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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.No.3/89

New Delhi, dated this the 10th day of June, 1994.

Shri C.J. Roy, Hon. Member(J)

Shri P.T. Thiruvengadam, Hon. Member(A)

Shri Banarsi Lal
S/o Shri Hari Chand,
Ex H.V.D. Delhi Milk Scheme,
25, Savitri Nagar,
New Delhi 110 017.

By Advocate: Shri S.C. Luthra.
versus

...Applicant

1. Union of India through
Secretary,
Government of India,
Ministry of Agriculture,
Rafi Marg, New Delhi.

2. The General Manager,
Delhi Milk Scheme,
Government of India,
West Patel Nagar,
New Delhi 110 007.

...Respondents

By Advocate: Shri V.S.R. Krishna

O R D E R

By Shri C.J. Roy,

This OA has been filed by Shri Banarsi Lal under Section 19 of the Administrative Tribunal's Act, 1985 against the order of the respondents dated 27.5.1983, by which, his services were removed.

2. The facts of the case according to the applicant are that, he was appointed as a Heavy Vehicle Driver (H.V.D. in short) in the Delhi Milk Scheme on 14.12.1960. He was issued a charge sheet under Rule 14 of the CCS(CCA) Rules, 1965 on 8.5.81 for absenting himself from the place of duty w.e.f. 9.1.1978 in an unauthorised manner causing disruption to the official work and finally was removed from service.

3. The contention of the applicant is that the order of removal from service was issued

by an authority, lower than the appointing authority within the meaning of Rule-2(iii) of the CCS (CCA) Rules, and therefore, the impugned order is liable to be quashed. He has prayed for the following orders:-

- i' To quash the order of removal from service (Annexure A-1) as illegal and without authority and;
- ii' To pay the back wages for the intervening period between the date of dismissal and date of final decision, after regularising the period from 9.12.1978 to the date of dismissal.

4, The respondents have filed their counter in which, they have stated though the applicant was appointed by the Chairman in the temporary capacity, he was later on confirmed as H.V.D. by the DGM(A). Therefore, he became his appointing authority for disciplinary proceedings under CCS(CCA) Rules and that he was of status equivalent to that of FA & CAO, DMS as notified vide order dated 12.2.80. Thus FA&CAO was fully competent to remove the applicant from service. The enquiry proceedings were conducted in accordance with the provisions of the CCS(CCA) Rules, 1965. No leave applications stated to have been sent under postal certificate were received in this office except application dated 14.8.81 and 16.10.81, and the applicant was directed vide office letter dated 14.7.80 to report for duty, as his absence from duty w.e.f. 9.12.78 without prior permission is contrary to the standing instructions and subversive of office discipline (Annexure-II). The applicant was absenting from duty for the last 2½ years on flimsy grounds and therefore, they did not have any other alternative except to initiate

departmental proceedings by issuing a charge sheet on 8.5.81. Though the charge sheet was sent to him at his last known address on record by a Registered Post, it was returned back undelivered by the postal authorities with the remark in Hindi, as follows:-

"Bhar Bhar Ghar Jane Par
Aur Ithilahi Dena Par
Patha Karthi Khar Par
Nai Milthi."

5. The remark made by the postal authorities, according to the respondents, clearly shows the intention of the applicant to evade the Registered Post. The Enquiry Officer had given opportunity to him to appear and defend his case, but the applicant did not avail the same. He was duly informed of the effective dates of enquiry proceedings. The formal order of removal from service is a speaking order, in which, the Disciplinary Authority has accepted the findings of the Enquiry Officer. It is, therefore, not necessary to record any reasons in view of the decision in the case of State of Madras versus A.R. Srinivasan (AIR 1966 (SC) 1827).

