

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

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Date of Order : 09.05.2001.

ORIGINAL APPLICATION NO. 407/95

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Laxmi Narain Gupta aged about 57 years, S/o Shri Babu Lal Gupta, R/o behind Tehsil Shanti Sadan, Ward No. 5, Nadbai, District Bharatpur.

.....Applicant.

VERSUS

1. Union of India through Director General (Postal), Sanchar Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Director Postal Service, Rajasthan, Western Region, Jaipur.
4. The Superintendent of Post Offices, Bharatpur Division, Bharatpur.

.....Respondents.

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Mr. Vinod Goel, Adv. proxy for
Mr. Virendra Lodha, Counsel for the applicant.

Mr. Hemant Gupta, Adv. proxy for
Mr. M. Rafiq, Counsel for the respondents.

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CORAM :

HON'BLE MR. A.K. MISRA, JUDICIAL MEMBER

HON'BLE MR. N.P. NAWANI, ADMINISTRATIVE MEMBER

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O R D E R

(Per Hon'ble Mr.A.K.Misra)

The applicant had filed this O.A. with the prayer that the impugned orders relating to his removal from service and the order rejecting his appeal, be quashed and set aside and the respondents be directed to reinstate the applicant on the post of Extra Departmental Branch Post Master (E.D.B.P.M.), with all consequential benefits.

2. Notice of the application was given to the respondents who have filed their reply to which no rejoinder was filed.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. The applicant was served with a Chargesheet containing two charges. In Charge No. 1, it was indicated that the applicant had remained on leave for more than 184 days within a period of one year as against the permissible maximum limit of 180 days of leave. The second charge is relating to his un-authorised absence from duty from 13.8.1987 to 14.9.1987.

5. The applicant was found guilty of both the charges and was punished with the penalty of removal from service. His appeal to the departmental authorities was also dismissed. Therefore, the applicant has challenged the aforesaid orders on the following grounds.

6. That the leave of the applicant was granted by the

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competent authority yet the same has been taken into consideration as period of absence. The order of the appellate authority has been passed in a cryptic manner and without application of mind. The applicant had not availed more than 180 days of leave in a calendar year. Therefore, the allegation of the department that he had availed more than 180 days of leave in a period of one year, is wrong. The Department had allowed the allowances to a person as a substitute who had worked in absence of the applicant during the months of August and September 1997, therefore, he cannot be said to be un-authorisedly absent. The order of punishment is bad in law and the penalty is disproportionate, therefore, the order of removal of the applicant from service, deserves to be quashed. On the other hand, the respondents have justified their action by stating that the applicant had remained on leave and on un-authorised absence for a period more than 180 days in one completed year from the beginning of the spell of first leave. The penalty for availing leave more than the leave permissible is removal from service. No illegality has been committed in conduct of the case. The penalty is absolutely justified and the O.A. deserves to be dismissed.

7. We have considered the rival contentions and the arguments advanced by the learned counsel for the parties. The Rule 5 of the Extra Departmental Agents (Conduct and Service), Rules (for short 'the Rules'), is in respect of entitlement of leave of EDBPM which is quoted hereunder :-

"Leave

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

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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 up to 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."

8. Under this Rule the Government had taken certain decisions from time to time fixing the limit of leave which could be availed by the EDAs. Under the Decision No. 3 Printed on Page 35 of the Swamy's Compilation of Service Rules for Postal ED Staff, VIII edition of 2000, Conditions No. 4,5, and 6 which are quoted herein, cover the maximum limit of leave which could be availed by such EDAs within a period of one year.

"(4) No ED Agent should be permitted leave of absence for more than 90 days at a stretch which may be extended up to 180 days in exceptional circumstances by the Divisional Superintendent of Post Offices. The maximum period of leave which may be sanctioned to an ED Agent in a single stretch shall not exceed 180 days. Leave of absence in excess of 180 days may be granted by Heads of Circles only in cases where the necessity for leave arises due to ED Agent officiating in a departmental post. The Heads of Circles have been delegated powers to sanction leave to EDAs beyond 180 days on account of genuine illness (effective 12.9.1988).

(5) If an ED Agent remains on leave for more than 180 days at a stretch, he will be liable to be proceeded against under Rule 8 of EDAs (Service and Conduct) Rules, 1964.

(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."

9. In this regard, it would be evident from the provisions of Rule 5 that the period of sanctioned leave and the period of un-authorised absence, is to be counted together for purposes of calculation of maximum permissible leave. The Rule does not make any difference between the sanctioned period of leave and unauthorised absence. Therefore, the contention of the learned counsel for the applicant that in order to hold the charge as proved in respect of availing leave of 180 days i.e. maximum permissible limit under the rules, sanctioned period of leave has wrongly been taken into consideration. The leave which was sanctioned should not have been made a matter of charge. But, we do not think that in view of the specific provision this argument can at all carry weight. All what rule says is that the leave sanctioned and un-authorised absence are to be taken together for working-out the maximum permissible limit. The Rule also provides that unless the period of leave exceeding 180 days, is decided by the Government in favour of the applicant, such absentee is to be removed from service by following the procedure laid down in Rule 8 of the Rules. In this case, the period of sanctioned leave and the period of absence from duties is not disputed, therefore, it can be safely concluded that applicant had availed leave of more than 180 days in one year as maximum permissible under the rules. The competent authority of the Government had not sanctioned such excess leave, neither the applicant has advanced any ~~extra-ordinary~~^{extraordinary} circumstances before the concerned authorities for such sanction. Therefore, no fault can be found in this regard in the conclusion of the disciplinary authority. So far as the question of calculation of the period

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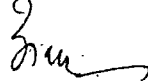
of one year is ^L it is not provided under the rules that the period of one year is to be taken either ^{the} financial year or the calendar year. All what is provided under the Rule is that period of frequent leave is to be calculated keeping in view the period of one year; that obviously means the period of leave taken by the applicant in the first instance and leave availed thereafter during the period of one year. As mentioned above the period of leave ^{availed by} and the period of absence ~~availed~~ of the applicant is not in dispute, therefore, computing the period of one year commencing from first spell ^{of leave} and the period of leave subsequently taken by the applicant and the period of unauthorised absence in continuation thereof ~~then~~ the ir-resistable conclusion would be that within a period of one year the applicant had availed leave for more than 180 days and if period of unauthorised absence is added thereto, then the total period of leave and absence would be much more than 200 days which is not permissible under the rules. Neither the said period has been regularised by the departmental authorities by sanctioning the same. The Extra Departmental Agents are appointed to provide postal facilities and the services connected thereto, to the persons living in the villages and remote .. habitations. Prolonged leave by an EDA or his unauthorised absence from duties ~~causes~~ immense hardship to such villagers and ~~dis-lodges~~ the departmental arrangements in this regard. Therefore, the conclusion of the disciplinary authority to remove the applicant from service under the given circumstances, cannot be treated as harsh. When the only penalty provided for such a default is removal then the same cannot be said to be excessive.

10. We have not noticed any infirmity in the procedure

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adopted by the Department which may have resulted into some prejudice to the applicant. In view of this, we do not find any force in the Original Application. The same is, therefore, dismissed without any orders as to cost.


(N.P. Newani)
Adm. Member


(A.K. Misra)
Judl. Member

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