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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 625 OF 1999  
Cuttack, this the 28th day of May, 2004

Matlub Khan.

....

Applicant.

Vs.

Union of India & Ors.

...

Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

  
(B. N. SOM)  
Vice-Chairman

  
(MANORANJAN MOHANTY)  
Member (Judicial)

28/5/04

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O. A. NO. 625 of 1999

PRESENT: THE HON'BLE MR. B. N. SOM, VICE-CHAIRMAN  
THE HON'BLE MR. M. R. MOHANTY, MEMBER (J).

Matlub Khan. ... Applicant.  
-Vrs.-  
Union of India & Ors. ... Respondents.

For the Applicant: Mr. K. C. Kanungo, Counsel.  
For the Respondents: Mr. A. K. Bose, Counsel.

Date of decision: 28.05.2004.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):-

Applicant (Matlub Khan) while working as Extra Departmental Delivery Agent of Prataprudrasur Branch Post Office ( in account with Balipatna Sub Post Office, under Bhubaneswar G.P.O. of Orissa) was proceeded against departmentally under Rule-8 of E.D. Agents (Conduct and Service) Rules, 1964 under Annexure-1 dated 06.08.1993. During the pendency of the said Disciplinary Proceedings, he was placed under 'off duty'. As revealed from the chargesheet under Annexure-1, there were following three heads of the charges:

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- "(i) Mr. Khan remained unauthorised absent from duty w.e.f. 7.2.1992 to 12.2.1992;
- (ii) Mr. Khan entrusted on 6.2.1992 with Balipatna MO No.2926/01 dtd.29.1.92 for Rs.300/- did he neither paid the MO; nor returned the cash till 13.2.92 and credited the cash on 14.2.1992;
- (iii) Mr. Khan entrusted on 6.2.1992 with MO No.7413 dtd.29.1.92 of Bankura for Rs.400/- paid on 11.2.92 returned the paid voucher on 13.2.92 showing date of payment as 7.2.92 and made part payment in respect of Balakati MO No.2926/247 dtd.29.1.1992 for Rs.300/- paying Rs.200/- on 11.2.92 and rest Rs.100/- on 15.2.1992".

The matter was enquired into and, ultimately, the Inquiring Officer held that the Charge Nos. I & II are proved but, as regards the charge No. III, it was held proved with regard to keeping the cash unauthorisedly with him. On receipt of a copy of the enquiry report, he submitted a written statement (on the findings of the Inquiring Officer) on 24.11.1998 and the Disciplinary Authority imposed on him a punishment of removal from service (which shall not be a disqualification for his future employment) with immediate effect vide Memo under Annexure-3 dated 15.12.1998. Being unsuccessful (on 30.6.2000) in his Appeal dated 09.03.1999, this Original Application under section 19 of the Administrative Tribunals Act, 1985 (with prayers to quash the order under Annexures-2, 3 and 6) was filed by him. He has also prayed, in alternative, for remand of his case to the Disciplinary Authority to reconsider the quantum of punishment in accordance with law and to reinstate him in service with all consequential benefits.

2. Respondents have filed their counter contesting the pleas taken by the Applicant in his Original Application; by stating therein that since there was no violation of any of the rules in the matter of conducting the enquiry and since adequate opportunities have been given to the Applicant to defend his case, there remains nothing for this Tribunal to interfere in the matter.

3. We have heard learned counsel for both sides and perused the materials placed on record.

4. It is the case of the Applicant that the allegation of unauthorised absence from 7.2.1992 to 12.2.1992 to be not correct and also has not been proved in the enquiry even by preponderance of probabilities. The allegation of unauthorised absence is not only unfair and unethical but speaks of the attitude of the employer towards the employee; because the Applicant met an accident on 07.02.1992 which rendered him unconscious. The plea of the Applicant that he was treated for his sickness in PHC, Athantar is nothing but true; but a patient did not know as to whether he was an indoor or outdoor patient. Therefore, six days leave on account of unforeseen situation cannot be said to be unauthorised one and basing on such allegation the punishment of removal is shockingly disproportionate and needs interference by this Tribunal. As regards charge No. ii and iii(a) it has been submitted by the learned counsel for the Applicant that these are the

