

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.020/00369/2014

Date of Order :23.10.2019.

Between :

G.Balaji, s/o G.Goria, aged about 40 yrs,
Working as GDS/Mail Deliverer/Mail Carrier,
Manthana Branch Post Office, a/w Kankipadu
Sub-Office, Vuyyuru Sub-Division, Vijayawada
Division, District Krishna.

...Applicant

And

1. The Union of India, rep., by the
Director General, Posts, Dept. Of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110 001.

2. The Chief Postmaster General,
A.P.Circle, Hyderabad-500 001.

3. The Postmaster General,
Vijayawada Region, Vijayawada.

4. The Sr.Superintendent of Post Offices,
Vijayawada Division, Vijayawada-520 001.

5. The Inspector, Posts, Vuyyuru Sub-Division,
Vuyyuru-521 165, Division Vijayawada,
District Krishna.

... Respondents

Counsel for the Applicant

... Mrs.Rachana Kumari

Counsel for the Respondents

... Mrs.K.Rajitha, Sr.CGSC

CORAM:

**THE HON'BLE MS.MANJULA DAS, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORAL ORDER

By Ms.Manjula Das, Member (Judl.)

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking for the following reliefs:

- (a) To call for the records pertaining to the Disciplinary Proceedings initiated against the applicant and set aside the impugned show cause Memo.B2/GDS/Rule-10/G.Balaji/2013-14, dated 03.12.2013, of the 4th respondent proposing to enhance the punishment imposed by the 5th respondent to that of removal of the applicant from service, and the impugned order No.B2/GDS/G.Balaji/2013-14, dated 03.03.2014 imposing the punishment of removal of the applicant from service with immediate effect duly modifying the earlier punishment of the 5th respondent, without any new material that has come to light in the inquiry, without considering the averments made by the applicant, declaring the same as arbitrary, illegal, unwarranted, illegal, misconceived and in violation of Articles 14 and 16 of the Constitution of India;
- (b) To direct the respondents to continue the applicant to work as GDS/Mail Carrier/Mail Deliverer, Manthena B.O., with all consequential benefits;

2. The brief facts of the case are that the applicant was initially appointed as GDS/Mail Carrier/Mail Deliverer, Manthena B.O. a/w Kankipadu SO under Vuyyuru Sub-Division in Vijayawada Division, Krishna District with effect from 20.04.1978. He belongs to ST (Lambada)

community. He has been working as such with unblemished record of service for the last 35 years. On 27.09.2010, he met with an accident on his journey to Vijayawada and was bed-ridden having slipped into Coma. He was under treatment from 27.09.2010 to 31.10.2011.

3. The applicant submitted that the 5th respondent had issued a charge memo dated 27.10.2011 for unauthorized absence from 27.09.2010. On recovery from treatment, he submitted a representation dated 12.11.2011 along with medical certificate dated 01.11.2011 explaining the reasons for the period of his unauthorized absence and requested to permit him to join duty. The 5th respondent, being the Disciplinary Authority, had appointed an Inquiry Officer and Presenting Officer, vide his proceedings dated 12.12.2011. The 5th respondent having considered the genuineness of his absence, had dropped the disciplinary proceedings initiated against the applicant, vide his order dated 20/23.01.2012, without prejudice to further action, which may be considered in the circumstances of the case, appropriate to the nature of charges. However, the 5th respondent issued another charge memo dated 22.02.2012 for the same allegations stating that as the earlier charge memo had been returned with the remarks that "the said person is not residing in the village and his house was demolished". The applicant denied the charges and submitted his

representation dated 19.03.2012 to the 5th respondent explaining his extenuating circumstances and requesting to permit him to join duty. On denial of charges, an inquiry was held from 30.04.2012 to 22.08.2012. As the Inquiry Officer was transferred, a new Inquiry Officer was appointed from the next stage of examination of additional witnesses (D.W.1) with effect from 19.03.2012, vide memo dated 05.03.2013 and subsequently postponed to 18.04.2013 and concluded on 23.05.2013. The Presenting Officer submitted his brief on 12.06.2013 against which the applicant submitted his defence brief on 06.07.2013. Basing on the above submissions, the Inquiry Officer submitted his report dated 10.07.2013 holding the charges as proved beyond doubt. Considering the report of the Inquiry Officer, the Disciplinary Authority imposed the punishment of debarring the applicant from appearing in the recruitment examination for the post of Postman for 3 years with immediate effect treating the period of unauthorized absence from 27.09.2010 to 31.10.2011 as such, vide order dated 14.08.2013. The 4th respondent deferring with the view of the Disciplinary Authority, issued a show cause notice, vide impugned memo dated 03.12.2013, proposing to enhance the punishment imposed by the Disciplinary Authority, giving liberty to the applicant to submit his representation within a period of 15 days from the date of receipt of the said show cause notice. As the proposed punishment is harsh and severe,

