

(A3/L)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

T.A. No. 111/87

(W.P. No. 9848 of 1983 of High Court of Judicature at Allahabad)

Umesh Prasad Srivastava

Petitioner.

versus

Union of India & others

Respondents.

Hon. Mr. Justice K. Nath, V.C.
Hon. Mr. K. Obayya, A.M.

(Hon. Mr. Justice K. Nath, V.C.)

Writ petition described above is before us for quashing the order dated 31.10.1970 (Annexure 2), the dismissal order by which the the applicant was dismissed from service; there is also a prayer to quash the appellate order dated 14.7.73 (Annexure 1) by which the appellate authority modified the dismissal order into removal from service.

2. The petitioner was working as Postal Clerk at Sub-Post office, Khaga, District Fatehpur, when by order dated 5.3.1968 he was transfer^{red} to post office Bindki. On 7.3.68, he applied for leave which was sanctioned and he was immediately relieved. The applications for further leave continued to be received which were granted from time to time so that he was on sanctioned leave till 28.2.69.

3. The Department's case is that from 1.3.69, the petitioner absented himself without permission or sanction of leave and he also did not report for duty at Post office Bindki. A communication was sent to him on 1.12.1969 (Annexure 1) by which he was asked to explain

9h

his absence from 1.3.69 without information either at Khaga or at Bindki. The applicant claims to have sent a reply (Annexure 2) dated 5.12.69 in which he mentioned that he had sent three leave applications alongwith medical certificates, under Certificate of Posting. They were mentioned to have been sent on 1.3.69 for the period from 7.3.69 to 31.5.69, on 1.6.69 for the period from 1.6.69 to 31.8.69 and on 1.9.69 for the period from 1.9.69 to 31.12.69. According to the Department, however, none of these applications were received.

4. Consequently, by a charge sheet dated 22.1.1970 (Annexure -3) the departmental disciplinary proceedings were instituted against the applicant. In the first article of charge it was stated that he had absented himself from duty with effect from 1.3.69 without any application for leave and without producing any medical certificate in anticipation of leave and thereby contravening the provisions of Rule 39 of Posts and Telegraph Manual, Volume II. The second article of charge mentioned that the applicant had been transferred to Bindki but he did not join at Bindki and continued to submit medical certificates and leave applications for the period from 1.3.68 to 28.2.69 and since then he has been absent from duty without any application or sanction. It was further mentioned that a letter was sent to the Superintendent of

2

Police, Fatehpur to intimate the applicant's whereabouts as a criminal case had been instituted against him and that by the letter dated 1.12.69 (Annexure 1) he was required to explain why the disciplinary action may not be taken for contravention of Rule 39. No reply had been received while the applicant continued to be absent from 1.3.69, thereby ^{he} contravened the provisions of Rule 39 aforesaid.

5. The applicant did not submit any written statement in reply to the chargesheet. The enquiry report dated 1.7.71 (Annexure 6) mentions that while the applicant did not file any reply to the chargesheet, one Shri M.L.Rikhara, had appeared for him as defence assistant and that in the course of enquiry the prosecution witnesses who were examined, were also cross-examined on behalf of the defence. At conclusion of the enquiry, the Enquiry Officer submitted the report (Annexure 6) to the disciplinary authority recording that although the applicant was not guilty of contravening the provision^s of Rule 39, he had overstayed the leave and had violated the rule 40 of P.&T Manual, Volume II.

6. The disciplinary authority did not agree with the view of the enquiry officer in so far as the question of contravention of Rule 39/40 was concerned and issued notice to the applicant on 26/27.8.71 indicating the reasons of his disagreement. The applicant submitted a reply to the disciplinary authority. The disciplinary authority, in his ~~order~~ dated 31.10.70

9

(Annexure 2) mentioned that he had already informed the applicant by his show cause notice dated 27.8.1971 (Annexure 9) that violation of Rule 39 of P.&T Manual Volume II was also proved and that Rule 40 laid down for procedure for action to be taken for violation of Rule 39. On facts, he held that the applicant was unauthorisedly absent and therefore, he held that ^{that} charge stood fully proved. On this basis, he passed te order of dismissal of the applicant with immediate effect. The matter figured before the appellate authority, who while ^{choosing} not to express any opinion on the effect of the enquiry officer's finding the applicant guilty of Rule 40 instead of Rule 39, concurred ^{with} ^{the} view of the disciplinary authority that rule 39 was clearly applicable to the case of the applicant.

7. On merits, the appellate authority upheld the finding of the disciplinary authority that the applicant had failed to prove that the alleged leave applications were received in the Divisional office. He held that the appellant was guilty of having anticipated leave for a very long period of time and thereby remained absent from duty without authority or permission.

