

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 131/2007

Date of Order: 28.4.2011

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

S M Khandelwal S/o Shri Biharilal, aged about 63 years, R/o H.No. 148, Near Shiv Temple, Santoshi Mata Temple Lane, Adarsh Nagar, Pali-Marwar, last employed on the post of J T O Bagidora on deputation) in the office of S.S.A (Secondary Switching Area), Dist. Banswara.

...Applicant.

Mr. J.K. Mishra, counsel for applicant.

VERSUS

1. The Union of India through the Secretary to the Government of India, Ministry of Communication, Department of Telecom, Sanchar Bhawan, New Delhi.
2. The General Manager, Telecom District (Erstwhile TDM Banswara), BSNL, Banswara.

... Respondents.

Mr. Vijay Bishnoi, counsel for respondent No. 2.
None present for respondent no. 1.

**ORDER
(Per Mr. Justice S.M.M. Alam, Judicial Member)**

Applicant, S. M. Khandelwal, who was employed on the post of J.T.O., Bagidora in the office of S.S.A. (Secondary Switching Area), Dist. Banswara, (now retired), has preferred this Original Application for grant of the following reliefs:

"(i) That impugned order dt. 23.2.1996, Major Penalty Charge Sheet (Annexure A-1) and penalty order dated 25.5.2006, imposing the major penalty of withholding of 10% of pension for two years (Annexure A/2, may

be declared illegal and the same may be quashed and applicant allowed with all consequential benefits as if the impugned orders were never in existence.

- (ii). That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii). That the cost of this application may be awarded."

2. The brief facts of the case are as follows:

The applicant was initially appointed on the post of Engineering Supervisor (now J.T.O.) on 18.12.1968 at Bhilwara. During his service period, he was posted at various places and thereafter on attaining the age of superannuation, he retired from service as J.T.O., Bagidora, Dist. Banswara, on 31.01.2004. During the period of his service, on 31.12.1980, he was served with a charge-sheet issued under Rule 14 of CCS (CCA) Rules, 1965. However, the said enquiry still remained uncompleted but he was denied his promotion, which adversely affected his physical and mental ability. He remained under treatment at Bagur Hospital from March 1983 to 30.09.1983, and thereafter he suffered with mental disorder from 30.09.1983 to 09.08.1998. During this period, his family members got him treated from Sadhus and Ojhas. Thereafter from 10.08.1998 to 10.02.1999, he remained under treatment of authorized psychiatrist, and after some improvement, he joined his duties on 11.02.1999.

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On 23.02.1996, a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 was issued to the applicant alleging two articles of charges. Thereafter, Inquiry Officer was appointed who conducted ex-parte enquiry and submitted his enquiry report dated 06.09.1999 holding the applicant guilty of all the charges. On representation filed by the applicant stating therein that he was never served with the above mentioned charge memo, whereupon a fresh enquiry was ordered, in which the applicant participated and the enquiry was concluded. After conclusion of the enquiry, the Inquiry Officer submitted enquiry report on 23.03.2004 holding that the charges were not fully proved. The said enquiry report has been annexed as Annexure A/3. It is further stated that the Disciplinary Authority disagreed with the findings of Inquiry Officer and informed the applicant through letter dated 23.09.2004, whereupon the applicant submitted his representation on 15.10.2004 and explained the matter but the Disciplinary Authority passed an order imposing the penalty of withholding of 10% of monthly pension otherwise admissible to applicant for a period of two years vide order dated 15.05.2006, annexed with Annexure A/2. It is stated that the applicant was not supplied necessary documents in order to meet the point raised in the advice of U.P.S.C. and since there is no finding of the Disciplinary Authority that the applicant had committed any misconduct or misbehaviour and remained willfully absent from his duty, as such the impugned order of the Disciplinary Authority is bad in law and must be set aside.

