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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No.282 of 2008
Cuttack, this the 24th day of March, 2011

Manik Singh Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes.
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? Yes.


(A.K.PATNAIK)
Member (Judl)


(C. R. MOHAPATRA)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 282 of 2008
Cuttack, this the 24th day of March, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Manik Singh, aged about 50 years, Son of Late Durga Charan Singh, Village-Balidiha, PS-Kuliana, District-Mayurbhanj, at present C/o.Mr.Gamha Singh, At-Nagpal, PO-Udala, Dist. Mayurbhanj, at present working as T-II-3, CRRI, Cuttack-6.

.....Applicant

By legal practitioner: M/s.P.K.Rath-1,R.C.Jena,P.K.Satpathy,
A.K.Rout, P.K.Naik, Counsel.

-Versus-

1. Union of India represented through Director General, Indian Council of Agricultural Research (I.C.A.R), Krishi Bhawan, New Delhi-110 001.
2. Director, Central Rice Research Institute, Cuttack-753 006 (Orissa).
3. Acting Director, Central Rice Research Institute, Cuttack-753 006 (Orissa).
4. Senior Administrative Officer, Central Rice Research Institute, Cuttack-753 006 (Orissa).
5. Secretary-cum-Appellate Authority, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi-110 001.

....Respondents

By legal practitioner: Mr.S.B.Jena, ASC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

Copy of the Memorandum of charges dated 13-06-2002

placed at Annexure-R/7 reads as under:

“Article of Charge-I.

That the said Shri Manik Singh while functioning as T-1-3 at CRRI, Cuttack under ICAR was in habit of remaining of willful absence without prior intimation to the controlling authority for which his salary for 11/93, 3/94, 7/95, 8/98,11/98 and 7/2000 were stopped earlier.

However, in earlier occasion Shri Singh remained absent without prior approval of the competent authority for a period from 20.10.98 to 29.2.2000. Again Shri M.Singh applied for 2 days CL on 19.5.2000 and 20.5.2000 with the permission to leave the Head Quarters. But after expiry of the above said 2 days CL Shri Singh continued to remain on un-authorized leave till 28.05.2001 in spite of several reminders. So the competent authority after careful consideration has treated the two spells of leave from 20.10.98 to 29.2.2000 and from 19.05.2000 to 28.05.2001 as "Dies non" vide O.O.No. 408/Adm dt.11.07.2001 and in the said office order he was warned strongly and was intimated the consequence of disciplinary action for his failure to join in his duty. However, Sri Singh did not turn up to his duty but to continue to remain absent as usual.

Article of Charge.II.

That the said Sri Manik Singh was transferred to RRLRRS, Gerua, Assam vide O.O.No. 138/Adm.I dated 27.7.2001. Instead of joining at the sub station, Sri Singh continued to extend leave on medical grounds supported with medical certificate from a private Homeo Clinic. So Sri Singh was directed to appear before the Medical Board for review of his illness vide Memorandum No. 9742/Adm.I dated 13.09.01. But Sri Singh neither appeared before the Medical Board nor reported for duty but to go on extending leave haphazardly in usual practice.

Therefore, Sri Singh was again directed to report to duty immediately failing which disciplinary action shall be initiated against him vide Memorandum No. 722/Adm.I dt.19.1.02. But Sri Singh did not carry out the instructions to join in his new place of posting till today.

By the above act Sri Manik Singh has shown lack of devotion to duty and has behaved in a manner unbecoming of an employee of ICAR and thereby violated the provision of Rules 3 (1) (ii) & (iii) of CCS (Conduct) Rule, 1964 and Rule 32(2)(a) of CCS (Leave) Rules."

