already referred to, dismissal or removal of the applicant for availing the granted leave even-though it was for more than 180 days has to be held as illegal.

9. It has to be further noted that even in regard to the cases which come under Proviso a) / b) of Rule 5 EDA (C&S) Rules, it is open to the Government to review the exceptional circumstances of the case to grant leave for the period beyond 180 days in an year. The matter of the applicant was not referred to the DPS in regard to the same (vide instruction 4 of DGP&T) under Rule 5.

10. The question that next arises for consideration is as to whether a direction has to be given to the respondents to pay back wages to the applicant from the date of removal till the date of reinstatement to be made in pursuance of this order. We

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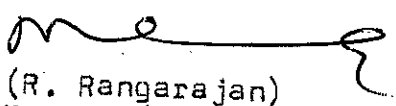
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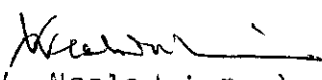
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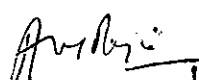
cannot say that there is no fault on the part of the applicant when he applied for period of leave beyond the period for which he could avail as he was not vigilant before applying for leave. So we feel it not a case where back wages have to be ordered.

11. In the circumstances, the OA is ordered accordingly. The impugned order dated 20-10-93 of R-2 removing the applicant from service as EDBPM and the order dated 30-1-1993 of Senior Superintendent of Post Offices, R-1, are set aside and the applicant has to be reinstated as EDBPM, Chinnoor, by 31-12-1995. No costs. //


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated : October 8, 95
Dictated in Open Court


Deputy Registrar(J)CC.

- To
1. The Senior Superintendent of Post Offices,
ak Nizamabad Division.
 2. The Director of Postal Services,
Hyderabad Region, Hyderabad.
 3. One copy to Mr.S.Ramakrishna Rao, Advocate, CAT.Hyd.
 4. One copy to Mr.V.Bhimanna, Addl.CGSC.CAT.Hyd.
 5. One copy to Library, CAT.Hyd.
 6. One spare copy.
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