6. It is further stated that the applicant intimated that he was suffering from Upri Hawa and that there is no use to report to Civil Surgeon for check up. On his expressing the willingness to join duty, he was called upon to report, but he failed to do so. The applicant filed an appeal in March, 1994. But due to technical clarifications, final order of Appellate Authority could not be passed immediately. The enquiry officer has correctly come to a conclusion that the charged officer is guilty of the charges on the basis of documentary evidence on record. Therefore, the case be dismissed.

7. The applicant has also filed a rejoinder, more or less, reasserting the same points has stated in the OA.

8. We have heard the learned counsel for both parties and perused the documents on record.

9. One of the points involved in this case is whether the order of removal from service issued to the applicant has been issued by the competent authority and the charges framed against him warrants dismissal from service.

10. The Statement of Charge framed against the applicant and the Statement of Misconduct, on the basis of which, the above charge has been framed against the applicant are as follows:-

"That the said Shri Banarsi Dass while functioning as Heavy Vehicle Driver in the Delhi Milk Scheme is absenting himself from the place of duty w.e.f. 9.1.1978 in an unauthorised manner causing disruption of the official work. He is thus charged of absenting himself from the place of duty in an unauthorised manner w.e.f. 9.12.1978 causing disruption of the official work."

"It is alleged that Shri Banarsi Dass HVD, Delhi Milk Scheme is absenting himself from the place of duty w.e.f. 9.12.1978 in an unauthorised manner causing disruption of official work. It is further alleged that a memo bearing No.-98/6-Estt.III dated 14.7.1980 was issued to him asking him to report for duty immediately which is alleged to have been followed by reminders dated 8.8.1980 and 27.1.1981. The memo dated 27.1.1981 was acknowledged by him on 14.02.81 but he has failed to report for duty as yet. He is thus charged of absenting himself from the place of duty in an unauthorised manner causing disruption of official work."

11. Firstly, we would like to deal with the subject in regard to the competency of the authority to issue order of removal from service to the applicant.

12. The learned counsel for the applicant argues that FA&CAO, is not competent to issue orders of removal from service, whereas, in the counter filed by the respondents, it has been stated

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that the applicant, who was appointed by the Chairman on temporary basis was later on confirmed substantively to the permanent post of Milk Van Driver by the Dy. General Manager(Admn.) vide Annexure-I order dated 22.2.74. It is, therefore, claimed that the Deputy General Manager(Admn.) has become his appointing authority and the FA&CAO who was of the status equivalent to that of the DGM(A), was notified as the Disciplinary Authority vide order No.13-30/78-LDI dated 12.2.80 and hence he was fully empowered to pass an order of removal from service against the applicant after enquiry proceedings in accordance with the provisions laid down in CCS(CCA) Rules, 1965. The FA&CAO, therefore, cannot be said to be subordinate to the appointing authority and is competent to be Disciplinary Authority in this case.

Therefore, the first ground raised by the learned counsel for the applicant in regard to the competency of the authority to pass the order of removal from service is negatived.

13. As regards the second ground that witnesses not cited in the charge-sheet have been examined, we are of the view that the applicant did not participate in the enquiry in spite of several letters and reminders and therefore, the witnesses were to be examined in his absense with a view not to keep the file still open for long. Having seen the statement of witnesses, who deposed against the applicant, we see that the enquiry officer has got enough material to come to a conclusion against the applicant. It is pertinent

to note that on one side the applicant ~~did~~ did not participate in the enquiry and on the other side, he questions the enquiry stating that if any new documents or witnesses are introduced atleast 7 days prior notice should have been given to him, which is not acceptable to us. we feel that it is not an incurable irregularity, which will vitiate the trial. Therefore, we negative this ground also.

14. As regards the claim of the applicant that he was not informed about the effective date of inquiry, it is seen from the departmental file that notices have been sent on 20.4.82, 31.5.82 and 31.7.82 at his residential addresses repeatedly through post but the notices were received back undelivered with the remark of the postal authority that the applicant could not be traced in spite of repeated attempts. On 15.1.83 and 25.1.83 the respondents despatched through one Shri N.M. Mathur thereby directing the applicant to appear before the enquiry in the case and the receipt of the above letters have been duly acknowledged at page 30-31/cor. of the departmental file. This clearly shows the ~~deliberate~~ approach of the applicant in order which to evade the enquiry conducted against him / he claims that he has not been informed about the effective date of inquiry, does not cut much ice.

