

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(5)

O.A. No. 842 of 1997

Decided on: 27.9.98

Shri O.P. VohraApplicant(s)

(By Shri shri Sant Lal Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri S.M. Arif Advocate)

CORAM:

THE HON'BLE ~~SHRI~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *✓*
2. Whether to be circulated to the other Benches of the Tribunal? *✓*

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O. A. No. 842 of 1997

New Delhi this the 2nd day of September, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri O.P. Vohra
S/o Shri R.C. Vohra
R/o C/o Shri Sant Lal, Advocate
C-21(B) New Multan Nagar,
New Delhi-110 056.

... Applicant

By Advocate Shri Sant Lal

Versus

1. The Union of India through the Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-110 001.
2. The Member (D) Postal Service Board, Postal Directorate, Dak Bhawan, New Delhi-110 001.
3. The Chief Postmaster, Delhi G.P.O. Kashmeri Gate, Delhi-110 006.
4. The Deputy Chief Postmaster Delhi G.P.O., Kashmeri Gate, Delhi-110 006.

... Respondents

By Advocate Shri S.M. Arif

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant is aggrieved against the departmental proceedings taken against him which resulted in the order of punishment of removal of service as modified by the appellate authority to that of compulsory retirement. He has prayed for quashing of all the impugned orders from the stage of institution of disciplinary proceedings to the passing of the order of the appellate authority.

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2. Disciplinary proceedings were initiated against the applicant who was Postal Assistant in Group 'C' under the respondents for unauthorised absence from duty from 1.8.92 till the date of initiation of the disciplinary proceedings. Consequent on his not reporting for duty even after the commencement of disciplinary proceedings, the respondents held an ex-parte enquiry which resulted in the passing of the orders of the disciplinary and appellate authorities, as mentioned above.

3. The main grounds taken by the applicant are as follows:-

(i) He was charged of having violated the provisions of Rules 62, 63 and 164 of the P&T Manual Volume III. The respondents should have followed the procedure prescribed therein; instead, they have initiated the disciplinary proceedings under CCS (Conduct) Rules, 1964, which were irrelevant.

(ii) Respondents proceeded to hold the ex-parte disciplinary enquiry inspite of the fact that he submitted an application for sickness duly supported by medical certificates for the period from 8.3.94 to 31.3.94 and it was during this period ex-parte hearings were held by the Enquiry Officer. The Enquiry Officer was in a hurry to conclude the proceedings during the period of his absence when he was sick. This resulted in denial of opportunity to him to participate in the enquiry and submit his defence.

(iii) The Enquiry Officer and the disciplinary authority had not followed the rules of principles of natural justice inasmuch as, he was not informed of the appointment of the Enquiry Officer nor any of the Enquiry Officer's letters had been received by him and he was not given opportunity for inspection of documents, list of witnesses as required under the rules. He submits that although he had received an order by the Enquiry Officer on 15.3.94 as recorded by the Enquiry Officer himself, he was asked to complete the process of inspection of document on 14.3.94. This would itself show the mala fide intention of the respondents.

(iv) The appellate and revisional authorities had not passed the speaking orders. There is no evidence of his having satisfied himself with the compliance of the provisions of Rule 27(2) of the CCS (CCA) Rules, 1965, inasmuch as there was no objective consideration of his case as was laid down by Hon'ble Supreme Court in **Ram Chander Vs. U.O.I.**, 1986(2) SLJ 249 SC. Even they reduced the penalty of compulsory retirement, was not commensurate with the gravity of the charge of the absence from duty which was not due to the negligence of the applicant but due to his sickness which was beyond his control and applicant had extenuating circumstances which were not considered by the appellate authority.

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(v) The disciplinary authority had not applied its judicial mind and passed a very cryptic and non-speaking order based on the ipsi dixit recording of the Enquiry Officer that the charge was proved.

