

44

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

O.A.No.1029 OF 1995.

Date of Order:17-3-1998.

Between:

M.A.Gaffar.

.. Applicant

And

1. The Sub-Divisional Inspector(Posts),
Warangal North Sub-Division,
Warangal.

2. The Superintendent of Post Offices,
Warangal Division, Warangal.

.. Respondents

COUNSEL FOR APPLICANT : Mr.S.Ramakrishna Rao

COUNSEL FOR RESPONDENTS : Mr.N.V.Raghava Reddy

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER(ADMN)

AND

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER(JUDL)

: O R D E R :

ORAL ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER(A))

Heard Sri S.Ramakrishna Rao, learned Counsel for
the Applicant and Sri N.V.Raghava Reddy, learned Counsel
for the Respondents.

.....2

42

2. The applicant while working as ED/Mail Carrier fell sick in 1990 with some chronic skin ailment which forced him to take leave without pay on heavy loss as the ED Agents in the Postal Department are not entitled for any leave with pay.

3. While the position stood thus, the applicant was issued with a Charge Memo No.PF/MAG/93, dated:14-7-1993(Annexure.2 to the OA). It may be stated that the applicant was unauthorisedly absent from duty since 16-5-1993; earlier he was granted leave from 2-12-1990 to 15-5-1993. The applicant submits that he had submitted a reply to that Charge Sheet. He further submits that he has been put off from duty with effect from 30-6-93 by office Order dated:2-7-1993. The said Charge Sheet was cancelled for administrative reasons and was issued a fresh Charge Sheet, vide Memo.No.PF/MAG/93, dated:18-10-1993(Annexure.6 to the OA, Page.17). In that Charge Sheet he has been shown as unauthorisedly absent from 19-5-1993 to 28-6-1993 and with the earlier sanctioned leave the total days the applicant was away from duty was more than 180 days. Further a Corrigendum was issued by Memo.No.PF/MAG/93, dated:12-3-1994(Annexure.9, Page.24 to the OA) showing the unauthorised absence from 16-5-1993 to 1-7-1993 instead of 16-5-1993 to 28-6-1993 as entered in the second Charge Sheet. An enquiry was conducted and the applicant was awarded the punishment of removal from service with immediate effect by Proceedings dated:30-8-1994 in Memo.No.PF/MAG (Annexure.11, page.28 to the OA). His appeal on the removal order was also rejected by Order dated: 31-1-1995, vide Memo.No.B2/Put Off/94-95(Annexure.1 to the OA).

4. This O.A. is filed to set aside the punishment of removal from service of the applicant passed by the Disciplinary Authority by his Order dated:30-8-1994 and the Appellate Authority by his Order dated:30-1-1995, and for a consequential direction to reinstate him back into service.

— Je

5. The contentions of the applicant in this OA are as follows:

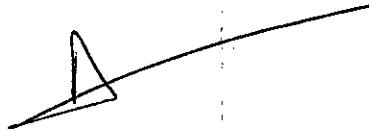
(i) The charge sheet can be issued only if the absence exceeds more than 180 days as embodied in Rule.5 of the EDA(C&S) Rules. The applicant was away from duty only for 180 days as per the second charge sheet.

(ii) ~~whereas to increase that 180 days a Corrigendum dt:12-3-1994 was issued thereby the absence was made more than 180 days, thereby bringing his case for conducting an enquiry under Rule 5 of the EDA(C&S)Rules.~~ The contention of the applicant is that, if it is 180 days or less then the applicant cannot be proceeded against and that has been conclusively held by this Tribunal in O.A.No. 1395 of 1993, dated:8-10-1995.

(iii) For granting leave beyond 180 days, Respondent no.1 is not competent. Such grant of leave beyond 180 days can only be done by higher authorities viz., Director of Postal Services, (now it is ~~stated to have been~~ delegated to R.2); but none is sure who is the appropriate authority for granting leave beyond 180 days. However, this can be informed to the applicant by the respondents so as to enable him to file a representation, if he so desires.

6. The first contention is that the applicant is not absent for more than 180 days. The first charge sheet issued subsequently cancelled states that he was away from duty only for 167 days. But the second charge sheet alongwith Corrigendum indicates that he was absent for more than 180 days. This is a matter of record and the respondent-authorities are competent to examine this contention on the basis of the records. Before us, we do not have sufficient material to accept the contention or reject the contention of the applicant. Hence, we leave it to the respondents to decide the issue in regard to number of days of leave availed by him during that period in question.

