

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(18)

OA No. 1825/92

New Delhi, this the 22nd day of January, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI R.K. AHOOJA, MEMBER (A)

In the matter of:

Rohtas
S/o Lakhpur Singh,
R/o Vill, H.No.140, Raj Nagar-II,
Palam Colony,
New Delhi.
(By Advocate: Sh. V.P.Sharma)

vs.

1. Union of India through
The Director General of Post Offices,
Dak Tar Bhawan,
New Delhi.
2. The Director Postal Services,
Dehradun.
3. Sr. Superintendent of Post Offices,
Muzaffarnagar Dn. Muzaffaranagar. (UP)
(By Advocate: Sh. S.M.Arif)

ORDER

delivered by Hon'ble Shri T.N.Bhat, Member (J)

We have heard the learned counsel for the parties at length and have also perused the material on record.

2. The applicant who was working as Extra Departmental Branch Postmaster at village Purmaffi and was removed from service by the order dated 29.12.89, has assailed the aforesaid order of removal by filing present OA. Interestingly, he has not sought any relief in respect of appellate order affirming the aforesaid punishment order.

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22.1.99.

3. The impugned order of removal was passed by the competent authority, namely, Senior Superintendent of Post Offices, Muzaffaranagar, U.P. after a regular enquiry. The charge against the applicant was that he had absented from duty without seeking prior permission and without making alternate arrangements for the work of the Branch Post Office.

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4. The grounds taken in the OA are as follows:-

that the enquiry was ordered against the applicant without considering the reply filed by him to the impugned chargesheet dated 4.7.89; that the enquiry against the applicant was based on no evidence; that the impugned order or punishment was prepared on the same day on which the enquiry report had been prepared which showed that the disciplinary authority had not properly applied his mind to the report; that the copy of the enquiry report was not furnished to the applicant before passing the final punishment order; that the revision petition filed by the applicant was not decided; that earlier also an order of termination had been passed against the applicant which was set aside on appeal by the order dated 11.1.88 and that on the same allegations the impugned chargesheet dated 4.7.89 could not have been issued; that the alleged absence of the applicant from duty was not an absence in the eyes of law because the applicant had applied for leave and has also handed over the charge of the Branch Post Office to another



person. And that it is not necessary that prior approval for proceeding on leave should be taken; that the applicant was not paid subsistence allowance during the period he was put off duty; that the applicant was not granted personal hearing in the appeal; that the appellate order in this case is not a speaking order; and, that the charge against the applicant is of a minor nature and the extreme penalty of removal from service was not warranted in the facts of the case.

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5. The respondents have filed a detailed reply in which the contentions raised by the applicant have been refuted.

6. Although, as already mentioned, the applicant has raised several grounds in his OA, the learned counsel for the applicant pressed only three grounds during the course of his arguments. We may take up those grounds one by one.

7. The first ground agitated is that the report of the Enquiry Officer was not furnished to the applicant before passing of the impugned punishment order. This contention cannot be accepted, for the simple reason that prior to the judgment of the Apex Court in Ramzan Khan's case in the year 1990 the disciplinary authority was not required under the law to give a copy of the enquiry report to the delinquent official. Therefore, the mere fact that copy of the enquiry report was not given to the applicant before the passing of the punishment order dated 29.12.89 would not vitiate the enquiry.

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8. It is, next, argued that the applicant had applied for leave though he had admittedly not sought prior permission. Merely applying for leave without giving the superior officer an opportunity to make alternate arrangement would not amount to compliance with the relevant rules because alternate arrangements are to be made for running the work of the Post Office. In the instant case it has been held on the basis of the evidence recorded during the departmental enquiry that the applicant had neither got his leave sanctioned before remaining absent from duty but had also not sought the necessary orders for making alternate arrangements. So far as the findings in the report of the Enquiry Officer are concerned we do not find any ground to interfere with those findings. We also do not find any merit in the contention that on the same set of facts the applicant had earlier also been chargesheeted and his services were terminated. The applicant before us has not been able to substantiate this plea, though the respondents had in their reply vehemently questioned the correctness of this plea.

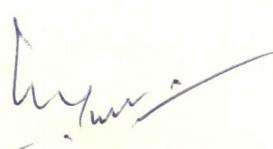
9. The main attack of the applicant's counsel is on the quantum of punishment. He states that absence without obtaining prior sanction would not amount to such a serious misconduct as to warrant awarding the punishment of removal from service. The learned counsel also lays much emphasis on the point that according to the provisions contained in Rule 7 of the EDA (Conduct and Service) Rules it is only in cases of gross misconduct that extreme punishment of removal or dismissal from service can be awarded. We are afraid, this contention

by me

cannot be accepted, as there is no merit in the proposition that absence from leave does not amount to gross misconduct. On the contrary any number of judgments can be cited to support the view that absence from duty does amount to serious misconduct which could entail the punishment of removal or dismissal from service. On going through the provisions contained in Rule 7 ibid we find that the punishments enumerated in Sub-Clauses (i) to (iv) are provided for misconduct of a minor nature while the punishments provided in (v) and (vi) are meant to cover those acts of misconduct which are of a grave and serious nature. Once it is established that the Extra Departmental Agent had absented from duty punishment of removal from service or even dismissal can be awarded validly.

10. We have gone through the report of the Enquiry Officer as also the impugned order of punishment passed by the disciplinary authority and we find that this is not a case of no evidence. Valid and cogent reasons have been given for holding the applicant guilty of the alleged misconduct. We further find from the appellate order dated 21.9.90 that the appellate authority has considered the contentions raised in the appeal and has given adequate reasons for rejecting the appeal we do not agree with the applicant's contention that the appellate order is not a speaking order.

11. Apart from the above, we may state that as regards the quantum of punishment the Courts/Tribunal are



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not competent to interfere unless the punishment awarded shocks the conscience of the Court or the Tribunal.

12. For the foregoing reasons, we find no merit in this OA which is accordingly dismissed, leaving the parties to bear their own costs.

Akbaras =

(R.K. AHOOJA)
Member (A)

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(T.N. BHAT)
Member (J)

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