CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/01133/2014

HYDERABAD, this the 8th day of October, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

T.Palajappa S/o Late Chittappa,
Aged about 56 years,
Occ : Gramin Dak Sevak MC/MD,
(Under the orders of removal),
West Kodepalli Branch Post Office,
A/w Gummmagatta Sub Post Office,
Ananthapur Division, Ananthapur District. ...Applicant

(By Advocate : Dr.A.Raghu Kumar)

Vs.

1. The Union of India rep by its Secretary,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi-1.

2. The Chief Postmaster General,
A.P Cicle, Dak Sadan, Hyderabad-1.

3. The Postmaster General,
Kurnool Region, Kurnool District.

4. The Superintendent of Post Offices,
Ananthapur Division, Ananthapur -515001.

5.The Assistant Superintendent of Post Offices,
Ananthapur Sub Division, Ananthapur-515001.

6. The Inspector of Posts,
Rayadurg Sub Division,
Rayadurg-515865.

....Respondents

(By Advocate : Mrs. K.Rajitha, Sr. CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed challenging the penalty of removal of the applicant from service.

3. Brief facts are that the applicant joined the respondents organization as Gramin Dak Sevak Mail Carrier/ Mail Deliverer on 1.9.1977. He was put off duty for unauthorized absence on 18.4.2011. On representing against the same, respondents appointed Mr. N.Gopal Reddy as Adhoc Disciplinary authority on 8.12.2011. Charge Memo for unauthorized absence was issued on 3.1.2012 and the I.O. held the charges as proved vide report dt. 30.10.2012, which was communicated to the applicant on 25.2.2013. Disciplinary Authority imposed the penalty of removal on 4.4.2014. Appeal preferred was rejected on 17.7.2014 and hence the OA.

4. The contentions of the applicant are that the charge memo was issued by the authority who was a material witness to the event in question as per the order of the 3rd respondent dated 25.10.2012 and found to be incompetent to initiate the proceedings as per the orders of the 4th respondent dated 8.12.2011. Appointment of a higher authority as I.O by a lower authority is unheard of. Therefore in view of the above the entire disciplinary proceedings are vitiated. Punishment imposed is disproportionate considering the fact that he was not able to attend duty because of health reasons and that he has put in 36 years of long service.

5. Respondents oppose the contentions of the applicant by submitting that the Inspector Posts (for short "***IP***") Rayadurg Sub Division issued several notices to the applicant for not turning up for duty from 2.3.2010 onwards and since there was no response, he was put off duty on 18.4.2011 by Inspector Posts, Anantapur East Sub Division who was holding additional charge of Rayadurg Sub Division. Applicant submitted representation explaining his difficulties. Thereafter, charge memo was issued on 3.1.2012 for unauthorised absence for the period from 2.3.2010 to 18.4.2011 and inquiry was ordered under Rule 10 of GDS (Conduct & Engagement) Rules 2011 by the IP, Rayadurg on 3.1.2012. Applicant admitted during the inquiry that he could not attend duty for reasons of health and that he did not apply for any kind of leave. The 3rd respondent has appointed Asst. Supdt of Post Offices (for short "***ASP***"), Anathapur West Sub Division as adhoc disciplinary authority on 25.10.2012 replacing Mr. N. Gopal Reddy, ASP earlier appointed as adhoc disciplinary authority for the reason of transfer of the latter. The necessity of appointing ASP, Anantapur West Sub Division arose, since IP Rayadurg who issued the charge sheet was material witness to the event of unauthorized absence. Penalty of removal from service was imposed on 4.4.2013 and the appeal preferred was rejected. Applicant was sent several notices to explain his unauthorized absence but he did not respond and only when he was put off from duty, medical certificate was submitted on 8.8.2011 though he was absent from 2.3.2010. The charge memo did contain a clerical error but that was not objected to by the applicant during the inquiry. Inquiry officer has to be senior to the rank of the officer inquired upon as per DOPT memo dated 6.1.1971. Applicant did not depose during inquiry about his ill health

on 10.8.2012. As per GDS (Conduct & Engagement) Rules, 2011, there is no bar for the appointing authority to issue the charge memo and hence, IP Rayadurg, who was the appointing authority issued the charge memo, which is supported by the judgment of the Hon'ble Apex Court in Asst. Supdt of Post offices and ors vs G. Mohan Nair in SLR SC 783.

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

7. I. The preliminary objections raised by the applicant are that IP Rayadurg, who is a material witness has issued the charge memo and that he has appointed an officer superior to him as the I.O. Further, adhoc disciplinary authorities have been changed at the drop of the hat. We do not find any substance in these objections since the I.O. appointed has to be senior in rank than the employee proceeded against as per DOPT memo dated 6.1.1971 and even if the disciplinary authority is a material witness, he can issue the charge memo, but cannot impose any penalty, as per applicable disciplinary rules. The change of adhoc disciplinary authority was necessitated for administrative reasons by the competent authority as explained by the respondents and is permitted under relevant rules.