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off shoots of charge No.I and,if the evidences are appreciated by the Inquiring Officer and Disciplinary Authority are scanned meticulously,it would reveal that it is a case of no evidence.In order to strengthen this submission,learned counsel for the Applicant drawn our attention to the findings of the Inquiring Officer more particularly to the findings that "the charged officer entrusted on 6.2.1992 with the Balipatna MO No.2926/1 dated 29.1.1992 for Rs.300/- only did neither pay the MO nor return the bill till 13.2.1992 and credited the cash on 14.2.1992".It has further been submitted by him that the entire prosecution charges befalls within 06.02.1992 to 12.02.1992.It is a fact that the applicant was carrying the office cash of Rs.300/- with him to return to the EDBPM on 13.02.1992 after being cured but the EDBPM did not receive stating that it was due to be received on 06.02.1992 but not on 13.02.1992 and, ultimately, he deposited it under UCR at Balipatna from ACG/67 receipt.Learned counsel for the Applicant had also during his submission,drawn our attention to various pre-varicating statements recorded during enquiry.

5. Learned counsel appearing for the Respondents, in support of the stand of the Respondents,submitted (a) that the Applicant was never an indoor patient as per the record of the PHC at Balipatna (b) that he was an outdoor patient due to Hypertension vide OPC Regn.No.177 dated 07.02.1992 (and that he was under treatment upto 10.2.1992) that he was given every opportunity during the enquiry

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(with all the relevant records, sought for by him in order to absolve himself from the charges) and that he could not collect any concrete point/means to protect him from the charges, that he concocted his stand to deceive the Deptt. and to divert the attention of the Disciplinary Authority from the misdeed like temporary mis-appropriation of Govt. money as well as unauthorisedly absenting from his duty causing dislocation in delivery works. It is the stand of the Respondents, at hearing, that since adequate opportunities have been provided to the Applicant and the proceedings were conducted as per the Rules and instructions, it needs no interference by this Tribunal.

6. After having heard learned counsel for the parties and on perusal of the records, it is seen that it is a fact <sup>as</sup> that the Applicant was under the treatment/an outdoor patient as per the records of the Hospital. Therefore, the Authorities should not have taken such a drastic action; when undisputedly, the Applicant was under treatment and since he was sick he must have been placed in a difficult situation to credit the money order promptly. However, he credited the amount no sooner he resumed duty within seven days. Merely because the Applicant wrongly stated that he was an indoor patient, his entire defence case was not available to be rejected.

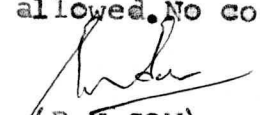
7. Order of removal/dismissal is a serious consequence, which not only affects a Govt. servant but his entire family/dependants depriving <sup>them</sup> of their rights under Art. 21 of the Constitution of India. Therefore, when it was a fact that the absence for seven days only was due to his unavoidable circumstances, a drastic punishment of removal

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from service was certainly harsh and <sup>is</sup>/shocking to the judicial conscience; especially, when the Applicant, being placed in a explainable difficult situation, could not report to duty or deliver the Money Order of Rs. 300/- only for seven days.

8. In the above premises, we set aside the impugned orders of removal as well as the order of the Appellate Authority and remand the matter to the Disciplinary Authority for reconsideration of the matter for imposition of a different punishment (other than removal/dismissal) to be done within a period of 45 days from the date of communication of the order and while doing so, the said Authority should keep in mind that the Applicant was undisputedly sick; which compelled him to remain absent for seven days and that, in the said circumstances, he had to refund the Money order amount (without being credited at destination) on his resuming duty and the long period of service rendered by him.

9. In the result, this Original Application is allowed. No costs.

  
(B. N. SOM)  
VICE-CHAIRMAN

  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)