

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.8/2017

Wednesday, this the 17th day of September 2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Sh. Mange Ram,
Age about 61 years (Senior Citizen)
Retired Packers/MTC, Group 'C',
S/o Sh. (Late) Ganga Saha,
R/o Village: Saboli, Nand Nagri,
Delhi-110093

- Applicant

(By Advocate: Mr. S.K. Vashisht)

Versus

1. Union of India through
Chief Post Master General,
Delhi Circle,
New Delhi-110001
2. The Assistant Supdt.,
II Sub-Division, Delhi North
District Court, Tis Hazari,
Delhi-110054
3. The Sr. Supdt. of Post,
Delhi North Division,
Delhi-110054

- Respondents

(Mr. YP Singh, Advocate)

O R D E R (ORAL)

Ms. Nita Chowdhury:

This Original Application (OA) has been filed by the applicant seeking the following reliefs:-

- “(a) To set aside the impugned Show Cause Notice No.ASP-II/B-III/Mange Ram/2016 dt. 23.09.2016, impugned order/letter No.ASP-II/B-III/Mange Ram

dt. 28.09.2016 and impugned office letter No.ASP II/III/Mange Ram/2016 dt. 20.10.2016 issued against the applicant by the Respondent No.2.

- (b) To the direct the Respondent to release the superannuation pension w.e.f. 30.09.2016 and pending dues of applicant.
- (c) Pass any order as deemed fit and proper in the facts and circumstances of the case.
- (d) Allow the cost in favour of applicant.”

2. It is the case of the applicant that he was very sick and because of that continued sickness, he could not attend his duty for a very long period of over five years. In fact, he has filed many copies of his medical treatment and based on the same, he wants that the show cause notice dated 23.09.2016 and the subsequent impugned order dated 28.09.2016 be set aside.

3. In reply, the respondents have drawn our attention to the fact that the applicant was given a memo which he himself has attached as Annexure A/7 of this OA. In the said memo, the following decision is recorded:-

“While working as Packer Shastri Nagar P.O. Delhi-110052 Sh. Mange Ram absented himself from duty for the period from 06-01-98 to 30-04-2003 without any information or prior permission of the competent authority. Thus, he is alleged to have violated the provisions of Rule 62 of Postal Vol.III. The official was called upon to explain as to why the period of unauthorized absence should not be treated as ‘DIES NON’. His representation dated nil is far from satisfaction.

Therefore, the period of unauthorized absence Sh. Mange Ram designated Packer AVHO, Delhi-52 is ordered to be treated as ‘DIES NON’ without prejudice to any other action.”

4. In view of his continued absence, the respondents have acted as per their rules and in this connection, our attention is drawn to Rule 62 of the Posts and Telegraphs Manual, Volume III which reads as under:-

“62. Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as *dies non*, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices.”

5. Further attention is drawn to Rule 12 of CCS Leave Rules, 1972 which reads as under:-

“(1) No Government servant shall be granted **leave** of any kind for a continuous period exceeding five years,

(2) Unless the President, in view of the exceptional circumstances of the case, otherwise determines, a Government servant who remains absent from duty for a continuous period exceeding five years other than on foreign service, with or without leave, shall be deemed to have resigned from the Government service:

Provided that a reasonable opportunity to explain the reasons for such absence shall be given to that Government servant before provisions of sub-rule (2) are invoked.”

6. It is also the contention of the respondents that their action is totally in accordance with the rules and, therefore, their decision to treat the period of unauthorized absence from 06.01.1998 to 30.04.2003 as ‘*dies non*’ was taken in view of the facts of the case and conduct of the applicant. Hence, it is their

contention that due to his unauthorized absence from 01.1.1998 onwards, his name was ordered to be struck off from establishment of Delhi North-II Sub Division with immediate effect and the representation preferred by the applicant dated 17.10.2016 for release of pension and other retiral dues has been disposed of by the respondents vide order dated 20.10.2016 (Annexure A/3) with the request to prefer the appeal to the competent authority.

7. In view of the above, we do not find any cause to interfere with the orders dated 23.09.2016 and 28.09.2016, as the same have been passed with due diligence and after following the set procedure.

8. However, one point, which remains to be answered by the respondents, is why they have not passed an order with regard to non-payment of pension to the applicant. It is true that the respondents have treated the period of unauthorized absence of the applicant for over 5 years as *dies non* and hence this is not to be counted towards pension but they have nowhere explained what is the remaining period of service of the applicant and why he should not be entitled for pension for the period for which he has duly served with the respondent. Hence, the respondents are directed to pass a detailed and speaking order in this regard, within a period of 45 days from the date of receipt of copy of this order. It is made clear that in case the applicant is entitled to pension based on the total period of service rendered/time

served by him, the respondents shall give him the due benefits in accordance with the rules. They shall pass a speaking order on this issue within a period of 90 days of receipt of a copy of this order.

9. With the above directions, the OA stands disposed of. No orders as to costs.

(S. N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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