II. Having overcome the preliminary objections, we now turn our attention to the nucleus of the dispute. It is not under dispute that the applicant was on unauthorised absence and a charge memo was issued on 3.1.2012. Article I charge of the memo reads as follows:

> *"That the said Sri T.Palajappa while working as GDSMC/MD, West Kodipali BO a/w Gummagatta SO under Guntakal HO has unauthorisedly absented himself from duty from 2.3.2010 till date."*

Respondents admitted that there was an error in the charge memo of mentioning as "till date" instead of "till the date of put off". As per law, the charge memo has to be clear, specific and not vague. Respondents claiming it was a clerical mistake and that the applicant did not object to the error, does not absolve the respondents of the responsibility of issuing a legally valid charge sheet. There is an ocean of difference between 'till date' and the 'till the date of put off'. "Till date" is an indefinite phrase, which has to be clarified by anchoring it, to an occurrence of an event. Hence, the very issue of the charge sheet is defective. Vague charges would not enable a charged employee to present an effective defence as in the instant case. The period of alleged unathorised absence was not made explicit. The charge has to be essentially clear explicit and definite. The charge sheet issued should be such that it should not be left to the applicant to imagine the period of unauthorised absence and then submit his defence, which, in effect, would mean not granting reasonable/adequate opportunity to the applicant to defend himself. We take support of the Hon'lble Apex Court observations in *Anant R. Kulkarni v. Y.P. Education Society*, (2013) 6 SCC 515 : (2013) 2 SCC (L&S) 593 : 2013 SCC OnLine SC 395 at page 519, in making the above remarks, as under:

> ***15.*** *In Surath Chandra Chakrabarty v. State of W.B. [(1970) 3 SCC 548:AIR 1971 SC 752] this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under: (SCC p. 553, para 5)*
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> > *"5. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be*

> *communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."*
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> *(emphasis supplied)*

The action of the respondents is thus violative of the legal principle stipulated in issuing a charge sheet. It is also not understand as to what prevented the respondents to drop the charge sheet and issue a fresh one or issue a corrigendum. None of the steps were taken by the respondents but took an unreasonable stand that the applicant did not object. The applicant is from the lowest rung of the organizational set up of the respondents organization and hence, expecting legal knowledge, as has been exhibited by the respondents, is too farfetched. The error is grave and it cannot be brushed aside under the carpet in a very light manner, as has been made out by the respondents.

III. Besides, the charge is about unauthorised absence. Applicant did explain that he could not attend duty due to health reasons, which was duly supported by a medical certificate. Unauthorised absence by itself cannot be considered as continuance of service has come to an end. In case the absence is for compelling circumstances, which disabled the applicant to perform duty, such absence cannot be held to be willful. In the instant case, applicant could not attend duty due to health grounds as is evidenced

from the medial certificates issued by the Civil Assistant Surgeon, Community Health Centre, Kalyandurg, Anantapur Dt. Being on the issue of health of the applicant, we do observe, that when the medical certificate of the competent authority is on record, averment of the respondents that the applicant did not plead about ill health during the inquiry on 10.8.2012, sounds inherently unreasonable. Further, absence from duty without a leave application may amount to unauthorised absence, but it does not always mean that it was always willful. Under compelling circumstances of illness beyond the control of the applicant, he was not able to attend duty and therefore, it cannot be held as failure of devotion to duty or conduct unbecoming of a government servant. It is for the respondents to prove that the absence was willful. In the instant case, they did not, since the medical certificates produced by the applicant proved that absence was because of ill health. Respondents have taken the medical certificate on record and did not challenge it. When they could not prove that the absence was willful, then it cannot be said that there was any misconduct committed by the applicant in being absent without submitting a leave application for compelling reasons cited. We rely on the observations of the Hon'ble Supreme Court in stating the above, as under:

1. ***Jeewanlal (1929) Limited Vs. The Workmen & Another***, reported in *1962 (1) SCR 717*, wherein the Hon'ble Supreme court has observed as under:

> *"Continued absence by itself cannot be termed as continuance of service has come to an end."*

2. ***Krushnakanth B Parmar and another Vs. Union of India*** reported in *(2012) 3 SCC 178*. On a reading of the judgment of the Hon'ble Supreme Court, it would make it vivid and its relevance to the present case, as presented below:

> *"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 willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. 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.*
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> *18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct."*

By applying the above legal principles to the case of the applicant, we find that the action of the respondents is in total divergence of the observations made. Hence, the decision of the respondents to impose the penalty of removal does not stand the rigors of legal scrutiny. For a lapse of non-serious consequences, the Hon'ble High Court of Delhi has set aside the penalty, while observing as under:

> *HC: "Under the circumstances we hold that the misconduct, if any committed by the petitioner, is not a grave misconduct and thus we quash the penalty levied of 5% cut in pension for a period of six months." – Delhi High Court Judgment dated 26.03.2015 – N. Bhardwaja Vs. Union of India & Ors.*

IV. Moreover, even the penalty of removal imposed is shocking and disproportionate. The charge was unauthorised absence for reasons of heath supported by a medical document. Applicant has rendered 36 years of

service for which there was no consideration. He was not involved in any financial embezzlement involving grave misconduct. Punishment met out should be reformative and not condemn an employee forever by an order of removal, in cases of the nature on hand. Even the charge sheet itself is defective albeit the applicant because of his poor knowledge, which is understandable at his level, did not challenge it. Applicant was removed from service on 4.4.2013, as confirmed by the appellate authority on 17.07.2014 and it is too late in the day to direct the respondents to issue a fresh charge sheet , which would be time consuming and neither beneficial to the respondents nor to the applicant. The precious scarce resources of money, material and manpower would be wasted in the process and unquestionably, not required in public interest.

V. Hence, keeping the overall facts of the case in view, the penalty of removal imposed by the disciplinary authority vide impugned order dated 4.4.2013, as confirmed by the appellate authority vide order dt. 17.07.2014, is set aside. The case is remitted back to the disciplinary authority to impose a penalty other than removal, dismissal, compulsory retirement in accordance with the latest GDS discipline rules and most importantly, keeping in view the Hon'ble Supreme Court observations cited supra. Applicant shall be paid subsistence/put off/ relevant allowance for the period of put off, as is permitted under the prevalent and relevant GDS Rules of the respondents organization, if not paid for any reasons.

The time calendared to comply with the above direction is 3 months from the date of receipt of the order.

In the result, the OA is allowed as above. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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