4. The respondents have filed a detailed reply. The main thrust of respondents' contention is that despite several attempts and efforts made by them by way of office letters addressed to the applicant whereby he was directed to resume duty, he remained absent. He referred to the letter of 13.10.92 despatched to him under Registered Post which was received undelivered with the remarks that the "addressee left without address". Thereafter PRI(P) was directed to make enquiries to find out whereabouts of the applicant and after contacting neighbours and on the basis of his fresh efforts, it was found that the applicant was residing in a new address at Karol Bagh and thereafter, applicant was addressed at his new address to report for duty within 3 days. It is stated that the PRI(P) even visited the residence of the applicant to deliver the letter dated 11.9.93 but the applicant could not be found at the residence. Thereafter, the said letter was despatched under Registered Post and ultimately, the said letter was delivered to the applicant on 16.9.93 and the clear receipt obtained and even then the applicant did not report for duty. In view of this, disciplinary proceedings had to be initiated under Rule 14 of the CCS (CCA) Rules, 1965. The applicant was informed to present

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his case in the enquiry, and was given several opportunities to defend his case either in person or through defence assistant. The applicant neither attended the proceedings nor made any representation. In view of this, ex parte enquiry had to be proceeded with in accordance with the rules and regulations and the Enquiry Officer returned the finding that the charge was proved and the disciplinary authority imposed the punishment of removal from service, which on appeal was modified to compulsory retirement.

5. The respondents have strongly contested the grounds taken by the applicant and they have denied the averments made in paras 5.1 to 5.4. They reiterate that the copy of the Enquiry Officer's report supplied to the applicant at his residential address which was delivered to the applicant at his residence under clear receipt on 25.4.94 and he was asked to submit his defence statement within 15 days but the reply was not received till 30.5.94. Another opportunity was given to him vide letter dated 30.5.94 giving him further 7 days time, and this was delivered to him on 8.6.94 under clear receipt. Even thereafter, the applicant did not submit any written statement. They assert that department had given several opportunities to the applicant to defend his case either in person or through defence assistant but he did not attend the proceedings at all. In the circumstances, the respondents justify their action.

6. We have heard the learned counsel for the

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parties and have also perused the record, including the record of the disciplinary proceedings.

7. The learned counsel for the applicant referred to Annexure A-8 in which the respondents took the receipt of medical certificates and leave application sent by the applicant from 8.3.94 to 31.3.94 and the said letter at Annexure A-8 dated 25.3.94 was, in fact, addressed to the Enquiry Officer. He argued that this itself would show that despite the information being available about his sickness during the enquiry, the Enquiry Officer did not care to postpone the enquiry but on the other hand rushed through the enquiry and made it ex-parte enquiry and held him guilty of the charge. In reply to the pleadings in this behalf by the applicant on the above point, respondents have admitted that these letters and medical certificates were on record and copies of enquiry proceedings were sent to the applicant by the Enquiry Officer. We find in the Enquiry Officer's report that he had stated that no written communication or information was received by him on the charged officer's side during the period when the proceedings were held.

8. From Annexure A-8, it is seen that this letter is dated 25.3.94 and from the departmental proceedings produced before us by the respondents, it is seen that the Medical Certificates in question along with application of the applicant expressing his inability to appear before the enquiry, were received by the respondent No.3 between 21.3.94 and 25.3.94 respectively and all the three

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applications and certificates were forwarded by the Sr. Post Master to the Enquiry Officer. There is nothing on evidence to show that the Enquiry Officer had received this before he closed the enquiry by his order dated 31.3.94. But from the entire history of the case, as evident from the records, at no stage prior to the enquiry held on 8.3.94, i.e., 16.2.94 & 26.2.94, the notice of which have been sent to the applicant at his new address at Karol Bagh, there had been any response from the applicant. On the other hand, the applicant denies having received the communication regarding appointment of the Enquiry Officer and the Presenting Officer by the order dated 18.1.1994. It is seen from the record that the letter dated 31.1.1994 regarding enquiry to be held on 16.2.94 and requiring him to attend the enquiry and nominate the defence assistant, if any, was sent to him at his new address at Karol Bagh. Earlier letters dated 18.1.1994 was also sent to the applicant. In any case, the fact remains that the applicant had remained absent for almost 2 years from 1.8.92 till the institution of the departmental proceedings by the order dated 30.11.1993 and even thereafter. There is nothing on record to show that the applicant was suffering from serious mental ailment and physical illness as claimed in the application to which cause, he has attributed his long absence. We also find that at no stage the applicant had shown any anxiety to participate in the enquiry. The communication regarding the enquiry between 16.2.94 and 8.3.94 was sent to him by Registered Post. There is no evidence of his having sent any intimation, in response to their

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communication. In such cases, on the analogy of 'Service of Charge-Sheets' as held by Apex Court in D.D.A. Vs. H.C. Khurana, ATC 1993(24) SC 765, service of these documents, can be said to be complete when they were despatched by the respondents by Registered Post.