15. As regards the allegation that the order of removal is bad in law being a non-speaking one, the respondents contend that since the Disciplinary Authority has accepted the findings of the Enquiry Officer, there is no need to record any reasons in view of the decision in the case of State of Madras vs. A.R. Srinivasan AIR 1966 (SC) 1827.

The rest of the grounds alleged by the applicant in the OA, in our opinion, do not have any substance.

16. We have seen the departmental file of the applicant produced by the department. The learned counsel for the applicant states the applicant was suffering from mental delusion and therefore, he sent his leave letter under postal certificate (Annexure A-III) on 9.12.78 and followed by similar communications at A-IV to A-VIII), but no reply has been given. The learned counsel for the respondents submit that it is for the applicant to ensure whether his leave has been granted by the competent authority or not, either by himself or by his well wisher who takes care of him if he is really unable to ascertain the position. It is submitted by the respondents that when the applicant is residing within the city of New Delhi, and is affordable to go out of the city as far as Indore, the submission that he is unable to attend the office even to ascertain the position is deliberate in order to avoid resume the duty for one reason or the other purposely.

17. The learned counsel for the applicant cites a judgement in OA 346 of 1986 in the case of Brahaspati Prashad vs. Union of India & Ors. delivered in the Principal Bench of the Tribunal on 28.5.87, in which, it was observed that "we are at a loss to understand why the I.O. did not chose to effect service of the notices on the applicant through 'substituted service' ie. by affixing the notice at the residential premises of the applicant and obtaining a memo duly signed by responsible officer in proof of substituted service..."

18. In the instant case, more than one notice have been served by the respondents which has also been asserted in the charge sheet and is clearly known to the applicant who, after perusal of the charge sheet has raised questions about the examination of the witnesses not cited in the charge sheet. This goes to show that the applicant had the knowledge of service of notice. Even, if it is published in the newspaper, a person suffering from 'Upri Hawa' may not read it. It is not a ritual. Therefore the judgement cited by him, is not applicable in this case nor give him a cause without participating in the Enquiry, filing unauthenticated xerox copies of 'certificate of posting' letters written in Urdu etc. to support his version. The applicant's non-participation in the enquiry is not the fault of the respondents. That apart, if the applicant is suffering with a disability and his interests are looked after by a guardian, it is equally left to the guardian to look after the applicant's office affairs like filing leave letters, participating in the enquiry and filing medical certificates given by the Doctor of Government Hospital. Further, the respondents in the administrative exigencies, could change the enquiry officer, which in no way, particularly in this case, could have affected the applicant, having not participated in the enquiry proceedings. If the applicant had participated in the enquiry and found fault with the charge or findings of the inquiry officer alleging that they are biased against him, then there is something for us to interfere. Here, it is a case of the inquiry being conducted ex-parte. Therefore, the contention of the applicant cannot be accepted.

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19. We wish to add in regard to the allegation of the applicant that uncited witnesses were also examined against him, we are at a loss to understand as to how the Inquiry Officer is prevented in examining the witnesses, who are not even cited, but later on, during the course of the enquiry, was found that certain witnesses were necessary to be examined in the interest of the case. Had the applicant appeared in the inquiry, he would have got enough opportunity to cross examine them also and thus defend himself. Without exhausting the remedy available to him, raising the question about examination of the uncited witnesses in the charge sheet, is not acceptable to us.

20. It is also the case of the applicant that the charge sheet was not served on him. When we have seen the departmental file containing the receipts and acknowledgements and actions taken to serve the notices, the non-receipt of notices by way of refusal or non-availability at the residence on the ground of ill health on several occasions, cannot be taken as a ground that the charge sheet is not served against him and that the inquiry is vitiated.

