

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 22nd DAY OF APRIL, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER (J)

THE HON'BLE MR. T. JACOB, MEMBER (J)

OA.17/2013

i. Pandurangan,
S/o Jayaramanm,
No.2/19, Thazha Nooran Sandu,
Vettavallam Village & Post,
Thiruvannamalai Taluk & District,
Pin 606 754.

...Applicant

-versus-

1. Union of India rep., by the
Director of Postal Services,
Chennai City Region,
Chennai 600 002.

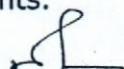
2. The Superintendent of Post Offices,
Thiruvannamalai Division,
Thiruvannamalai 606 601.

...Respondents

By Advocates:

M/s R. Malaichamy, for the applicant.

M/s M. Shanthini, for the respondents.



O R D E R

(Pronounced by Hon'ble Mr. T. JACOB, Member (A))

The applicant has filed this OA under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"1) To call for the records of (i) the 2nd Respondent pertaining to his charge memo made in Memo No.B3/2-2 Neivanatham dated 30.09.2009 & the order of removing the Applicant from service vide his Memo No.B3/2-2/Neivanathan dated 08.07.2011 and the order of the 1st Respondent rejecting the appeal of the Applicant and confirming the order of the 2nd Respondent dated 08.07.2011 vide Memo No.Vig.App/2-18/2012/CCR dated 31.07.2012 and set aside the same; consequent to

2) direct the Respondents to reinstate the Applicant into service with all attendant benefits..."

2. The brief facts of the case, according to the applicant are that, the applicant while working as Gramin Dak Sevak, Mail Deliverer/Mail Carrier(GDS MD/MC), Neivanathan S.O., was issued with a Charge Sheet under Rule 10 of the GDS (C&E) Rules, 2001 alleging that the applicant absented himself unauthorisedly for more than 180 days. He was not allowed to join duty on 16.03.2009. He was permitted to join duty on 21.10.2009 and thereafter he worked continuously without any adverse remark till he was removed from service. It is alleged that the applicant had availed leave for treatment of his illness. There is no charge against the applicant that he had wilfully and wantonly absented himself for duty from 16.03.2009. The Inquiry Officer conducted enquiry in total violation of principles of natural justice. The 2nd respondent without considering the various points raised by the applicant and furnishing the documents obtained during preliminary investigation rejected his appeal dated



22.07.2011. The 2nd Respondent is the Appellate Authority to the applicant and not a Disciplinary Authority. Hence issuing Charge Sheet and imposing the punishment of removal from service vide order dated 08.07.2011 on the applicant is not correct. The 1st Respondent is the reviewing authority and hence the order rejecting the appeal is not correct. The applicant has filed this OA seeking the above reliefs on the following grounds:-

- (i) The leave availed by him was duly considered and granted by the authority. Hence the issue of unauthorised absence does not arise.
- (ii) Even though the applicant approached the authority to join duty, he was not permitted to do so. Hence charging the applicant that he absented unauthorisedly from duty is not correct.
- (iii) Annexure III of the charge sheet does not contain the leave application of the applicant from 16.03.2009. Hence the charge sheet itself is defective and liable to be set aside by this Tribunal.
- (iv) The applicant was not furnished with the leave application alleged to have been submitted by the applicant for the period from 16.03.2009. Therefore, removing the applicant from service without furnishing the relied upon documents is violative of principles of natural justice.
- (v) After issue of charge sheet dated 30.09.2009, the applicant joined duty on 21.10.2009 and he continued to work till he was removed from service by order dated 08.07.2009. Hence the charges levelled against the applicant is arbitrary and illegal.



(vi) The leave availed by the applicant was sanctioned by the authority from time to time. Hence imposing the penalty of major punishment of removal from justice is unjustifiable.

(vii) The charge of the 2nd respondent in the charge sheet dated 08.09.2009 that the applicant was absent from duty for more than 180 days in a year is incorrect. The List of documents shown in Annexure III of the charge sheet is the evidence for the same.

(viii) The 2nd respondent is not a disciplinary authority to the applicant. He is an appellate authority. Hence issue of charge sheet and the order of punishment imposed by the same authority is arbitrary, illegal, without competency and without any authority.

(ix) The 1st respondent is not the appellate authority but a reviewing authority. Hence the order of rejecting the appeal by the 1st Respondent is unjustifiable.

(x) Without considering the request of the defence assistant to the applicant for postponing the enquiry to some other date, the IO concluded the enquiry against the applicant.

(xi) Various points raised by the applicant in support of his case has not been considered by the 2nd respondent.

(xii) The applicant availed leave only to take treatment for his illness. Hence not reporting to duty by the applicant is neither wilful nor wanton. There is no charge against the applicant that he wilfully and wantonly absented himself for duty.



