

NO
Compulsory
Retirement

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. 211/88
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DATE OF DECISION 9-12-1992.

Shri M.Z. Belim Petitioner

Mr. B.S. Supahia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. Jayant Patel Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan : Vice Chairman

The Hon'ble Mr. R.C. Bhatt : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

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Shri M.Z. Belim,
Sub-Post Master,
Supdi, (Gondal).

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Applicant.

Versus.

1. Union of India
(Notice to be served through
The Post Master General,
Gujarat Circle,
Ahmedabad - 9.
2. The Director of Postal Services,
Posts & Telegraph Deptt.,
Rajkot Division,
Rajkot.
3. Superintendent of Post Offices,
Gondal Division,
Gondal, Dist: Rajkot. Respondents.

J U D G M E N T

O.A.No. 211 OF 1988

Date: 9-12-1992.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. B.S. Suphia, learned advocate for the
applicant and Mr. Mukesh Patel for Mr. Jayant Patel,
learned advocate for the respondents.

2. The applicant ^{who was} serving as a Sub Post Master
at Sub P.O. Supedi, Gondal Division at the relevant
point of time, has filed this application under section
19 of the Administrative Tribunal's Act, 1985, seeking
the relief that the appellate order of compulsory
retirement of the applicant produced at Annexure A-5
dated 27th December, 1985 by the Director of Postal
Services, Rajkot Division, i.e., respondent No.2, be
quashed and set aside and the respondents be directed

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to treat the applicant as reinstated with full backwages and continuity of service till the date of actual superannuation with all incidental benefits.

3. The case of the applicant as pleaded in the application is that while he was working as an "officiating Sub Post Master" at Sub Post Office Supedi, Gondal Division, he applied for a months' medical leave in June 1982 as he was suffering from T.B., but the said application was not acknowledged and so he continued on duty; that thereafter due to deterioration in his health, he applied for a month's medical leave on July 17, 1982 and the applicant was relieved and proceeded on medical leave; that on completion of medical treatment at Junagadh General Hospital as an indoor patient, he reported for duty at Sub Post Office, Supedi, but he was not allowed to resume duty and so ^{he} approached the respondent No.3 Superintendent of Post Offices, Gondal Division, Gondal. It is the case of the applicant that the respondent No.3 informed him that an order had been issued for allowing him to resume on duty and has inform^{ed} the Supedi, Post Office telephonically, but on approaching the Accountant, Gondal division for salary due, the Accountant refused to pay salary and produced a memo signed by respondent No.3 stating that the payment was not to be made without permission

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that ^{when} the applicant approached the Supedi, Post Office

he was not allowed to resume duty and hence he approach^{ed} again to respondent No.3 who refused to intervene in the matter.

4. It is the case of the applicant that due to further deterioration in his health, he was admitted and treated at hospitals in Junagadh, Rajkot, Surendranagar and Ahmedabad till 1985 during which time he regularly applied for medical leave and posted relevant medical certificates, that on approaching the Morbi P.O. on 25th May, 1985, he was forced with penalty order of removal from service vide order dated 28th January, 1985, on which date he came to know for the first time that an ex-parte enquiry had been conducted on alleged ground of unauthorised absence. The applicant has in his application made reference to Special Civil Application No. 1907 of 1984 filed by him in the High Court of Gujarat for not allowing him to resume duty on completion of sick leave and that though he had reported for duty

on assurance
given by
respondents'
advocate in
the High Court,

before respondent No.3 on 20th November, 1984, he was not allowed to resume duty. The applicant had preferred two appeals dated 23rd May, 1985 and 10th July, 1985 against the penalty order of removal from service by the disciplinary authority dated 28th January, 1985 to respondent No.2 and had

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requested for an enquiry officer's report which had not been furnished to him, which was ultimately furnished to him and he had also made representation against findings of / the enquiry report dated 26th December, 1985.

5. The case of the applicant is that the appellate authority considered his appeal without giving him an opportunity of personal hearing and passed an order reducing the penalty of removal from service, which according to him is illegal, arbitrary and violative of principles of natural justice. It is his case that the enquiry proceeding was conducted ex-parte, that the articles of charges, statement of imputation of misconduct, list of documents etc. were not delivered to him and he was not given copy of the enquiry report when the order of removal from service was passed against him. It is also his case that the second medical opinion was not taken by the enquiry officer which is contrary to the procedure required vide DGP and P&T letter dated 6th November, 1978. It is the case of the applicant that the procedure adopted by the appellate authority was in gross violation of principles of natural justice as he was not given an opportunity of personal hearing and the quantum of punishment is not commensurate with alleged ground of unauthorised absence.