2. Further Respondents sought to prove the charge through the following documents and witness:

- 1. Office Order No. 408/Adm.I dt.11.07.2001;
- 2. I/C, Library, Lr.No. 34-01/Lib/2001/128 dt.03.07.2001
- 3. Office Order No.F.2-01/94-Adm.II/138 dt.27.07.2001;

4. Memorandum F.No.02-41/76-Adm.I/9742
dt.13.09.2001;

5. Memorandum No.02-41/76-Adm.I/722
dt.18.1.2002 and Regd. Memorandum No. 841/Adm.I dated 19.01.2002.

1. **Mrs.Annada Mohanty, I/C.,Library.”**

3. Copy of the report of the enquiry placed by the Respondents at Annexure-R/15 reads as under:

“INQUIRY REPORT

With reference to Office Order F.No.0141/76/Adm.I/575 dated 16.4.03 the undersigned has been appointed as the IA to inquire into the charges framed against Shri Manik Singh, T-II-3 under Rule 14 of the CCS Rules, 1965.

It was intimated that the charge sheet sent to Sri Manik Singh vide Memorandum No. 12120/Adm-I dated 13.6.02 has been returned unnerved with a postal remark that the “Addressee Absent” and thus it was flashed in two local News papers vide Office Letter No. 902 & 903 dated 21.1.03. Shri Manik Singh has not submitted any reply within the stipulated time.

The charges framed against Mr. Singh are:

Art. Of Charge-I

That the said Manik Singh while functioning as T-II-3, CRRI, Cuttack under ICAR has remained on unauthorized leave with effect from 25.6.2001. So Sri Singh was intimated the consequence of disciplinary action for his failure to join his duty within 15 days vide the M.No.408/Adm.I dt.11.07.2001. But Sri Singh failed to join his duty. Thus, by this act Sri Singh contravened the Govt. of India's decisions under (3) (III) below Rule 25 of Leave Rules and provision (9) of Sub Rule 23 of Govt.of India's decisions below Rule 3-B of CCS (Conduct Rules) 1964.

Art. Of Charge-II

That the said Sri Manik Singh while functioning as T-II-3 in the aforesaid Office has been transferred to RRLRRS, Gerua, Assam vide O.O.No. 21-1-/94-Adm.II/138 dt.27.7.2001. Instead of joining at his new place of posting Sri Singh applied for unspecified period of leave with a Medical Certificate obtained from a Private Homeo Clinic, Baripada. In view of the genuineness of his illness Sri Singh was asked to appear before the Medical Board, Baripada

vide O.M.No. 9742/Adm.I dt. 13.09.2001. But Shri Singh did not carry out the order. Again Sri Singh was asked to join in his duty within 15 days failing which disciplinary action shall be taken against him vide O.M.No. 722/Adm.I dated 18.01.2002 and No. 841/Adm.I dated 19.01.2002. But Sri Singh extended leave haphazardly without paying heed to official warning. Finally, Sri Singh was given last opportunity to resume his duty within 7 days by publishing a notice in the Samaj and the Prajatantra on 23.01.2002 failing which the inquiry will be held ex parte. But Sri Singh did not act upon the last opportunity. Thus by this Sri Singh contravened the Government of India's decision under (3)(III) below Rule 25 of Leave Rules and provision (9) of Sub Rule 23 of Government of India's decisions below Rule 3-B of CCS (Conduct Rules) 1964.

Sri Gangadhar Soren, AAO represented the case before the inquiry authority on 19.05.2003.

The Inquiry Authority after perusal of relevant papers found the charges framed against Shri Manik Singh, T-II-3 to be true.” (Emphasis supplied).

4. Based on the aforesaid report of the IO, the Disciplinary Authority issued Office Order No. 02-41/76-PR-Admn.I/100/9282 dated 20/21-10-2003 at Annexure-A/5 which reads as under:

“WHEREAS an inquiry was conducted against Sri Manik Singh, T-II-3 CRRI, Cuttack-6 under Rule 14 of CCS (CC&A) Rules, 1965;

AND WHEREAS the charge framed against Shri Manik Singh, T-II-3, CRRI, Cuttack-6 under Rule 14 of CCS (CC&A) Rules, 1965 are proved by the Inquiry Officer;

AND WHEREAS, within the stipulated time Shri Manik Singh has failed to submit his representation against the Inquiry Report, the copy of which was made available to him vide this office Memorandum No. 02-41/76-PR/Admn.I/5271 dated 28.05.2003.

