

Original Application No. 318 of 1998

Jabalpur, this the 2nd May, 2003

Hon'ble Mr. R.K. Upadhyaya - Administrative Member  
Hon'ble Mr. J.K. Kaushik - Judicial Member

Balaram S/o Khadaru Yadav, aged 55 yrs,  
Ex-Departmental Mail Carrier, R/o Janggir  
Distt-Janjgir (M.P.)

! Applicant

(By Advocate - Shri A. Shrivastava)

Versus

1. Union of India, Department of Posts and  
Telegraph through its Secretary, New Delhi.

2. Post Master General, Madhya Pradesh.

3. Sub-Divisional Inspector (Posts) Sub Division,  
Champa, Distt-Bilaspur (MP).

4. Superintendent of Posts, Bilaspur (MP) - Respondents.

(By Advocate - Shri P. Shankaran)

ORDER (Oral)

By J.K. Kaushik, Judicial Member -

Shri Balaram has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying therein that in view of the facts and grounds mentioned in the Original Application, the impugned order Annexure-A-1 be quashed and "the applicant be directed to serve instated with full back wages from the date of issuance of order Ann.A-1".

2. The brief facts of the case are that the applicant was appointed to the post of Extra Departmental Mail Carrier/Delivery Agent in the year 1969. He worked at various places with devotion, sincerity and honesty till 1985 and his services have been terminated. He was issued a memorandum dated 29.6.1985 and a departmental enquiry was held against him under Rule 8 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as 'the EDA Rules'). The applicant vide his reply dated 8.7.1985 denied all the allegations.

He has submitted that the allegations were petty in nature

Contd.....2/-

therefore, the punishment of 'put off from service' is not justified.

2.1 The S.D.O.(P) Nilaspur was appointed as the enquiry officer, who conducted the enquiry and submitted his report holding the applicant guilty of the misconduct. Thereafter, the applicant was inflicted penalty of dismissal from service under Rule 7 of the EDA Rules vide order dated 25.4.1986 (Annexure-A-1).

2.2 The further case of the applicant is that only one prosecution witness was examined, who disowned his earlier statement. The enquiry officer was biased against him. The impugned order has been passed with mala fide intention. He was not given any show cause notice on the question of penalty.

3. A separate application for condonation of delay has been filed wherein it has been submitted that the applicant had filed a civil suit which was wrongly sent to the State Administrative Tribunal, which was further returned to the Civil Court, wherefrom an order was passed which is placed at Annexure-A-4, by which the Civil Suit was returned for presentation before the appropriate forum. Thereafter, this Original Application has been filed. He has also prayed that the delay in filing of the Original Application may be condoned.

4. A detailed reply has been filed on behalf of the respondents which contained certain preliminary objections. It has been submitted that in the course of the enquiry the charges levelled against the applicant were proved and thereafter he was removed from the service. The Original Application is barred by limitation and the explanation for condonation of delay is not proper. Further it has been submitted that no appeal has been filed against the penalty order. The facts and grounds mentioned in the O.A. have been generally denied by the respondents.

5. We have heard the learned counsel of parties at considerable length and have considered the rival contentions after perusing the records.

6. As far as the limitation is concerned, it is a case of the applicant that he was contesting his grievance in a wrong forum and that too with diligence and without any negligence and it has been submitted on behalf of the applicant that the delay is required to be condoned keeping in view the provisions of the limitation as mentioned in Section 14 of the Limitation Act, 1963 wherein it has been provided that if a person is agitating his claim in a wrong forum without any negligence on his part, the period spent there shall ~~not~~ be taken into consideration. As far as the limitation is concerned in the instant case taking a lenient view, as held by the Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag Vs. Katili, AIR 1987 SC 1353, and desirability of deciding the case on merits, we condone the delay.

7. As regards the merits of this case, admittedly the applicant has not preferred any appeal <sup>in</sup> as has been statutorily provided in the rules. / Rule 10 of the EDA Rules there is a mandatory provision of appeal and there was no abnormal reason in directly approaching this Tribunal. As per Section 20 of the Administrative Tribunals Act, 1985 one is required to exhaust the remedy available under the service rules and it would only because of abnormal reasons one can directly approach the Tribunal. In the present case, ~~there was~~ no abnormal reason has been indicated. Therefore, we are of the considered opinion that provisions of Section 20 *ibid* are clearly attracted in this case. The learned counsel of the applicant has submitted that an appeal was filed, however, this fact has been disputed by the other side. Despite carrying ~~extensive~~ analysis of the complete pleadings, we do not get any details as to whether any appeal has been filed. Thus, we can safely conclude that the appeal has not been filed and there is a clear cut misstatement of fact in the OA which is just to be dismissed on that account alone without examining the merits of the case. Keeping in view

Contd....4/-

the mandatory provisions of Section 20 ibid as well as the mis-statement on the part of the applicant, we are not inclined to examine the merits of this case.

8. However, still on merits of the case also we do not find any infirmity in the decision making process and it is not a case of no evidence. Only we found that one of the charges certain documents were expected from the applicant, however, in respect of other charges there is evidence and we are not required to examine regarding the sufficiency or adequacy of the evidence.

9. The upshot of the aforesaid discussion is that the Original Application fails and the same is hereby dismissed with no order as to costs.

*J.K. Kaushik*  
(J.K. Kaushik)  
Judicial Member

*R.K. Upadhyaya*  
(R.K. Upadhyaya)  
Administrative Member

rkv.

पृष्ठान्त सं ओ/न्या.....जबलपुर, दि.....  
प्रतिनिधि

- (1) सचिव, न्यायिक प्रशासन, जबलपुर
- (2) अध्यक्ष, न्यायिक प्रशासन, जबलपुर के काउंसल A. Shrivastava, Adv.
- (3) अध्यक्ष, न्यायिक प्रशासन, जबलपुर के काउंसल P. Shankaran, Adv.
- (4) अध्यक्ष, न्यायिक प्रशासन, जबलपुर के काउंसल

सूचना एवं आचार संहिता के अनुसार

*Shrivastava*  
श्री शिवराज  
१५/०३

*Issued*  
*on 12.5.03*  
*AS*