21. On hearing the counsel for both parties and perusal of the record, we are satisfied that the inquiry had been conducted in accordance with the CCS/CCA) Rules and there is no violation of natural justice. The applicant failed to prove the authentication of his problem when he was called vide letter dated 23.9.81 to report to Civil Surgeon for medical check-up within seven days of receipt of the same. Had this been done, he would have

immediately appeared before the Civil Surgeon instead of replying that he was suffering from 'Upri Hawa' and there is no point in reporting for a medical check-up.

22. Having not received any leave applications from the applicant (except that of 14.8.81 and 16.10.81), the respondents directed him vide letter 14.7.80 to report for duty, as his absence from duty w.e.f. 9.12.78 without prior permission is contrary to the standing instructions and subversive of office discipline (Annexure-II), but to no avail. There could be no motivation behind the respondents to falsely implicate the applicant in the departmental proceedings and remove him from service. It is incumbent on the applicant or guardian to ascertain the position of the leave letters whether they have been received by the competent authority and permission granted for extention of leave or has been refused. Nothing has happened in this case. Left with no other alternative, the respondents were forced to departmentally proceed and issue a charge sheet against him.

23. The assertion of the applicant that he did not receive any communications from the department, yet his versions that he could send letters by 'certificate of posting' do not persuade us to interfere in the proceedings. We are satisfied that the respondents have made several attempts to serve notices to the applicant.

24. As regards the contention of the applicant that certain documents which were dated later on, to the charge sheet, were also taken into

consideration, the enquiry officer has enough material to come to the conclusion even without the said documents. We, therefore, do not accept even the conclusion that there is unusual delay by the respondents, especially, when the applicant himself did not join duty for 2-1/2 years.

25. The allegation of the applicant that no enquiry was conducted against him, also could not be accepted after perusing the departmental file at length. No medical certificate has been produced in support of his problem of 'Upri Hawa'. We are not the appellate court to reappraise the evidence adduced in the departmental enquiry as preponderance of probabilities are sufficient in the departmental enquiry. When two views are possible to be taken and when an enquiry officer takes a view and if there is a possibility for an other view being taken the Tribunal will be reluctant to take the second view and interfere with the disciplinary proceedings.

26. We are satisfied that the enquiry officer has considered all the above aspects of the case and rightly established and held that the charges are proved thereby imposing the penalty of removal from service. The appellate authority has also considered his case and rightly rejected the appeal. His review application has also been considered and rejected. All the above process takes its own time, and therefore, the ground raised by the applicant in regard to delay, cannot be accepted.

27. It is no doubt that absenting unauthorisedly is a misconduct. The Hon. Supreme Court in AIR 1982 (SC) 854, in the case of L. Robert D'Souza versus Ex.Engineer, Southern Railway, had held that absence without leave constitutes misconduct and hence enquiry is necessary.

28. In view of the above judgement and also the observations made by the Hon. Supreme Court in the Parmananda's case that the Tribunal has no power to interfere especially in the matter of extent of sentence, we feel that it would be just and proper to give a direction to the respondents, though we do not see any infirmity in the case to interfere. While the other points raised in this OA are not germane to the present issue, we prefer to direct the respondents to reconsider whether the punishment imposed on the applicant is too severe, or not. We feel, a reconsideration is warranted in view of the claim of 'Upri Hawa' by the applicant, which is alleged to have rendered him incapable of knowing what was happening around him. The appellate authority shall reconsider the extent of punishment awarded and pass a speaking order within a period of two months from the date of receipt of a copy of this order.

29. With this observation, the OA is disposed of. No costs.

P. T. Thiru
(P.T. THIRUVENGADAM)
MEMBER(A)

/kam/

18/10/94
(C.J. ROY)
MEMBER(J)