

*** THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT**
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

+ WRIT PETITION No. 16873 of 2018

% Dated 12.6.2018

Between:

**# 1. Union of India, represented by the Chief Postmaster
General, A.P. Circle, Hyderabad, and others. ... Petitioners**
and

N. Surya Rao ...Respondent

**! Counsel for the Petitioners: Mr.K. Lakshman,
Assistant Solicitor General**

^ Counsel for the respondent : Mrs. Rachana Kumari

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**? Cases cited:
AIR 1990 SC 1308
1998(4) SCC 154**



THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
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WRIT PETITION No. 16873 of 2018

ORAL ORDER: *(Per the Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present petition, petitioners have challenged order dated 01.12.2017 passed by the Central Administrative Tribunal, Hyderabad, in O.A.No.231 of 2013.

2. Case of respondent herein is that he was appointed as Gramin Dak Sevak at Kalavalapalli Branch Office in West Godavari District on 04.06.1981. He fell sick with multiple ailments due to various domestic problems. Hence, he could not attend duty from 21.02.2005 till 09.10.2007 for a period of 958 days. During the entire period, he was undergoing medical treatment and medical certificates were produced from time to time. When he represented to the 4th petitioner to take him back to duty duly explaining the reasons for his absence, he was reinstated on 10.10.2007. Ever since, he was working without any blemish. However, after the lapse of three years, the petitioners issued a charge memo alleging unauthorized absence from duty for a period of 959 days from 21.02.2005 to 10.10.2007.

3. Further case of the respondent is that the charges pertain to the very same period which had been condoned while taking him back to duty after considering his representation and medical certificates and after exonerating him from the lapses. During the relevant period of absence, no show-cause-notice or charge memorandum was issued. Thus, charge memorandum

dated 27.07.2010 was issued after a lapse of three years. Thereupon, an enquiry was conducted and the Enquiry Officer found the charges proved. Based upon the enquiry report, the 4th petitioner imposed penalty of removal with immediate effect vide order dated 22.02.2011. Aggrieved by the same, the respondent submitted an appeal to the 3rd petitioner and same was dismissed. Challenging the same, the respondent filed O.A.No.231 of 2013 on the file of the Central Administrative Tribunal, Hyderabad Bench, and same was allowed vide order dated 01.12.2017.

4. The present petition is filed on the ground that the respondent was absent from duty from 21.02.2005 to 10.10.2007 for a period of 959 days. Since the respondent could not be kept away from duty without initiating any disciplinary proceedings and without conducting any detailed departmental enquiry, the 4th petitioner had allowed him to resume duty vide order dated 09.10.2007 without any prejudice to the disciplinary action to be initiated against the respondent. Accordingly, the respondent rejoined duty on 10.10.2007 afternoon.

5. Learned counsel appearing on behalf of the petitioners submits that during the absence period, there was no request for leave from the respondent and the petitioners sent various reminders to him to join duty. However, there was no response from his side. At last, when the respondent reported to duty, he was allowed only for the reason that proper departmental enquiry shall be conducted. Joining duty without conducting enquiry is not illegal as per law. Thus, the learned Tribunal ignored all these facts and allowed the O.A. filed by the respondent.

6. Admittedly, the respondent was absent from duty without any leave application from 21.02.2005 to 10.10.2007 for a period of 959 days. Under the provisions of the Gramin Dak Sevak (Conduct & Employment) Rules, 2001 (for short “ the GDS Rules”), any Gramin Dak Sevak, who remains absent from duty in excess of the limit up to which he could have been granted leave, has to be removed from service in accordance with the procedure laid down in Rule 10. The petitioners had issued registered letters on 11.03.2015, 02.04.2005 and 21.10.2005 which were returned undelivered, as the addressee was reportedly not in the village. Therefore, in terms of the GDS Rules, the petitioners ought to have immediately taken action to remove the respondent from service following the due procedure.

7. However, no such action was taken and the respondent had pleaded that he left Kalavalapalli Village and went to Chintalapudi on personal work and that he suffered from severe ill-health and had to stay in his relatives' house till he recovered completely. While submitting his letter dated 08.10.2007 requesting for permission to join duty, the respondent also submitted a medical certificate issued by the Deputy Civil Surgeon, Community Health Centre, Chintalapudi, who certified that the respondent was under his treatment and was advised rest from 21.02.2005 to 29.07.2007.

8. The case of the petitioners is not that the medical certificate issued by the Deputy Civil Surgeon was not genuine. They only point out that even though the respondent was permitted to report for duty on 30.07.2007, he continued to be absent up to 07.10.2007 without any application. Admittedly, the respondent had joined duty on 10.10.2007 and has been

working thereafter. It is only after the passing of three more years the petitioners finally issued the charge memorandum on 27.07.2010. The inordinate delay of five years that had occurred in issuing the charge memorandum for unauthorized absence which began in 2005 has vitiated the entire disciplinary proceedings.

9. In the case of *State of Madhya Pradesh Vs. V. Bani Singh and another* (AIR 1990 SC 1308), the Supreme Court has held that if the delay is unexplained, prejudice is caused to the delinquent employee and accordingly observed as follows:

“There is no satisfactory explanation for the inordinate delay in issuing the charge memorandum and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case, there are no grounds to interfere with the Tribunal’s orders and accordingly we dismiss this appeal.”

10. A similar view has been expressed by the Supreme Court in the case of *State of Andhra Pradesh Vs. N. Radhakishan* (1998 (4) SCC 154).

11. The ratio decided by the Supreme Court in the aforesaid cases would squarely apply in this case, as the petitioners had not taken timely action in accordance with the GDS Rules for proceeding against the respondent, who was absent from duty from 21.02.2005 onwards, and had issued the charge memorandum after the lapse of five years.

12. In view of the above, we find no grounds to interfere in the order dated 01.12.2017 passed in O.A.No.231 of 2013. Finding no merit, the writ petition is dismissed.

Consequently, miscellaneous applications if any pending in the writ petition shall stand closed. No order as to costs.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

12th June, 2018

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THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



W.P.No.16873 of 2018
(dismissed)

12th June, 2018

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