the applicant submitted his representation dated 10.12.2013 explaining his circumstances and requesting to consider dropping of the proposed action. Against the action of the 4th respondent proposing to impose the punishment to that of removal from service, the applicant also filed O.A.No.106/2014 before this Tribunal, which was disposed of vide order dated 29.01.2014, directing the respondents to dispose of the applicant's representation dated 10.12.2013 within a period of six weeks with a reasoned order as per rules. The 4th respondent, without considering the extenuating circumstances of the applicant, had issued the impugned order dated 03.03.2014 imposing the penalty of removal from service with immediate effect duly modifying and enhancing the earlier punishment imposed by the Disciplinary Authority on the applicant. Aggrieved by the orders of the Disciplinary Authority and Appellate Authority the applicant filed the present OA seeking to set aside the impugned orders dated 03.12.2013 passed by the Disciplinary Authority and dated 03.03.2014 passed by the Appellate Authority by declaring the same as arbitrary, illegal, unwarranted, misconceived and in violation of the Articles 14 and 16 of the Constitution of India, and for a direction to the respondents to continue the applicant to work as GDS/Mail Carrier/Mail Deliverer, Manthana BO, with all consequential benefits.

4. The respondents have filed a reply statement. They have stated that the Extra Departmental Agents (EDAs) system in the Department of Posts is governed by the Extra Departmental Agents (Conduct & Service) Rules 1964, amended as Gramin Dak Sevaks (Conduct & Engagement) Rules 2011.

5. The respondents further submitted that the applicant was appointed as GDS Mail Carrier/Mail Deliverer, Manthena BO a/w Kankipadu SO under Vuyyur Sub-Division on 22.04.1998. He belongs to ST community and his date of birth is 15.03.1973. The applicant proceeded on leave without allowances (LWA) from 13.09.2010 to 25.09.2010. The applicant remained unauthorizedly absent from duty since 27.09.2010 without any leave application/prior permission from the competent authority and without appointing a Substitute, as required under the relevant rules. Hence, a show cause notice was issued to the applicant, vide memo dated 25.01.2011 by the Inspector, Posts, Vuyyur Sub-Division, Vuyyur, Respondent No.5 & Appointing Authority to explain why disciplinary proceedings should not be initiated against him. But the said show cause notice sent by registered posts returned undelivered with remarks that the applicant is not residing in the village and the house was demolished.

6. The respondents further submitted that a charge sheet under Rule 10 of GDS (Conduct & Employment) Rules, 2001 was issued to the applicant, vide memo dated 27.10.2011. An Inquiry Officer and the Presenting Officer were appointed, vide memo dated 12.12.2011. However, the said charge sheet was dropped, vide memo dated 20/23.01.2012 on administrative reasons. Later a fresh charge sheet against the applicant was issued, vide memo dated 22.02.2012. An Inquiry Officer and the Presenting Officer were appointed by the Respondent No.5, vide memo dated 11.04.2012. The inquiry continued with seven sittings from 30.04.2012 and continued upto 23.05.2013.

7. The respondents further submitted that all opportunities were given to the applicant at each and every stage to defend his case. After completion of the inquiry, the Presenting Officer submitted his written brief with the explanation that the case is crystal clear that the applicant was unauthorizedly absent from duty from 27.09.2010 to 02.04.2012 without applying any leave and therefore the charges framed against the applicant stands proved based on the documentary evidence adduced during the inquiry. A copy of the Presenting Officer brief was forwarded to the applicant on 13.06.2013. Based on the brief submitted by the Presenting Officer and the proceedings of the inquiry, the Inquiry Officer submitted his report dated 10.07.2013 to the Disciplinary Authority holding the charges as

proved beyond doubt. The Disciplinary Authority forwarded a copy of the Inquiry Officer's report to the applicant to submit his written statement of defence, if any, within 15 days from the date of receipt of the same, vide letter dated 17.07.2013. The applicant submitted his representation dated 06.07.2013 against the Inquiry Officer's report. Based on the report of the Inquiry Officer and the representation submitted by the applicant along with documents, the Disciplinary Authority awarded a punishment of debarring from appearing in the recruitment examination for the post of Postman for 3 years with immediate effect and the period of unauthorized absence from duty from 27.09.2010 to 31.10.2011 be treated as such on the applicant, vide memo dated 14.08.2013 and the same was forwarded to the applicant on 03.09.2013.