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6. The respondents have filed detailed reply controverting the averments made by the applicant in his application. It is contended that the applicant has not exhausted all the remedies within the meaning of Section 20 of the Act. It is contended that the applicant was working as temporary and ad hoc sub postmaster, Supedi post office upto 16th July, 1982 and when regular incumbent Mr.B.B. Gujarati was posted and took over the charge from the applicant, the applicant was granted 10 days' E.L. on medical certificate from 17th July, 1982 to 26th July, 1982 i.e., relieved from the charge of sub-postmaster, Supedi. It is contended that on 30th July, 1982 the applicant gave one application dated 26th July, 1982 wherein he had requested to grant 15 days extension of leave from 27th July, 1982 onwards, but his leave application was not granted and he was directed to resume his duties but he did not care and continued to remain absent from duties without proper permission of the competent authority. It is contended that the applicant had taken away some important documents of the post office at the time he was going on leave on 27th July, 1982 and hence his leave application was not granted. It is contended that on 16th August, 1982, the applicant had returned all the documents and record. It is contended that the applicant had requested to pay his unpaid pay

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and allowances upto 16th July, 1982 which were paid to him and he was directed by the letter dated 21st August, 1982 to resume and complete the records at Supedi Post Office and to report compliance, but he did not obey the directives and continued to remain absent from duty, that the applicant was given the said letter dated 21st August, 1982 in person. It is contended that the letters were thereafter written to the applicant by Registered Post on 16th October, 1982 at Junagadh and again on 9th November, 1982, but the same returned undelivered. and again the letter dated 31st January, 1983 and 21st February, 1983 ^{written to him} were also received back. According to the respondents, all the efforts were made by respondents to serve the letters to the applicant at various addresses to resume the duty but the same resulted _/ in ~~vain~~ and hence disciplinary action was initiated against the applicant under Rule 14 of the CCS(CCA) Rules, 1965 vide memorandum dated 3rd May, 1983 which was issued to him through Post Master, Junagadh at his last known address ^{and} _/ at various places including the permanent address noted in his service book, but the same were received back as undelivered.

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7. The respondents have further contended in their reply that ultimately an inquiry officer was appointed and memo dated 15/19-12-1983 was sent to the applicant which was also received back. The inquiry officer held his first sitting of the inquiry at Dhoraji on 12.1.1984 and the applicant was addressed a letter by the inquiry officer at his all the three last known addresses viz. Supedi, Junagadh and Jafraabad, but the said letters were received back undelivered and the applicant did not attend the inquiry on that day. It is contended that the second sitting of the inquiry was held on 7.3.1984 at Gondal, Head office and the applicant was informed about the same at his three last known addresses with a clear intimation that if he would remain absent, proceedings would be started exparte but at that time also all the letters sent were received back undelivered. The enquiry was held exparte, therefore, on 7.3.1984 and 8.3.1984 under Rule 63 of P & T Vol. III and Rule 14 (23 of CCS (CCA)) Rules 1965. It is contended that the inquiry officer had come to the conclusion that the applicant had absented from duty without prior approval of the competent authority as per the detailed reasons given in the report and submitted his report on 18.4.1984 to respondent no. 3, Supdt. of Post Offices, Gondal, who was the competent authority. After due consideration, the respondent no. 3 - disciplinary

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authority- agreed with the inquiry officer's report and issued a show-cause notice dated 9.1.1985 at the three known addresses at Supedi, Junagadh and Jafarabad by Regd. A.D. in accordance with the rules along with the report of the inquiry asking applicant to make a representation on the penalty proposed but the same returned with the remarks " left without particulars/not claimed" The respondent no. 3 then after considering the inquiry report and documents on record inflicted punishment of removal from service by order dated 28.1.1985. The said order was sent at the same last three knowns addresses but the same received back undelivered with remarks " left/ undelivered". It is contended that ultimately punishment order issued by the respondent no. 3 could only be delivered through post master, Morbi on 1.3.1985. The applicant then preferred appeal before appellate authority, that the appellate authority sent copy of inquiry report to the applicant and asked applicant to send his representation within 7 days, that the applicant preferred representation dated 26.12.1985. The appellate authority after considering the same reduced the penalty of removal from service into compulsory retirement which was a very lenient and sympathetic view

