

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR

O.A. No. 35/1997

Date of order: 14.5.2002

Siya Ram Sharma Son of Late Shri Shukhlal, aged 50 years,  
Resident of village Mamodhan, Post Mamodhan, Tehsil Baseri,  
District Dholpur (Rajasthan) working at Branch Post E.D.B.P.M.  
Mamodhan District Dholpur.

...Applicant

V E R S U S

1. Union of India, through the  
Secretary, M/o Department of Posts,  
Dak Bhawan, New Delhi.
2. Chief Post Master General  
Rajasthan Circle, Jaipur
3. The Director, Postal Services,  
Jaipur Region, Jaipur.
4. The Superintendent of Post Offices,  
Dholpur Division, Dholpur.

...Respondents

Mr. K.P. Singh, counsel for the applicant.

Mr. B.N. Sandhu, counsel for the respondents.

CORAM:

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

O R D E R

( Per Hon'ble Mr. J.K. Kaushik, Judicial Member )

The applicant Siya Ram has filed this Original Application  
under Section 19 of the Administrative Tribunals Act, 1985

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for quashing and setting aside the impugned order dated 5.6.1996 (Annexure A/3) and order dated 12.6.1996 (Annexure A/4), by which the appeal of the applicant has been rejected <sup>for</sup> and he has further prayed a direction to the respondents to reinstate him in service, with all consequential benefits.

2. The brief facts of the case are that the applicant while working on the post of Extra Departmental Branch Post Master at Mamodhan could not continue on his duties because of family circumstances. Initially he was sanctioned leave but thereafter his two young brothers had expired and the entire family burden came on his shoulders. It is the further case of the applicant that he sent letters to the respondent No. 4 for grant of leave and he was under bonafide impression that his leave has been sanctioned. It is also said that he sent medical certificate to respondents No. 4 alongwith letter but the respondent No. 4 treated that the applicant wilfully absented for 258 days.

3. It has been averred that some enquiry was initiated against him and thereafter an order dated 31.1.1995 (Annexure A/1) was passed by respondent No. 4 by which the applicant has been imposed the penalty for removal from service. It is said that an appeal was preferred wherein he narrated each and every fact and circumstances that he remained out of duty due to circumstances beyond his control and it was not a case of wilfully absent from duty. His appeal was rejected vide order dated 5.6.1996 (Annexure A/3) and the same was communicated vide letter dated 12.6.1996 (Annexure A/4). It has been averred that the respondent No. 4 have not exercised their power in proper manner regarding

the condonation of breaks in service caused due to leave in excess of 180 days by the EDAs as per Annexure A/5 dated 8.5.1996.

4. The applicant has taken number of grounds in the O.A. It has been said that the impugned orders were contrary to the provisions of law, the respondents had power to condone the breaks, the rules of 1964 have been given complete go-by as also Article 311 of the Constitution of India. The applicant always sent due information to the department for extending his leave alongwith medical certificate. He was not given with any notice for seeking explanation for his absence and there has been flagrant violation of provisions of Articles 14, 16, 21 and 311 of the Constitution of India.

5. The Original Application was admitted on 31.1.1997 and the notices after admission were issued to the respondents for filing the reply. The respondents have controverted the case and grounds raised in the Original Application and it has been averred the principle of natural justice has been followed in this case. The applicant applied for extension of leave for three months but the leave was not sanctioned and he was directed for report on the duty. He did not report and remained absent from duty for a period more than 180 days. The stand of the applicant has been said to be self contradictory. On the one hand, it has been said that two young brothers had expired and the entire family burden came on his shoulders. On the other hand, he said that he sent the application alongwith medical certificate to the respondent No. 4. The applicant was issued with a

memorandum dated 26.8.1993 and a disciplinary action was initiated against him under Rule 8 of CCS (EDA Service and Conduct) Rules, 1964. Keeping in view the provisions of Rule 5 of the said rules. It has been further said that Annexure A/5 dated 8.5.1996 was very well taken into consideration and the respondent No. 3 and 4 have exercised their power in proper manner. The applicant unauthorisedly absented from duty and his services has been terminated after following the rules in force including the Article 311 of the Constitution of India. Therefore, the O.A. has no force and the same deserves to be dismissed with no costs. The applicant has filed rejoinder to the reply and have almost reiterated the facts which were taken in the O.A. and in addition <sup>he</sup> has mentioned that the punishment awarded is not proportionate and the entire life of the applicant has been put in dark.

6. We have heard the learned counsel for the parties and have carefully examined the record of the case.


7. The factum of remaining absent for 258 days from duty by the applicant are not disputed in this case. Thus, it is true that the applicant remained absented for more than 180 days in a year. The position of rules in force is very clear on this point. Rule 5 of the EDA Service & Conduct Rules, 1964 and the Government's instructions below same. It has been provided that ~~xx~~ 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 & Conduct Rules, 1964. The main rule provides that where an employee who is granted leave for a period less than

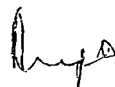
the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave, he shall, unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule-8.

8. We have thoroughly examined this matter and we find that the applicant has remained absent for more than 180 days, may be on account of leave or on account of absence and action has been taken under ~~rule~~ rule-8 of EDAs Service & Conduct Rules, 1964. The applicant has been removed from service as per the mandate of the rule after following the procedure laid down in the said rule. There has been no infirmity or illegality in conducting the inquiry and the absence of the applicant for a period more than 180 days has been fully proved. Thus, there is no illegality or infirmity in the impugned orders.

9. Further, Rule-5 of EDAs Conduct & Service Rules, 1964 is not under challenge and the complete action has been taken as per the said rule. Therefore, no interference is called for in this matter since the applicant has remained absent, may be on leave or otherwise, for a period exceeding 180 days and there was no Government decision to deal with <sup>of absence</sup> the period/otherwise. Thus, the OA is without any merit. Consequently, we pass the order as under:

"The OA is dismissed and there shall be no order as to costs."

  
( J.K. KAUSHIK )  
Judl. Member

  
( A.P. NAGRATH )  
Adm. Member