8. The respondents further submitted that a notice was issued to the applicant, vide Respondent No.4 memo dated 03.12.2013 stating that the Appellate Authority found the penalty awarded by the Disciplinary Authority as not commensurate with the gravity of the offence committed by the applicant, and therefore, proposes to enhance the penalty imposed by the Disciplinary Authority to that of removal from service and that the applicant was given an opportunity to make a representation on the penalty proposed to be enhanced within 15 days from the date of receipt of the said memo. In response, the applicant submitted his representation dated 10.12.2013. While the representation was under consideration, the applicant filed

OA.No.106/2014 before this Tribunal, which was disposed of at the admissions stage, vide order dated 29.01.2014 with a direction to the respondents to dispose of the representation of the applicant dated 10.12.2013 within a period of six weeks with a reasoned order as per rules, giving liberty to the applicant to approach this Tribunal, if any orders passed on the impugned notice dated 03.12.2013 of the Respondent No.4, reserving the applicant's right to raise all the issues in the said proceedings. The Respondent No.4 & Appellate Authority considered the representation of the applicant dated 10.12.2013 in the light of the orders of this Tribunal dated 29.01.2014 in OA.No.106/2014 and keeping in view of relevant rules on the subject and considering all the facts, modified the penalty imposed by the Disciplinary Authority to that of removal from service with immediate effect, vide memo dated 03.03.2014.

9. The respondents in their reply have denied the contention of the applicant that there was no new material brought to light for reviewing the punishment awarded by the Disciplinary Authority and as such the action of the 4th respondent is illegal and unwarranted. The respondents submitted that the 3rd and 4th respondents are empowered to review the punishment awarded by the 5th respondent. The applicant cannot claim sympathy or condonation of his unauthorized absence on medical grounds as a matter of right.

10. The respondents further submitted that according to the applicant, he met with an accident on 27.09.2010 on his journey to Vijayawada and slipped into coma and underwent treatment from 27.09.2010 to 31.10.2011. When the applicant proceeded on LWA upto 25.09.2010 and due to rejoin duty on 27.09.2010 (26.09.2010 being Sunday) at Manthana BO, it was not known as to how he performed journey towards Vijayawada. A patient like the applicant when met with an accident and slipped into coma should have been admitted as an In-patient in any Hospital. But, the applicant did not explain reasons for not doing so and did not produce any documentary evidence for his version. He simply produced a medical certificate from Dr.K.Rama Devi, Gynecologist, which shows that the applicant underwent medical treatment as an out-patient, which is evident from the deposition dated 13.05.2013 of the said Doctor given before the Inquiry Officer during the course of inquiry. Further, the applicant and his family members never tried to inform the concerned appointing authority about his accident/health condition. From this, it is evident that the applicant deliberately absented himself from duty unauthorizedly and simply produced a medical certificate, which is an afterthought to cover up his misdeed. In view of the documentary as well as oral evidence adduced during the course of inquiry and after considering the representation of the applicant along with all connected records and relevant rules on the subject, the competent authority i.e., Respondent No.4, reviewed the applicant's case and enhanced the penalty to that of removal from service. The respondents therefore prayed to dismiss the OA with costs.

11. Heard Mrs.Rachana Kumari, learned counsel appearing for the Applicant and Mrs.K.Rajitha, learned Senior Standing Counsel appearing for the Respondents.

12. At the outset, Mrs.Rachana Kumari, the learned counsel for the Applicant, submitted that the applicant has already accepted the punishment imposed by the Disciplinary Authority. She further submits that on medical grounds, the applicant could not be present in the office due to the accident met with by him and suffering from Cerebrovascular disease as well as Hypertension, and the Doctor, who examined the applicant had advised the applicant to take bed rest. For the above reasons, the applicant was unable to attend the office, and therefore, occurred unauthorized absence, which is not wilful.

13. The undisputed fact is that the applicant met with an accident for which he suffered from Cerebrovascular disease and the Doctor advised him to take bed rest. Hence, he could not be present in the office.

14. However, the applicant did not made any application for the leave admissible under the rules and provisions. Hence, there is a lapse on the part of the applicant. Though the absence in the office is not wilful and in compelling circumstances on medical grounds, he was confined and restricted to attempt for official duties. It is further noted that the applicant has rendered more than 35 years with unblemished service. Taking a

lenient view, though there is an unauthorized absence, by taking note of the situation and circumstances arose which are beyond control of the applicant to attend the office, we are in view that the punishment imposed by the Disciplinary Authority is reasonable and the punishment imposed by the Appellate Authority, by suo motu enhancing the punishment to that of a major punishment i.e., removal from service has to be quashed and set aside. Accordingly, the punishment of removal from service imposed by the Appellate Authority is quashed and set aside.

15. Accordingly, the OA is partly allowed. No order as to costs.

Sd/-

(NAINI JAYASEELAN)
MEMBER (ADMN.)

Sd/-

(MANJULA DAS)
MEMBER (JUDL.)

Dated: this the 23rd day of October, 2019
Dictated in the Open Court

Dsn.