8. It is contended by the respondents in their reply that after 26th July, 1982, medical leave of the applicant was not granted. The respondents have denied that the applicant regularly applied for medical leave till May, 1985, and posted medical certificates as alleged. It is contended by the respondents that the applicant had not

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submitted any leave application for absence of his duty from 9th November, 1982, to 28th January 1985, and the medical certificate submitted by him between the period from 17th July, 1982, to 8th November, 1982 did not cover the period from 22nd July, 1982 to 26th July, 1982, 26th August, 1982, 26th September, 1982 to 22nd December, 1982. The respondents have also denied that the applicant had reported for duty before the respondents no. 3 on 20th November, 1984 and that he was not allowed to do so as alleged. The respondents have denied that the applicant's request for furnishing a copy of the inquiry report was refused, and contended that the applicant in para 6- xvii of the application has admitted that inquiry report was furnished to him and he was asked to make a representation. It is contended that the appellate authority has considered the case of the applicant on merits. It is contended that the ex-parte inquiry held is legal and valid.

9. The applicant has filed rejoinder controverting the contention taken by the respondents in the reply.

10. The first ground taken by the applicant in this application is that the impugned order of the appellate authority Annexure A/5 dated 27th December, 1985, was ex-parte, illegal, arbitrary and violative of principles of natural justice in as much as fair enquiry procedure as per rules were not followed nor the imposition of compulsory retirement

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justified. We have perused the order Annexure A/5 which is a decision of the appeal petition dated 23rd May, 1985, and 10th July, 1985 filed by the applicant under Rule 26 of the Central Civil Service (Classification, Control, and Appeals) Rules, 1965. The appeal had been submitted to the respondents no. 2 against the order of removal from service imposed on the applicant by the Disciplinary Authority namely, the third respondent vide memo dated 28th Jan. 1985. The applicant has not furnished the copy of the decision of the disciplinary authority removing him from service but the respondents have produced the copy of the same. The case of the applicant was that he was working as an " Officiating Sub- Post Master" at Sub P.O. Supdt. Gondal, Division that he had applied for a month's medical leave in June, 1982, as he was suffering from T.B. but this leave application was not acknowledged and he continued on duty. According to him, again he applied for a month's medical leave on July, 17, 1982 but the copy of that leave application is not annexed with this application and the reason given by him is that the same was destroyed during the communal riots in 1985. According to the applicant, he was relieved and then he proceeded on medical leave. The case of the respondents is that the applicant was Sub Post Master, Supedi P.O. and was under the order of transfer for posting as Postal Asst. Supedi, was served with a memo of charges under Rule 14 proposing charges to hold an inquiry on the basis of the Articles of and other Annexures enclosed in it, that instead of joining duty as Postal Asst. Supedi with effect from

to 26th July, 1982 (after expiry of leave for 10 days from 17th July, 1982 to 26th July, 1982) has unauthorisedly remained absent from duty as Postal Asst. Supedi with effect from 27th July, 1982, till the charge was framed on 3rd May, 1983, and he acted in contravention to Rule 62 of P & T Manual Vol. III and in contravention to Rules 3 (1) (ii) and 3 (1) (iii) of the CCS (Conduct) Rules 1964. The charge sheet was issued on 3rd May, 1983, and accounted for the period from 27th July, 1982 to 3rd May, 1983, for which the applicant was alleged to have remained un-authorisedly absent.

11. The order of the disciplinary authority dated 28th Jan. 1985, and the order of the appellate authority dated 27th Dec. 1985, show that the charge-sheet was sent to the applicant by the registered post vide Gondal Market Yard P.O. Registered letter dated 3rd May, 1983, No. 1188, addressed as ex-Sub-Postmaster, Supedi, P.O. and designated Postal Assistant, Supedi P.O. but the said registered letter returned as unclaimed. A copy of the Charge-sheet was also sent to the Post Master, Junagadh H.O. for delivery to the applicant to a "care-of" address and it was reported by the Post Master, Junagadh H.O. that the 'care-of' party refused to accept delivery of the Registered Letter on behalf of the applicant. Attempts to deliver the Charge-

