

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 467 of 2016

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Mr. Md. Ahmed Baig, aged about 59 years, Son of Late Mahaboob Baig, At/Po/Dist – Berhampur at present working as S.A., H.R.O., Berhampur, RMS, BG. Division.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 11001.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. The Director Postal Service, O/o Post Master General, Berhampur Region, Berhampur, Ganjam – 760001.
4. The Superintendent, RMS, BG Division, Berhampur, Ganjam.
5. Head Record Officer, (H.R.O) RMS B.G. Division, Berhampur, Ganjam.

.....Respondents.

For the applicant : Mr. D. K. Mohanty, Advocate

For the respondents: Mr. M. R. Mohanty, Advocate

Heard & reserved on : 28.02.2020

Order on : 02.06.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *To quash the charge sheet dtd 21.12.2015 under Annexure A/6.*

- (ii) *To quash the order of punishment passed by Disciplinary Authority dtd 28.01.2016/25.02.2016 under Annexure A/8.*
- (iii) *To quash the order of Appellate Authority dtd. 16/20.06.2016 under Annexure A/10.*
- (iv) *To direct the Respondents to refund the salary of the applicant from the period 16.11.2015 to 23.11.2015 with 12% interest*
- (v) *To pass any other order/order's as deemed fit and proper in this case.*

2. The case of the applicant in brief as averred in OA is that the applicant while working under Respondent No. 4 after availing leave joined his post on 16.11.2015 (forenoon), and on the same day when he went to lunch at his residence fell ill and sent his leave application (Annexure A/1) in evening through his son stating that he will submit unfit certificate at the time of his joining. His application was accepted by the competent authority i.e. ASP (Hq.) for the Respondent No. 4 because Respondent No. 4 was out of station on that day. The applicant after being medically fit, submitted his joining report along with unfit certificate and fit certificate issued by competent authority on 24.11.2015 (Annexure -A./2) along with joining report. Subsequently, respondent No. 4 issued a show cause dated 20.11.2015 (Annexure A/3) for unauthorized absence on date clearly mentioning that "it has been observed that you are under unauthorized absence from duty from 13.30 hrs of 16.11.2015 till today simply submitting one application which does not disclose the period of leave and the nature of leave requested. Further it is revealed that you are absent from duty and deserted your office on your own accord without taking prior permission from the competent authority. You are hereby directed to submit your explanation as to why suitable disciplinary action will not be taken against you for your act of such unauthorized absence from duty as noted in the foregoing para". The applicant submitted his show cause reply on 30.11.2012 (Annexure A/5) praying for grant of leave from 16.11.2015 to 23.11.2015. The respondent No. 4 issued charge memorandum vide letter dated 21.12.2015 (Annexure A/6) which was received on 23.12.2015 on the statement of imputation of misconduct or misbehaviour on the ground that applicant remained absence from duty from 13.30 hrs of date 16.11.2015 to 23.11.2015 without availing proper permission or sanction of leave and directed to submit his representation. The applicant submitted his representation to the charge sheet on 04.01.2016 (Annexure A-7). Respondent No. 2 vide order of punishment dated

28.01.2016/25.02.2016 (Annexure A/8) issued order stating that “Keeping in view of length of service of Md. Ahmed Baig, Office Assistant, O/o the SRM, RMS “BG” Division, Berhampur (Gm) 760001, I Sri Ajit Kumar Dash, Superintendent, RMS “BG” Division, Berhampur took linent view in this case and order for treating the service of Md. Ahmed Baig for the period from 16.11.2015 to 23.11.2015 as non duty and hence treated as dies non for the purpose of pay and allowances only and I further order for awarding the penalty of withholding of one increment for three months without cumulative effect in the time scale pay of Md. Ahmed Baig when falls due for his act of misconduct as noted above.” The applicant preferred appeal to the respondent No. 3 on 05.04.2017 (Annexure A/9) against the order of punishment. Respondent No. 3 rejected the appeal vide order dated 16/20.06.2016. Hence this OA.

3. The respondents in their counter inter alia averred that since the applicant violated Rule – 62 of Postal Manual Vol – III (Annexure – R/1) which states that “Absence of officials from duty without proper permission or when on duty in office have left the office without proper permission 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” and further by remaining unauthorized absent from duty from 17.11.2015 to 23.11.2015 without prior sanction of leave previously sanctioned thereby violated Rule – 40(i) of Postal manual Vol – III. The Respondents further averred that ASP (Hq) is authorized to receive the applications for leave of the officials and Respondent No. 4 is the competent authority to grant leave to the officials under him including the applicant. The respondents also submitted that the punishment to the applicant was made under Rule-16 of the CCS (CCA) Rules – 1965 and both the Disciplinary as well as the Appellate Authority has correctly taken the decision.