3. In support of his case, the learned counsel for the applicant has relied upon the following decisions:

1. Judgement of the High Court of Madras in the case of S. Shanmugarajan vs. The State of Tamilnadu dated 26.2.2013.
2. (1989) 9 ATC 26) Decision of the CAT, Madras Bench in the case of Dr. Puzhankara Kamalam vs. ICAR.
3. Decision of the CAT, Hyderabad Bench in OA.918/1988 dated 13.11.1991
4. Per contra, the respondents have filed a detailed reply statement stating that the applicant while working as GDSMD/MC was permitted to avail Leave Without Allowance (LWA) for the period from 15.12.2008 to 16.12.2008 and from 20.12.2008 to 15.3.2009 for 88 days by the Inspector, Posts, Tiruvannamalai Sub Division. Further extension of leave for the period from 16.3.2009 to 30.4.2009 was also granted by the 2nd respondent with direction to rejoin duty on expiry of LWA. But the applicant did not rejoin duty on 1.5.2009 and remained absent unauthorisedly without any intimation. The applicant was directed vide letter dated 30.5.2009 to rejoin duty immediately but the said letter sent by RPAD was returned undelivered with remarks 'Addressee left to Mumbai, address not known and RI No.3211 was returned undelivered with remarks 'Left without instructions'. Consequently the 2nd Respondent- Superintendent of Post Offices, Tiruvannamalai Division who is the appointing authority/disciplinary authority for the applicant initiated disciplinary action under Rule 10 of GDS (C&E) Rules, 2001 in Memo No.B3/2-2 Neivanatham dated 30.09.2009. The charge sheet Memo was delivered to the applicant on 14.10.2009 at his Mumbai address. The applicant has neither



submitted representation in reply to the charge sheet memo nor submitted any representation for extension of time. An Inquiry Officer and Presenting Officer were appointed vide Memo dated 2.12.2009. The Inquiry Officer conducted enquiry and submitted his report dated 30.5.2011 holding the charges as proved. A copy of the above enquiry report was sent to the applicant. The applicant submitted his representation dated 15.6.2011. The 2nd respondent considered the representation of the applicant and the records of the case and concluded that the total period of LWA from 15.12.2008 to 30.04.2009 was 134 days and adding the period of strike from 17.12.2008 to 19.12.2008 and the absence from duty beyond 30.04.2009 ie., 01.05.2009 to 16.06.2009, the absence came to 184 days which is more than the permissible period and accordingly ordered for removal from engagement vide Memo dated 08.07.2011. The applicant preferred appeal dated 22.07.2011 to the 1st Respondent which was subsequently rejected by the 1st respondent by order dated 31.07.2012 confirming the order of removal from service. Hence the respondents pray for dismissal of the OA.

5. The learned counsel for the respondents has relied upon the following cases:-

1. Judgement of the Hon'ble Supreme Court in the case of UOI vs. Gulam Mohd. Bhat in CA.No.4950/99;
2. UOI vs. K.G. Sony (2006) SCC (L&S) 1568;
3. Delhi Transport Corpn. vs. Sardar Singh (2004) 7 SCC 574.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.



7. Admittedly the applicant while working as GDSMD/MC was permitted to avail Leave Without Allowance (LWA) from 15.12.2008 to 16.12.2008 and from 20.12.2009 to 15.3.2009 for 88 days by the Inspector Posts, Tiruvannamalai Sub Division, Further extension of leave from 15.3.2009 to 30.4.2009 was also granted by the second respondent with directions to report to duty on expiry of LWA. The applicant failed to join duty on 1.5.2009 and remained on unauthorised leave without any intimation. Several letters sent to his last known residential address returned undelivered. Disciplinary action under Rule 10 of GDS (C&E) Rules, 2001 was initiated for the following articles of charge.

"ARTICLE-I"

Sri. J. Pandurangan, GDSMD/MC, Nelvanatham NBO a/w Vellavalam SO was granted LWA from 15.12.2008 to 16.12.2008 and 20.12.2008 to 15.3.2009 for 88 days by the Inspector Posts, Tiruvannamalai Sub Division, Tiruvannamalai. Further extension of LWA from 16.3.2009 to 30.4.2009 was granted by this office with directions to rejoin the post on expiry of LWA. But Sri J. Pandurangan did not join the post on 1.5.2009 but extended his LWA from 1.5.2009 to 27.5.2009 and remained unauthorisedly absent from 28.5.2009 to 16.6.2009 thus absented from duty for more than 180 days in a year and thereby attracted to provisions of Rule 7 of Gramin Dak Sevak (Coinduct and Employment) Rules, 2001 and thereby failed to maintain devotion to duty as enjoined in Rule 21 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

8. As no reply to the charge sheet memo nor any representation for extension of time was received from the applicant, an Inquiry Officer and a Presenting Officer were appointed to enquire into the charges framed against the applicant vide letter dated 2.12.2009. The Inquiry Officer submitted his report dated 30.5.2011 holding the charges as proved. The second respondent disciplinary authority after considering the Inquiry Report, representation of the applicant and records of the case imposed the penalty of removal from service on the applicant vide order dated 8.7.2011. The appeal preferred

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against the order of removal was rejected by the first respondent appellate authority vide order dated 31.7.2012.