Now, therefore, in exercise of the powers conferred under Central Civil Services (Classification, Control & Appeal) Rules, 1965 and after taking all relevant factors into account, the said Sri Manik Singh, T-II-3, CRRI, Cuttack-6 is hereby compulsory retired from service under Rule 11 (vii) of CCS (CCA) Rules, 1965 with immediate effect.”



5. Thereafter, applicant preferred appeal. During the pendency of the appeal he approached this Tribunal in OA No. 297 of 2007. The said OA was disposed of by this Tribunal on 06.11.2007 directing the Appellate Authority to consider and dispose of the appeal of the applicant. The Appellate Authority considered the appeal and rejected on the grounds mentioned in the order No.3 (3)/2008-Vig (D) dated 29th February, 2008 (Annexure-A/7) which reads as under:

“WHEREAS Shri Manik Singh, Ex T-II-3, CRRI, Cuttack preferred an Appeal on 15.2.2006 against the penalty of Compulsory Retirement imposed on him vide CRRI’s Order dated 21.10.2003. The said appeal was, however, not received by the Appellate Authority.

WHEREAS Shri Manik Singh filed an OA No. 297 of 2007 before Hon’ble Central Administrative Tribunal, Cuttack Bench praying therein for issuing direction to the Appellate Authority to dispose of the above referred Appeal filed by him.

WHEREAS the Hon’ble Tribunal vide its order dated 6.11.2007 has directed the Appellate Authority to decide the appeal in accordance with the law besides directing Shri Manik Singh to submit his application for condonation of delay.

WHEREAS the undersigned i.e. Appellate Authority has received the application of Shri Manik Singh for condonation of delay on 25.12.2007 along with a copy of his earlier Appeal dated 15.2.2006.

WHEREAS per Rule 25 of CCS (CCA) Rules, 1965 “no appeal preferred under this part shall be entertained unless such appeal is preferred within a period of 45 days from the date on which a copy of the order appealed against is delivered to the applicant. Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause of not preferring the appeal in time.

WHEREAS the appeal preferred by Shri Manik Singh, Ex-T-II-3 is hopelessly time barred and the reasons cited by the Appellant are not convincing for not preferring the appeal for too long a period spanning over more than two years.

Notwithstanding the above, in pursuance of the order dated 6.11.2007 of Hon'ble Central Administrative Tribunal, Cuttack Bench, the undersigned has carefully considered the request made by the appellant in his appeal dated 15.2.2006. The undersigned has observed as under:

i) The disciplinary authority had made all the efforts to serve the charge sheet to the Charged Officer but the envelope containing the charge sheet was received back from the postal authorities on 14.6.2002, 15.6.2002, 16.6.2002, 17.6.2002, 18.6.2002, 19.6.2002 and 20.6.2002 with the remarks that the addressee was not found at home. It is evident from the above that the appellant evaded the inquiry as despite claiming to be ill and supposedly taking rest at home, he was not found at home on all these occasions.

ii) A notice was also published in the news paper "the Samaja" on 23.1.2003 asking him to resume his duty immediately and to submit a Medical Certificate from the Medical Board regarding his illness. It was also notified that if no action was taken by him within the stipulated period of seven days, ex parte inquiry against him will be made.

iii) Despite the Medical Board declaring him fit to resume his duty w.e.f. 3.2.2003, he did not resume the duty on grounds of illness etc. In view of the above position, there was no other option left but to conduct the inquiry against him ex parte.