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Sheet addressed as Postal Assistant, Supedi P.O. Postal Asst. Supedi P.O. at Jafrabad, and 'care-of'"Kohinoor Pan House" through the Post Master, Junagadh H.O. and the registered letters returned as un-delivered. The applicant had not left his leave- address with his controlling officer. The record shows that the Disciplinary Authority appointed the inquiry officer who proceeded with the inquiry and the notice was issued to the applicant for attending the inquiry at the above three addresses but the notices returned un-delivered and therefore, inquiry was held ex- parte. The learned advocate for the applicant submitted that the respondents were knowing the address of the applicant as the applicant had filed Special Civil Application No. 1907 of 1984 in the High Court of Gujarat. Merely because the applicant had mentioned his address in his writ petition filed in the High Court of Gujarat that itself is no ground to show that the respondents did not issue notice to the applicant at the correct address. The respondents had sent the charge sheet and the notices of the inquiry at all the known addresses of the applicant as per their record but all returned unserved and the inquiry proceeded ex-parte as the applicant did not remain present though all efforts were made to procure his presence by issuing notices.

12. The inquiry report produced at Annexure A/3 also

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shows that the inquiry was proposed to be held at Dhoraji on 12th Jan. 1984, and the deponent was addressed at Supedi, Jafrabad and Junagadh but the notices returned un-delivered and the official also did not attend the inquiry on 12th Jan. 1984, that the further inquiry was proposed to be held at Gondal on 7th March, 1984, and again the letters were addressed at all three addresses with clear notice that if the applicant remained absent the proceeding would be started ex-parte but he did not turn. In this view of the matter, the proceeding before the inquiry officer could not to be faulted. The applicant has failed to establish that the ex-parte proceeding before the inquiry officer was illegal, arbitrary or violative of principle of natural justice. So far the decision of the appellate authority is concerned, it can be not be stated ex-parte because the respondent no. 2 was now bound to give personal hearing to the applicant, nor the applicant has produced any evidence before us to show that the applicant had asked for personal hearing of his appeal. Thus, the appellate order dated 27th December, 1985, Annexure A/5 can not be faulted on the ground that the applicant ^{was} not given personal hearing. Thus, there is no substance in ground A and the same deserves to be rejected.

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12.A The second ground taken by the applicant in his application is that Rule 14 (4) of CCS /CCA Rules is grossly violated. It is mentioned in this ground that the article of charge sheet, statement of imputations of mis-conduct or misbehaviour and list of documents were not delivered to the applicant and the matter proceeded ~~ex~~-parte. It is not necessary to repeat the discussion which we have made earlier vide disposing of ground no. A and it would suffice to say that all attempts were made to serve the said documents to the applicant at his known addresses but they returned unserved. The report of the disciplinary authority and the appellate order in details deal with this aspect of the matter that the letters and notices returned un-delivered. Therefore, there is no substance in this ground also.

13. The third ground (C) taken in the application is that applicant was not given a copy of the inquiry report when given the order of Removal from service on 25th May, 1985. The learned advocate for the applicant has not pressed this ground at the time of hearing. The applicant in para 17 of the application has stated that the appellate authority had, vide order Annexure A/2 sent the copy of inquiry report to the applicant giving him an opportunity to send the representation against the report of inquiry. Apart from these facts, there is a decision in

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case of Dr.D.B.Rathod V/s. Union of India & Ors., 1992(21) ATC, page 451, in which it is held that Civil Servant or Railway Servant against whom proceedings are initiated does not choose to appear before the inquiry officer with the result that the inquiry is held ex-parte, then non-furnishing copy of enquiry report does not vitiate the proceedings. In this case, the whole inquiry proceeded ex-parte because the applicant did not appear before the inquiry officer and hence it was not incumbent on the respondents to serve the report of the inquiry officer before the disciplinary authority took the decision on the basis on the report of inquiry officer, though, as a matter of fact it was sent, as contended by the respondents in their reply.

14. So far as ground D is concerned, it is alleged by the applicant, that the second medical opinion was not taken by the inquiry officer as per CCS(Leave) Rules of 1972 which is contrary to procedure required vide DGP & P & T letter dated 6.11.1975 but this point was not argued at the time of hearing and it is also not established that the procedure adopted by respondents has violated any Rule.

15. So far ground E is concerned, we have already held that there was no question of violation of principle of natural justice, by the appellate authority while deciding the appeal of the applicant, as there is no allegation in the application that the applicant had demanded personal hearing. Hence, the appellate authority was not bound to give personal hearing to the applicant.

