

RESERVED**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH****Original Application No.21/598/2014****Hyderabad, this the 24th day of January, 2020*****Hon'ble Mr. Ashish Kalia, Member (Judl.)******Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

M.A. Jabbar, S/o. Md. Nizamuddin,
Aged about 54 years, Postman,
Lalaguda Sub Office (Removed),
R/o. H. No. 10-9-15/1, Indiragandhi Puram,
Fatehnagar Railway Gate,
Sanathnagar, Hyderabad – 500 018.

... Applicant

(By Advocate Mr. ABLN Pavan Kumar,
Proxy Counsel for M. Venkanna)

Vs.

1. Union of India, Rep. by
The Director General, Posts,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi -1.
2. The Director of Post Services,
Hyderabad City Region,
O/o. The Chief Postmaster General,
A.P. Circle, Dak Sadan, Hyderabad – 500 001.
3. The Senior Superintendent of Post Offices,
Secunderabad Division, Gandhi Nagar,
Hyderabad – 500 080.

... Respondents

(By Advocate: Mrs. Megha Rani Agarwal, Addl. CGSC)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the penalty of removal imposed on the applicant by the disciplinary authority and confirmed by the appellate authority vide orders dated 21.10.2013 and 24.3.2014 respectively.



3. Brief facts of the case are that the applicant was issued a charge memo under Rule 14 of CCS (CCA) Rules 1965 vide letter dated 8.3.2013 for unauthorised absence, while working as Postman in the respondents organisation. Applicant claims that he could not attend duty due to poor health. That being so, he denied the charges on 22.3.2013 and therefore, an inquiry was ordered. However, applicant admitted the charges on 28.5.2013 before the Inquiry Officer and the inquiry report was submitted on 6.7.2013 holding the charges as proved. Aggrieved by the findings, applicant represented on 11.9.2013 and the disciplinary authority considering the Inquiry Report and the representation of the applicant, imposed the penalty of 'Removal from service' on 21.10.2013, which was confirmed by the appellate authority on 24.3.2014. Contesting the decision of removal, the OA has been filed.

4. The contentions of the applicant are that the unauthorised absence of the applicant was due to poor health. The punishment is harsh and disproportionate causing irreparable financial loss and emotional trauma. Unauthorised absence is not misconduct deserving a major penalty of removal. The admittance of the charges before the Inquiry Officer was because the I.O and P.O tutored him to admit the charges with an

inducement that by doing so a lesser punishment would be imposed. Applicant has put in 30 years of service without any blemish except the unauthorised absence for reasons of health.



5. Respondents oppose the contentions of the applicant by stating that the applicant is habituated to unauthorised absence. If in case the applicant was not keeping good health he could have sought medical leave directly or by submitting a letter, presuming that he was immobilised, through his family members. Applicant admitted the charges on 28.5.2013 in his deposition before the inquiry officer as well as in his defence brief on 2.7.2013. Therefore, tutoring of the applicant to admit the charges is false. As per Rules, the penalty to be imposed for unauthorised absence is removal or dismissal and accordingly penalty of removal was imposed by the disciplinary authority by giving ample opportunities to the applicant to defend himself. The penalty was confirmed by the Appellate Authority too. Applicant did not avail the opportunity of submitting a petition to the Chief Post Master General and without exhausting the said remedy, applicant has approached the Tribunal.

6. Heard both the counsel and perused the pleadings on record.

7(I) Applicant was proceeded for unauthorised absence for the periods from 1.9.2008 to 30.11.2008, 1.3.2009 to 10.8.2009 and from 15.9.2009 till the date of issue of charge memo on 8.3.2013. Applicant claims that the unauthorised absence was on account of mental ailment of hysteria. Respondents claimed that the applicant is a habitually absentee and that too, without applying for proper leave. However, they did not produce any record to this effect along with the reply statement to affirm the assertion.



Applicant denied the charges vide his letter dated 22.3.2013 (Annexure A.IV). Nevertheless applicant admitted the charges before the Inquiry Officer and the disciplinary authority imposed the penalty of removal, which was later confirmed by the appellate authority. Applicant initially denying the charges and later admitting the same before the inquiry officer gives an impression that there is some substance in the allegation that the applicant was tutored to admit the charges so that he would be let off with a minor penalty. More so, in the context of the applicant being from the lower cadre of the Postman, he is easily susceptible to such inducements. Particularly, when the charge pertains to unauthorised absence, wherein there is scope to view the matter on humane grounds by the competent authorities.

II. The respondents point out that without exhausting the remedy of petitioning the Chief Post Master General, applicant has approached the Tribunal. Submitting a petition to the Chief Post Master General is optional and not mandatory as per A.T Act 1985.

III. Coming to the charge perse of unauthorised absence, it cannot be construed as grave misconduct if there are compelling reasons like ill health or for other factors beyond the control of the applicant, as was held by the Hon'ble Supreme Court in ***Krushnakanth B Parmar & Anr vs. Union of India*** reported in (2012) 3 SCC 178. Relevant portion is extracted hereunder:

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior

permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. *In a department proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."*



IV. Respondents have not proved that the absence is wilful except to state that the applicant has admitted the charges, which, the applicant alleges, is due to inducement by IO/PO. Therefore, the above judgment squarely covers the case of the applicant. Besides, continued absence by itself cannot be termed as 'continuance of service has come to an end'. In this regard, support could be had from ***Jeewanlal (1929) Ltd. v. Workmen, (1962) 1 SCR 717*** wherein the Apex Court has held as under:-

"If the service of an employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service."

V. Further, it needs to be pointed out the applicant belongs to the lower rung of the bureaucracy and would not be conversant with the rules. Applicant did not commit any fraud or indulged in an act of gross misbehaviour warranting the imposition of a major penalty of removal. Other than the unauthorised absence, the respondents have not pointed out any blemish in the long service record of nearly 30 years of the applicant. The unauthorised absence was for certain short spells. There is no loss sustained by the respondents and on the contrary the applicant has lost his salary by not applying for eligible leave. It would be difficult to appreciate

that a Government employee would like to forsake his salary despite there being scope to avail eligible leave, unless he is placed in a compelling condition consequent to which he could not attend duty. It is these factors which should have been weighed while imposing the penalty of removal.



VI. Normally the Tribunal would restrain itself in intervening in matters of disciplinary proceedings, unless it is shockingly disproportionate as held by the Hon'ble Supreme Court in *Director General, RPF and Others v. Ch. Sai Babu*, (2003) 4 SCC 331 as under:

"6.Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the concerned delinquent person works."

In the instant case the penalty imposed is shockingly disproportionate to the offence committed. It has pricked the conscience of the Tribunal. Therefore, respondents are directed to modify the penalty to other than removal or dismissal, as is deemed fit keeping in view the observations of the Hon'ble Supreme Court cited supra as well as the observations of the Tribunal in the aforesaid paras. Treatment of period from the date of removal consequent to modifying the penalty as directed, is left to the discretion of the respondents. Consequential benefits that accrue by

modifying the penalty be extended to the applicant. Time allowed to implement the order is 3 months from the date of receipt of this order.

VII. With the above directions, the OA is allowed to the extent specified, with no order as to costs.



(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

/evr/