iv) His past record also shows that habitual absenteeism was his regular habit. There were several periods of unauthorized absence which were treated as dies non such as his periods of unauthorized absence from 20.10.1998 to 29.2.2000 (about 16 months) and 19.5.2000 to 28.5.2001 (12 months) were treated as dies non vide office order dated 11.7.2001. But there was no improvement in his behaviour. This clearly shows his complete lack of commitment and interest in the employment.

v) His delayed Appeal against the penalty order is again a continuation of his behaviour and shows his apathy and disinterest in work;

AND WHEREAS after considering the issues raised in the appeal against the order of penalty, available documents and other facts of the case, the undersigned is of the view that besides the Appeal made by Shri Manik Singh,



Ex-T-II-3, being hopelessly time barred, the points raised therein do not merit consideration.

NOW, THEREFORE, the undersigned being the Appellate Authority in this case hereby rejects the appeal of Shri Manik Singh, Ex T-II-3, CRRI, Cuttack against the penalty order and confirms the said penalty of Compulsory Retirement imposed on him vide CRRI's Order dated 21.10.2003."

6. The aforesaid orders under Annexure-A/5 and Annexure-A/7 have been challenged by the Applicant on various grounds mentioned in his OA with prayer to quash the same and direct the Respondents to grant him all the arrears dues.

7. Respondents filed their counter stoutly opposing the stand taken by the Respondents. The sum and substance of the stand of the Respondents is that this Tribunal being not the Appellate Authority over and above decision of the Competent Authority passing orders in compliance with Rules and principles of natural justice, and that there being no allegation of abridgement of any of the provisions of the Rules, or violation of principles of natural justice, the punishment imposed on the applicant needs no interference.

8. The first submission of the Applicant is that the Disciplinary Authority without considering the materials available on record and without examining whether provisions of the Rules have strictly been followed and adequate opportunity was granted to the applicant to defend his case imposed the punishment which was endorsed by the Appellate Authority by taking extraneous materials though the same had not formed part of the charge sheet. This was strongly opposed by Mr. Jena, Learned

ASC appearing for the Respondents by stating that the Disciplinary Authority imposed the punishment of compulsory retirement taking into consideration all materials available on record with due application of mind and the Appellate Authority upheld the said order of punishment in a reasoned order. While doing so, he has only expressed the past conduct of the Applicant and for such technicality interference in the order would amount to approving the misconduct committed by the Applicant. Second ground of challenge of the order of punishment by the applicant is that neither the IO nor any of the Authorities i.e. Disciplinary Authority or Appellate Authority took note of the vital fact that the applicant proceeding on leave is due to his illness and death of his wife and was with the intimation through various applications supported by medical certificates. By treating the leave as dies non, the applicant was warned, hence the Respondents should not have drawn up the proceedings relating to the said period of leave and imposed the punishment. By doing so, the Respondents imposed the applicant double punishment for one offence. By drawing our attention to the order dated 07.01.2011 of the Hon'ble High Court of Orissa in **WP (C) No. 1784 of 2003** filed by **Pradeep Kumar Nayak v Deputy Inspector General of Police, CRPF, Bangalore and others**, Learned Counsel appearing for the Applicant prays for annulling the present order of punishment. On the other hand by relying on the decisions of the Hon'ble Apex Court in the cases of **Maan Singh v Union of India and others, 2003 (2) AISLJ page 359** and

18

State of Punjab and Others v Charanjit Singh, 2004 (1) AISLJ 238,

Mr. Jena, Learned ASC appearing for the Respondents strongly opposed this submission of the Applicant by stating that by ordering the unauthorized period as *dies non* and issuing warning, the misconduct of the applicant has not been taken away and, therefore, imposition of the punishment of compulsory retirement is in no way contrary to Rules or law. Third submission of the Learned Counsel for the Applicant is that the illness of the applicant or the death of the wife of the applicant has not been questioned either by the IO, DA or AA. As such, imposition of compulsory retirement on him for such absence is too harsh and therefore, the punishment is liable to be set aside. Per contra, it was submitted by Mr. Jena, Learned ASC that unauthorized absence for such a long time cannot be viewed lightly. Unauthorized absence as held by the Hon'ble Apex in very many cases is a serious misconduct. As such imposition of punishment of compulsory retirement cannot be treated as harsh in any manner. Accordingly, Learned ASC prays to dismiss this OA.