9. It is settled law that in matters of disciplinary proceeding the extent of judicial indulgence is limited to ascertaining whether there has been full compliance of the principles of natural justice and whether there is any deficiency in decision making process. Thus the focal point for consideration in this OA is whether the respondents have followed the due procedure of law before imposing the penalty of removal on the applicant.

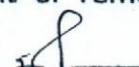
10 There is no dispute with regard to the sanctioned period of Leave Without Allowance (LWA) from 15.12.2008 to 16.12.2008 and from 20.12.2009 to 15.3.2009 for 88 days and further extension of leave from 15.3.2009 to 30.4.2009. The applicant ought to have reported for duty on 1.5.2009 on expiry of LWA. The applicant failed to join duty on 1.5.2009 and remained on unauthorised leave without any intimation in violation of Rule 7(b) of GDS (C&E) Rules, 2001. There is also no record produced by the applicant that he had remained on authorised leave. As per the charge sheet dated 8.9.2009, the applicant had remained absent from duty unauthorisedly for more than 180 days. The unauthorised absence from duty together with leave granted exceeds 180 days. As per the instruction 2(5) of the Director General, if an ED Agent remains on leave for more than 180 days at a stretch, he will be liable to be proceeded against under Rule 8 of EDAs (Service and Conduct) Rules, 1964. Further Rule 7 of the GDS (Conduct and Employment) Rules stipulates that the Sevaks shall be entitled to such leave, as may be determined by the Government, from time time.

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11. Provision (b) of Rule 7 of the GDS (C&E) Rules, 2001 under which the respondents have imposed the punishment of removal from service on the applicant is reproduced hereunder for easy reference:

7(b) where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave, he shall, unless the Government, in view of the exceptional circumstances of the case, otherwise decided, be removed from service after following the procedure laid down in Rule 10.

Following the above rules and instructions, the Inquiry Officer has conducted the enquiry. The applicant was supplied with copies of 11 documents as sought for by him. The Inquiry Officer after recording that there was no defence documents and after affording adequate opportunity to the applicant to defend his case, submitted his report dated 30.5.2011. The second respondent who is the appointing/disciplinary authority, after considering the Inquiry Report and the records of the case, imposed the penalty of removal of the applicant from service by order dated 8.7.2011. The appeal preferred by the applicant on 22.7.2011 was considered and rejected by the 1st respondent vide order dated 31.7.2012. It could be seen on perusal of the appeal that the applicant had himself admitted that after sending application for extension of LWA from 1.8.2009 to 27.05.2009, he fell sick at Mumbai and therefore, could not rejoin duty immediately. He reported for duty only on 21.10.2009 after receipt of the charge memo. As per Rule 19 of GDS (C&E) Rules, 2001, the applicant had an option to prefer revision petition to the higher authorities, which he did not avail. As such, we do not find any illegality or irregularity in the order of the disciplinary authority imposing the punishment of removal of the applicant



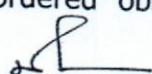
from service. We are of the considered view that the respondents have followed the due procedure of law while initiating the disciplinary proceedings against the applicant under Rule 10 of GDS (C&E) Rules, 2001 and imposing the penalty of removal on him.

12. The learned counsel for the applicant contended that the 2nd Respondent is the Appellate Authority to the applicant and not the Disciplinary Authority and hence issuing Charge Sheet and imposing the punishment of removal from service is not correct. It is also contended that the 1st Respondent being the reviewing authority, order rejecting the appeal by him is also not correct.

13. We have considered the matter. The 2nd respondent ie., Superintendent of Post Offices, Tiruvannamalai Division is the appointing/disciplinary authority to the applicant and the 1st respondent ie., Director of Postal Service, Chennai City Region, Chennai (appellate authority) is the authority immediately superior to the 2nd respondent. As such, in exercise of powers conferred, they have rightly decided the case and passed orders following the due procedure of law. Even if the authority which passed the order of removal is higher than the appointing authority logically the authority next higher to him shall be the appellate authority and this requirement is fulfilled in the instant case.

14. The Hon'ble Supreme Court in the case of Delhi Transport Corporation vs. Sardar Singh (2004) 7 SCC 574 has held that unauthorised absence for long period by an employee itself is a serious misconduct which may call for punishment of extreme penalty of dismissal from service.

15. In Union of India vs. Gulam Mohd. Bhat in CA.4950 of 1999, the Hon'ble Supreme Court has held that the penalty ordered observing the relevant



procedures cannot be interfered with.

16. In Union of India Vs. K.G. Sony (2008) SCC L&S 1568, the Hon'ble Supreme Court has held that Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or shocking to the conscience of the Court in the sense that it was in defiance of logic or moral standards.

17. In view of the above, the Judgements referred to by the applicant are not applicable to the facts of the present case.

18. In the conspectus of the above facts and circumstances of the case and the Judgements of the Hon'ble Supreme Court referred to supra, we do not find any illegality or infirmity in the order of the disciplinary authority and the appellate authority. We are of the considered view that the penalty ordered following the due procedure of law, cannot be interfered with. In the result, the OA is liable to be dismissed and is accordingly dismissed. No costs.