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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

~~XXXXXXXXXXXX~~

O.A.NO.908 of 1995.

Between

Dated: 22.9.1995.

Mohd Jaffar

...

Applicant

And

The Senior Superintendent of Post Offices, Hyderabad City Division,
Hyderabad.

...

Respondent

Counsel for the Applicant

: Sri. P.Rathaiah

Counsel for the Respondent

: Sri. K.Bhaskara Rao, Addl. CGSC.

CORAM:

Hon'ble Mr. A.B.Gorthi, Administrative Member

contd:....2/-

DA 908/95.

Dt. of Order:22-9-95.

(Order passed by Hon'ble Shri A.B.Gorthi, Member (A)).

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The applicant while working as LSG Postal Assistant, Gol-konda was dismissed from service with effect from 1-11-93 after a departmental disciplinary enquiry. By the time of his dismissal he had rendered about 28 years of service and had to his credit the maximum earned leave admissible, i.e., 240 days. His claim in this O.A. is for a direction to the Respondents to pay him the cash equivalent of leave salary for the period of 240 days.

2. Heard learned counsel for both the parties. Shri P.Rathaiah, learned counsel for the applicant places reliance on the decision of the Principal Bench of the Tribunal in O.A.1540/90/ (1993(1)SLJ 285). In that case the applicant was convicted for an offence under section 302 of the Indian Penal Code. Without waiting for the outcome of the appeals filed by the applicant in the High Court and later in Supreme Court, the Respondents dismissed him from service in exercise of the powers conferred by Rule 19(1) of the CCS (CCA) Rules. The applicant was aggrieved not only by the said order of dismissal but also by the non-payment of leave encashment for 19 days prior to his dismissal. On the question of dismissal, the Principal Bench without setting aside the order of dismissal, gave liberty to the applicant to make a detailed representation and to bring out extenuating circumstances for reducing the punishment. As regards the applicant's claim for leave encashment, the same was allowed. Relevant portion of the Judgement is re-produced below :-

"8. The applicant was entitled to leave encashment for 19 days earned leave which had accrued to him before the date of his dismissal from service by the order dt.2.3.1985. This was denied to him on the ground that under Rule 24 of the CCS

(Pension) Rules, 1972, his past service is forfeited. According to the said Rule, dismissal or removal of a Govt. servant from a service or post entails forfeiture of his past service. In our opinion, there is nothing in Rule 24 to indicate that the leave accrued to a Government servant would be forfeited if he is dismissed or removed from service on a subsequent date. The true meaning of Rule 24 is that in such a case, the past service will not be counted as qualifying service for the purpose of pension and other retirement benefits."

3. The above conclusion was arrived at by the Principal Bench essentially on an interpretation of Rule 24 of the CCS (Pension) Rules.

4. Learned standing counsel for the Respondents, opposing the applicant's claim, has drawn my attention to Rule-9 and Rule-39 of CCS (Leave) Rules, 1972. Rule-9 reads as under:-

9. Effect of dismissal, removal or resignation on leave at credit :-

(1) Except as provided in Rule 39 and this rule, any claim to leave to the credit of a Government servant, who is dismissed or removed or who resigns from Government service, ceases from the date of such dismissal or removal or resignation.

(2) Where a Government servant applied for another post under the Government of India but outside his parent office or department and if such application is forwarded through proper channel and the applicant is required to resign his post before taking up the new one, such resignation shall not result in the lapse of the leave to his credit.

(3) A Government servant, who is dismissed or removed from service and is reinstated on appeal or revision, shall be entitled to count for leave his service prior to dismissal or removal, as the case may be.

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(4) A Government servant, who having retired on compensation or invalid pension or gratuity is re-employed and allowed to count his past service for pension, shall be entitled to count his former service towards leave."

Rule-39 provides for encashment of accumulated leave subject to a maximum of 240 days in respect of Government Servants who retire or compulsorily retired or who resign or quit service.

5. Rule-9 (1) makes it abundantly clear that any leave to the credit of the Government Servant who is dismissed from service ceases from the date of such dismissal. This rule was not brought to the notice of the Principal Bench in OA.1540/90. There is nothing on record to indicate that the judgement of the Principal Bench in the said O.A. has since been reversed either by a Full Bench of the Tribunal or by the Supreme Court.

6. The judgement of the Principal Bench in OA.1540/90 not being in consonance with Rule-9 (1) read with Rule-39 of CCS(Leave) Rules, 1972, the matter requires final adjudication/ decision by a larger Bench. This O.A. may therefore be referred to the Hon'ble Chairman of the Tribunal for constituting a larger Bench.

(Signature)
(A.B. Gorthi)
Member (Admn.)

Dated : The 22nd September 1995.
(Dictated in Open Court)

(Signature)
DY Registrar (J)

avl/spr

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OA-908/95

TYPED BY _____ CHECKED BY _____
COMPARED BY _____ APPROVED BY _____

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

HON'BLE MR. A.B. GORTHI, ADMINISTRATIVE MEMBER.

HON'BLE MR. _____
JUDICIAL MEMBER.

ORDER/JUDGEMENT:
DATED: 22/9/ 1995.

M.A./R.A./C.A.NO.

IN

O.A.NO. 908/95

T.A.NO. (W.P.NO.)

- ADMITTED AND INTERIM DIRECTIONS ISSUED.
- ALLOWED. *OA has been referred to Larger Bench.*
- DISPOSED OF WITH DIRECTIONS.
- DISMISSED.
- DISMISSED AS WITHDRAWN.
- DISMISSED FOR DEFAULT.
- ORDERED/REJECTED.
- NO ORDER AS TO COSTS. *note*

Rsm/-

**** OA maybe referred to bench of 3 members by larger bench
Co he pt. must then bind to full of the dispute*

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(5)

Central Administrative Tribunal
DESPATCH
13 OCT 1995
HYDERABAD BENCH

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