9. We shall now revert to the various grounds taken by the applicant. Regarding the contention that the respondents have not followed the provisions of Rule 94 of the P&T Manual in the enquiry, we find that there is no substance in this contention. The applicant has been proceeded with under Rule 14 of the CCS (CCA) Rules, 1965 and respondents have to follow the procedure outlined under the aforesaid rules. The procedure for holding ex-parte enquiry as prescribed in Rule 63 and 64 are also included in G.I. order under para 6 of the CCS (CCA) Rules (Supra). In this case, notices of all hearings have been sent to the applicant as per the documentary evidence available on record. It is also seen that as provided in the rules the competent authority has issued letters to the known residential address and also issued a chargesheet and notified the dates of enquiry from time to time, but the applicant had not shown sufficient cause or reason for abstaining from the enquiry except some letters enclosing medical certificates that he was suffering from insomnia from time to time. Even so, it is not as though the applicant was in such a condition that he would not have been in a position to appear before the Enquiry Officer and explain his difficulty. In the entire case before us, we find that the respondents have taken more

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than adequate steps to reach out to the applicant and communicate to him about the enquiry. Further, there is no evidence on record to show that the applicant genuinely tried to cooperate with the respondents in timely communication of his whereabouts, his conditions, and the reasons for his absence, and the reasons for inability to attend the enquiry from time to time. In the circumstances, we are of the considered view that the respondents cannot be faulted. No evidence is also forthcoming in regard to the reason for his long absence except the averment that he was suffering from mental and physical illness.

10. In disciplinary cases, Court has limited role to play. It is settled law that the courts cannot sit in appeal on the orders passed by the disciplinary and appellate authorities. From the evidence on record, we are not able to conclude that the disciplinary proceedings have been vitiated in any manner.

11. The applicant has relied on some judgments. Regarding the affording of reasonable opportunity as laid down in **Kashinath Dixit Vs. Union of India, 1986 (2) AIR 1986 SC** referred to by the applicant, we find that the applicant was served with a detailed charge-sheet consisting of list of documents and also list of witnesses which was sent to him by Registered Post (Registration No. 2890 dated 1.12.1993). The applicant had not sent any representation nor had he participated in the enquiry. Therefore, he cannot claim that no opportunity was given

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to him as he did not participate in the enquiry at all.

It is only when he could participate in the enquiry, he can expect to have the documents inspected by him. His reliance on other judgments to contend that opportunity was not given to him is not helpful as we find that sufficient opportunities had been given to the applicant at various stages.

12. The applicant contends that Presenting Officers written briefs were sent to him on 28.3.94 and he was asked to submit his brief by 31.3.94. If that was so, nothing prevented him from approaching the Enquiry Officer immediately with a letter seeking for more time. There is nothing on record to show that he even made an attempt to seek more time. This only leads us to an inference that the applicant had not shown any interest in cooperating with the Enquiry Officer for the conclusion of the enquiry and the Enquiry Officer had perhaps no other alternative, except to conclude the proceedings ex-parte. In these circumstances, we are unable to appreciate the contention of the applicant that the principles of natural justice have been violated in this case. As stated earlier, respondents took every possible step even to personally locate the address of the applicant, i.e., the new address and to have the letters delivered by Registered Post.

13. In the conspectus of the above discussion, we do not find any ground to interfere with the impugned orders of the respondents. In the circumstances, the application lacks in merit and is accordingly rejected. There shall

be no order as to costs.

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(K. MUTHUKUMAR)
MEMBER (A)

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(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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