9. We have carefully considered the arguments and counter argument advanced by Learned Counsel for both sides and perused the materials placed on record. We have also gone through the decisions relied on by the respective parties.

10. As has been admitted by the Respondents, due to absence of response, the proceedings were drawn up and concluded *ex parte*. It is the

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case of the Applicant that he did not participate in the enquiry due to his illness and later on due to the death of his wife. Be that as it may, Respondents made all efforts to serve the charge sheet but it was returned with postal remark that the addressee is absent. They have therefore rightly published in the news paper, even then there was no response from the side of the applicant. Hence we find no fault in so far as this aspect of the matter is concerned.

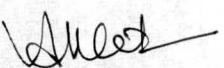
11. In the instant case it reveals from the charge sheet that the period of unauthorized absence of the applicant has been treated as *dies non* with reprimand to the applicant prior to issue of the charge sheet. Therefore, we do not find any reason to uphold the action of the Respondents in initiating disciplinary action against the applicant for the period of unauthorized absence which had already been regularized by the Respondents by treating as *dies non* along with a reprimand. The decisions relied on by Mr. Jena, Learned ASC have no application as in those cases after the report of the IO, the Disciplinary Authority imposed the punishment and treated the unauthorized period as leave due and admissible etc. But in the instant case as noticed the action of the Respondents is just the reverse. The Respondents first regularized the period and then started the proceedings. That the applicant remained on leave due to illness or death of his wife with due intimation to the Respondents is not in dispute. The IO report's conspicuously silent as to why he came to the conclusion that whether any such application of leave

has been submitted by him and/or the illness of the applicant and death of his wife are false. The IO submitted its report in a perfunctory manner without discussing what material or circumstances prompted him to reach such conclusion. It also appears that none of the listed documents were examined by the IO nor the witness cited in the charge sheet was examined. It merely says Sri Gangadhar Soren, AAO represented the case before the inquiry authority on 19.05.2003. Who is Gangadhar Soren under what authority he represented the Department and the fact that Shri Soren will represent the Department had ever been intimated to the applicant is not forthcoming. The IO has also not held the charge levelled against the Applicant proved. It says that "The Inquiry Authority after perusal of relevant papers found the charges framed against Shri Manik Singh, T-II-3 '**to be true**'." This does not mean that the charges levelled against the Applicant are proved. Rule/Government of India instruction clearly lays down the principle to be followed in a case where the delinquent does not appear despite intimation. On perusal of the records vis-à-vis the rules we see that none of the procedures prescribed in the matter of holding *ex parte* enquiry has been followed by the IO. The report of the IO is also not in accordance with the Rules. It is trite law that principles of Natural Justice would be scrupulously followed and principles of natural justice are those rules which have been laid down by the Hon'ble Apex Court as being the minimum protection of the rights of the Individual against the arbitrary procedure that may be adopted by a

judicial, quasi-judicial and administrative authority, while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. Thus, when the applicant chose not to appear before the I.O. as per the laid down provisions, the IO ought to have made available the prosecution case before coming to a definite finding. This is conspicuously missing. The DA and Appellate Authority, as it appears passed the order without examining this aspect of the matter. Error of violating the principles of natural justice by the Disciplinary Authority has gone unnoticed by the Appellate Authority.

12. In view of the discussions made above, we quash the order under Annexure-A/5 and A/7. However, we hold that this case is a deserving one for applying the principle of 'no work no pay' and the applicant is not entitled to the back wages as prayed by him.

13. In the result, this OA stands allowed to the extent stated above. No costs .


(A.K.PATNAIK)
Member (Judl)


(C.R.MOHAPATRA)
Member (Admn.)