TE



.....4

7. The learned Counsel for the applicant submits that the cancellation of the first charge sheet and the issue of second charge sheet after he has submitted his reply to the first charge sheet is irregular as observed by the Madras Bench of the Central Administrative Tribunal in P.DASARATHAN VS SUB-DIVISIONAL INSPECTOR (POSTAL) KARIKAL & OTHERS(O.A.No.408/1998,dt:21-6-1989), (reported in 1989(11) ATC 676) and in the case decided by the Jabalpur Bench of the Central Administrative Tribunal in CHANDRA SEKHAR SETH Vs. UNION OF INDIA & OTHERS(OA.No.7/1988), (reported in 1990(12) ATC 868). If the applicant is of the opinion that the issue of the second charge sheet cancelling the first charge sheet after he had submitted his representation to the first charge is irregular then he should have challenged the second charge sheet then itself as irregular due to technical reasons. But the applicant has not challenged that. At this stage to challenge it is not appropriate as the process of finalising the charge sheet is already over and he is challenging the final punishment granted on the basis of the second charge sheet.

8. The second contention of the applicant is that, Respondent no.1 in this O.A. is not competent to grant him leave beyond 180 days. Hence that incompetent authority refused to give leave beyond 180 days without putting up to the appropriate authority. In this connection, he relies on the Judgment of this Tribunal in O.A.No. 1395 of 1993 decided on 8-10-1995(NARAYAN REDDY Vs SENIOR SUPERINTENDENT OF POST OFFICES, NIZAMABAD DIVISION & ANOTHER). In para.6 of the said Judgment, it is observed that "if it is necessary to avail leave beyond 180 days, the higher authority viz., the Director of Postal Services was competent during that relevant period to sanction it". The applicant submits that the refusal of the grant of leave beyond 180 days by incompetent authority has to be set aside.

R

.....5

9. Now that the charge sheet has already been finalised and the applicant had already been removed from service, it is inappropriate to consider at this stage, whether the refusal to sanction leave is in order or not. However, we are of the opinion that the case may now be put up on the basis of the representation to be submitted by the applicant to the Appellate Authority for sanctioning of the leave beyond 180 days. If that authority sanctions the leave beyond 180 days, then it goes without saying that the first charge sheet issued is irrelevant as earlier the leave not sanctioned by an incompetent authority based on which the charge sheet was issued. If the leave beyond 180 days is sanctioned on the basis of the representation to the competent authority then the O.A. has to be allowed and the punishment order has to be set aside.

10. In case the appropriate authority refused to sanction the leave then the appellate authority should give a detailed reasons by a Speaking Order for refusing to grant leave beyond 180 days. If the applicant is going to be aggrieved by that Speaking Order, he is at liberty to challenge the same in accordance with law.

11. In case it is not sanctioned then the O.A. is to be dismissed. Hence, the whole issue now depends upon the competent authority sanctioning leave or otherwise on the basis of the representation to be submitted by the applicant.

12. In view of the foregoing, the applicant, if so advised, may submit a detailed representation for granting him leave ^{for} above 180 days to the appropriate authority (after ascertaining that appropriate authority from R.2) taking all the contentions available to him including the contentions raised in this O.A. If such a representation is received by that appropriate authority then that appropriate authority should decide the issue in regard to grant of leave to the applicant beyond 180 days.

Te

D

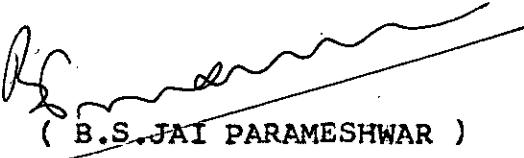
.....6

13. If that appropriate authority refused to sanction the leave then that authority should give a detailed Speaking Order for the refusal. The applicant is at liberty to challenge that Speaking Order, if so advised, by filing a fresh O.A. Under Section.19 of the Administrative Tribunal Act, 1985.

14. In case the leave is not sanctioned then the O.A. is dismissed. If the leave is sanctioned then the O.A. stands allowed and the applicant has to be reinstated back into service with all consequential benefits.

15. The applicant should submit a detailed representation to the appropriate authority within one month for grant of leave as discussed above from the date of receipt of a copy of this Order. If the representation is received within the stipulated period then the appellate authority should dispose of the representation within two months from the date of receipt of a copy of the representation.

16. With the above direction, the O.A. is disposed of.
No costs.


(B.S.JAI PARAMESHWAR)

MEMBER (J)

17.3.98


(R.RANGARAJAN)

MEMBER (A)

Dated: this the 17th day of March, 1998

Dictated in the Open Court

DSN

Copy to:

1. The Sub Divisional Inspector, (Posts),
Warangal North Sub Division,
Warangal.
2. The Superintendent of Post Offices,
Warangal Division, Warangal.
3. One copy to Mr. S. Ramakrishna Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC, CAT, Hyderabad.
5. One copy to D.R(A), CAT, Hyderabad.
6. One duplicate copy.

YLKR

17/3/88
6

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. BURANGARAJAN : M(A)

AND
THE HON'BLE MR. B.S. JAI PARAMESHWAR:
M(J)

DATED: 17/3/88

ORDER/JUDGMENT

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

in
D.A.NO. 1029/85

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED X REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR