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16.. So far ground F & G are concerned, it is important to note that though, the applicant has stated in his application that, he had asked for a month's leave in June, 1982, which was not acknowledged and that he had again applied for a medical leave for a month in July, 1982, the record shows that the disciplinary authority has observed that the applicant had sent leave application for the period mentioned in Annexure II to the charge-sheet but, not for remaining period. The case of the applicant is that he had informed for his absence to authority and that he submitted leave application from time to time with medical certificate and that the Supdt. of Post Offices Gondal had not authority to resume the duty against the medical opinion. According to the applicant as he was suffering from T.B. and was physically in-capacitated due to prolonged illness, therefore, under such conditions medical certificates and leave applications could not be sent ⁱⁿ time, and he took medical treatment at Junagadh General Hospital as indoor patient and then at Rajkot, Surat and Ahmedabad till May, 1985, and he regularly sent application for medical leave during the period of treatment and posted medical relavant certificate, thereafter, on 12th May, 1985, when he was faulted for removal from service. The decision of the appellate authority shows that the applicant had not submitted any proof of evidence in his leave application for the various breaks of period of absence mentioned in the report of the inquiry officer. The

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applicant was granted 10 days medical leave on medical certificate from 17.7.1982 to 26.7.1982. The applicant was supposed to resume his duty as P.A. Supedi with effect from 27th July, 1982, but he remained absent from duties from 27th July, 1982 continuously without proper permission of the competent authority. He continued to submit leave application and medical certificate of sickness from different Doctors upto 25th September, 1982. No further leave was granted to the official by the S.P.O. Gondal from 26th July, 1982, on wards. He gave an application dated 26th July, 1982, requesting for extention of 15 days leave from 27th July, 1982, but as the leave was not granted and was directed to resume his duty still he did not resume his duty. The applicant was addressed by the S.P.S. Gondal on 27th July, 1982, 30 th July, 1982, 16th August, 1982, 21st August, 1982, 24 th August, 1982, 16th October, 1982, and 9th November, 1982, asking him to resume his duty but he failed for his duty. The inquiry officer came to the conclusion that the applicant had absented from his duties without proper application for leave or any prior approval of the competent authority for the period at-least from 26th August, 1982, and 26th September, 1982, to 22nd October, 1982, and from 9th November, 1982 onwards till the finalisation of inquiry upto 8th March, 1984. The disciplinary authority has agreed with the findings of the inquiry officer that the applicant had failed to resume his duties as P.A. supedi with effect from 27.7.1982, and further absented from

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duty un-authorisedly as P.A. Supedi with effect from 27th July, 1982, to 8th November, 1982, without proper permission to competent authority and from 9th November, 1982, onwards, without any kind of intimation un-authorisedly. The applicant had acted in a manner which would be un-becoming of Government servant in-contravention to Rule 3 (1) (ii) and 3 1. (iii) of CCS (Conduct) Rules 1964, and that there charges were fully proved. The disciplinary authority then passed the order of removing of applicant from service with immediate effect.

17. The appellate authority has considered all the contentions taken by the applicant in his appeal memo and held that the procedure as laid down under the CCS (CCA) Rules have been complied with, and that the ex-parte proceeding has not led to the failure of justice or the denial of reasonable opportunity to the applicant and has held that finding of disciplinary authority were clerely warranted by evidence on record. The decision is given after appreciating evidence on record. However, considering long years of service and in order that the applicant might obtain his pensionary and other benefits, the quantum of penalty imposed upon the applicant by Disciplinary Authority namely the order of removal from service was reduced to that of compulsory retirement which

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was the minimum possible penalty applicable to him after his crossing of the date of superannuation.

18. The appellate authority also held that period from 22nd July, 1982, onwards should be treated as leave due and admissible. In our opinion both the authorities have considered all the aspects of the case and there is illegality committed by them in reaching the conclusion. On the contrary the appellate authority has taken a very lenient view by reducing the punishment. Moreover, the Tribunal has limited power in such cases and we cannot re-appreciate the evidence on record. In this case, we do not find any substance in grounds A to G of the appeal memo.

19. In the result, we find no merits in this application hence, it deserves to be dismissed.

20.

ORDER

Application is dismissed with no order as to costs.

per
(R.C. Bhatt)
Member (J)

[Signature]
9/12/82
(N.V. Krishnan)
Vice Chairman