8. The appellate authority then considered the quantum of punishment to be awarded. After observing that he was not a person ^{fit} to be retained in service, ^{he} has modified the punishment of dismissal into removal from service.

B

9. We have heard the learned counsel for the petitioner as well as the respondents and have gone through the record. The first point raised is that having been charged for committing violation of Rule 39 of P&T Volume, the petitioner could have not been found guilty of violating Rule 40. There are two aspects of this point. In the first place, although, the enquiry officer came to the finding that Rule 39 had not been violated but Rule 40 had been, the disciplinary authority came to the finding that Rule 39 had been violated with which the appellate authority also agreed. The ultimate finding of guilt is not therefore, violation of Rule 40 but for violation of Rule 39.

10. In the second place, while it is true that a person who is charged for ^{one type of} misconduct, cannot be punished for any other type of misconduct, even if such misconduct be found established on the evidence, without an opportunity to show cause on the proposed finding on the other act of misconduct as specified in Rule 14(23) of the C.C.&A. (C.C.&A) Rules set out in para 27 of the writ petition, the substance of the matter is that Rule 40 deals with the same misconduct which is dealt with ⁱⁿ Rule 39. The only difference is that Rule 39 deals with the administrative ^{aspect} of the misconduct, namely absence without prior permission or leave, Rule 40 only says that for such

R

absence or misconduct, a disciplinary action leading to imposition of any recognized penalties may be taken. We are satisfied therefore, that no illegality is committed in awarding the punishment to the applicant.

11. The next point raised is that the applicant had sent applications for leave as mentioned in Annexure 2. That question relates to a finding of fact depending upon evidence. The departmental authorities, including enquiry officer, have examined evidence and have arrived at a finding which is not shown to be per-verse in as much as there is no material on the record to show that the three applications referred to in Annexure 2, were really sent by the applicant and received by the department. We invited the attention of the learned counsel for the petitioner to certain features of Annexure 2. Firstly, the definite charge against the applicant was that he was absent from 1.3.69. The first application for leave mentioned in Annexure 2, however, is for the period from 7.3.69 to 31.5.69. It does not explain the absence from 1.3.69 to 6.3.69. The learned counsel for the petitioner said that during those days the applicant was on duty. There is no basis for that contention. He had already been transferred by order dated 5.3.68 from Khaga to Bindki. It is the definite case of the respondents that the applicant never reported at Bindki; the applicant does not say that he reported at Bindki. If he was on duty from 1.3.69 to 6.3.69 he could only have to be present at Bindki which, plainly is not the

position. Secondly, the applications are mentioned as despatched under Certificate of Posting. The only presumption which the law raises in respect of articles despatched by post is about registered articles under section 27 of the General Clauses Act. There is no statutory presumption about any other kind of post. Thirdly, the application Annexure 2 does not indicate to whom any of the three leave applications was addressed.

12. There is one more material on the record to which reference is found in the petition. In para 29 of the petition it is mentioned that the Senior Superintendent of Post offices had written a D.O. letter (Annexure 16) to the Superintendent of Police, where the former had mentioned that the applicant was not on duty since 7.3.68 and he has regularly been submitting medical certificates. The interpretation sought to be drawn is that the applicant must have sent applications to the Department. The allegation is specifically denied in para 33 of the counter affidavit where it is stated that the reference to the medical certificate is only to those certificates which had been received for the leave upto 28.2.69. We have gone through the pleadings on the subject and the letter (Annexure 16). We are satisfied that the Senior Superintendent of Post Offices, wanted only to inform the S.P. that having absented from 7.3.68 he had been sending medical certificates but when he was directed to appear before the Civil Surgeon

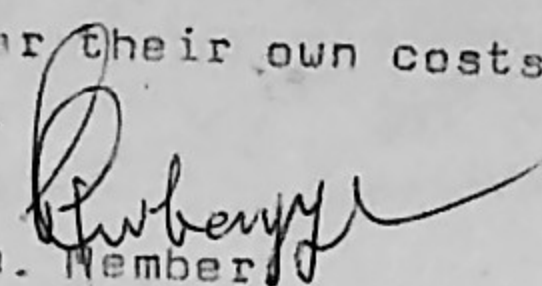
92

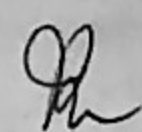
AS
8

-8-

he did not appear even before the Civil Surgeon as reported by the letter dated 15.4.69. The Superintendent of Post offices only wanted the information about the whereabouts of the applicant which were described as unknown. We are satisfied therefore, that there was no material before the departmental authorities on the basis of which they could arrive at an inference that the applicant had made applications for leave.

13. These ~~are~~ ^{all} are the points in this case. The petition has no force and is accordingly dismissed. Parties to bear their own costs.


Adm. Member


Vice Chairman

Allahabad 21 December , 1990.