4. Learned counsel for the applicant relied on the following citations:

1. (2012) 3 SCC 178 in the case of K. B. Parma vs. Union of India and Anr.
2. OA No. 794 of 2013 disposed on on 06.11.2017 by Hon’ble CAT, Mumbai.

5. This Tribunal has gone through pleadings of the parties, documents relied by them and the citations relied by parties. This Tribunal had also heard Learned counsels for the parties.

6. Although it has been alleged that the applicant remained absent unauthorizedly since 16.11.2015 till 23.11.2015, it is seen that the applicant had in fact attended his duty in the forenoon of 16.11.2015. He left the office on the same day in the afternoon during the lunch break and sent leave application through his son. In the medical certificate submitted by the applicant in the afternoon of 24.11.2015 he had mentioned he is unable to work and therefore he urgently left the office (Annexure A/1). In fact the said leave application for half day of 16.11.2015 has been allowed as he was sick, as seen from Annexure A/4 (extract below):

To
The HRO
RMS BG Dn, Berhampur(Gm)-1

No.: Dvnl/Office/RPB/2014 dated at Berhampur the 26.11.2015
Sub: Rough Pay Bill/Supply Rough Pay Bill of Divisional Office for the month of Nov-2015.

Sl. No	Name of the Official	Designation	Period of working		Period of absence		Remark
	S/Shree		From	To	From	To	
1	Radha Krushna Sahoo	ASP (HQ)	01.11.2015	30.11.2015	--	--	
2	Md. Ahamed Baig	OA Staff	01.11.2015 24.11.2015	16.11.2015 30.11.2015	17.11.15	23.11.15	Sick
3	Dibakar Dash	Acct	01.11.2015	30.11.2015	--	--	
4	P. Satyanarayana	OA Stock	01.11.2015	30.11.2015	--	--	
5	Balaram Choudhury	OA Mail	01.11.2015	30.11.2015	--	--	
6	Nihar Ranjan Sahu	PMU	01.11.2015	30.11.2015	--	--	
7	Bijaya Ku Baditya	OP	01.11.2015	30.11.2015	--	--	

7. It was submitted by learned counsel for the applicant that there is no allegation against the applicant that the absence in question was wilful. In fact there is no such finding by the concerned authorities that the period of absence in question was wilful absence by the applicant. In the absence of any such findings by the respondents in the departmental proceeding in question and in view of decision of Hon'ble Supreme Court reported in (2012) 3 SCC at page 178 in the case of Karunakant B Parmar we find that in the absence of any such finding that there was wilful absence by the applicant, the applicant cannot be imposed with any

punishment on the ground of said absence for the period in question.

8. The authorities have decided that the period of absence i.e. from 16.11.2015 to 23.11.2015 will be treated as dies non (it is seen that no show cause notice was given to the applicant in order to him give an opportunity as to whether the said period of absence should be treated as dies non or not). In the absence of any such opportunity of show cause given to the applicant and in view of postal department circular dated 28th Jan/25th Feb the order for treating the said period of absence as dies non, which is major penalty, cannot be sustained since the proceedings initiated against the applicant was a proceeding for imposing minor punishment.

9. The applicant had joined in his duty in the forenoon of 24.11.2015 and on the same day he had submitted the required medical certificates vide Annexure A/2 series. There is nothing on record to show that the respondents had cross checked the said medical certificates in question and had found the same to be not genuine. In the absence of any findings based on records it cannot be said that the said period of absence by applicant was either unauthorized or wilful. Hence the order of punishment imposed on him for the so called unauthorized absence cannot be sustained as the same is arbitrary, without due application of mind and hence illegal.

10. In view of the findings already given this Tribunal finds the order of punishment imposed on the applicant vide Annexure A/8 as illegal and accordingly the same is set aside. Resultantly the order passed by the appellate authority vide Annexure A/10 is also set aside. The respondents shall consider the leave application of the applicant and grant leave as permissible to him in accordance with rules. The respondents to complete the entire exercise within three months from the date of receipt of a copy of this order.

11. Accordingly the OA is allowed as per direction given in para 10 but in circumstance without any order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)