Yours

3. On filing of the Original Application, notices were issued to the respondents, and in compliance of the notices, respondent

no. 2 appeared through his lawyer and filed reply to the Original Application. As per reply of the respondents, it is stated that the applicant remained absent from official duty for more than 15 years without any sufficient reasons, which amounts to grave misconduct and so the applicant was served with charge-sheet dated 23.02.1996 (Annex. A/1) along with articles of charge as well as relevant documents. Thereafter, the applicant was given opportunity to participate in the enquiry and put his defence. Firstly, the applicant did not participate and ex-parte enquiry was conducted but then de-novo enquiry was ordered in which the applicant participated and the Inquiry Officer, after conducting the enquiry, submitted his enquiry report. It is further submitted that the Disciplinary Authority, who is competent to agree or disagree with the enquiry report, showed his disagreement with the enquiry report, and accordingly, after issuing notice to the applicant and with consultation of UPSC, passed the impugned order dated 15.05.2006 annexed with the communication dated 25th May, 2006 (Annexure A/2), whereby the Disciplinary Authority has been pleased to impose penalty of withholding 10% of monthly pension otherwise admissible to Shri S.M. Khandelwal, JTO, for two years. It is stated that this order of the Disciplinary Authority is as per rule and cannot be interfered with.

4. Shri J.K. Mishra, advocate, appeared on behalf of the applicant, whereas Shri Vijay Bishnoi, advocate, appeared on behalf of respondent no. 2, and argued the case.

5. As per the arguments of both the sides, the admitted case of the parties is that the applicant had been absent from his service since 30.09.1983 and in this way he remained absent for a period of about 13 years. It is also admitted case that the applicant was served with charge-sheet dated 23.02.1996 alleging therein that he, while functioning as JTO under transfer orders, from TDE Pali to TDE Banswara, with posting station at Sagwara Telephone Exchange and having been relieved by TDE Pali on 30.03.1983, submitted medical certificates of illness upto 30.09.1983 and then has not joined his duties at the posting station as yet, and that he has been remaining absent from duties since 30.09.1983 without any proper intimation up till now, and thereby absconding himself, thus, he has violated Rule 3 (1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964. It is also not in dispute that firstly the enquiry was conducted ex-parte but later on a de-novo enquiry was held in which the applicant participated. It is also not in dispute that the Inquiry Officer after conducting the enquiry submitted his report on 23.03.2004 (Annexure A/3), whereby the Inquiry Officer held that the charges framed against Shri S.M. Khandelwal, JTO, Bagidora, now retired, are not fully proved as Shri S.M. Khandelwal remained absent from duty with proper intimation upto 30.09.1983, and thereafter without intimation under compelling and beyond control circumstances upto 09.08.1998 and on medical ground upto 10.02.1999 thereby not absconding, and so Shri S.M. Khandelwal has not violated the Rule 3 (1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964. It is also not in dispute that the Disciplinary Authority did not agree with the finding of the

Inquiry Officer and gave notice to the applicant about this disagreement and thereafter sought opinion of UPSC and after obtaining opinion of UPSC passed the order of punishment.

6. We have perused the grounds on which the findings of the Inquiry Officer are based, which shows that the Inquiry Officer has put his seal upon superstition belief of providing treatment by *Sadhus, Ojhas, Tantra Mantra*, etc. as one of the modes of treatment of disease. But this action of enquiry officer is against the spirit of Constitution and such mode of treatment has not been recognized under any law. It appears that the UPSC while advising the Disciplinary Authority has noted down that the claim of being treated by Sadhus and Tantriks cannot be recognized under the law. We are of the view that this opinion of the UPSC and subsequent decision of the Disciplinary Authority is in accordance with the law. We are further of the view that there was absolutely no legal evidence before the Inquiry Officer to condone such a long and continuous period of absence of about 13 years and even thereafter and therefore the Disciplinary Authority was justified in disagreeing with the report of Inquiry Officer which was definitely perverse and showing undue favour to the applicant "reason is best known to the Inquiry Officer". In the circumstances of the case, we find and hold that the Disciplinary Authority has rightly disagreed with the report of the Inquiry Officer and passed the order of penalty of withholding 10% of monthly pension otherwise admissible to Shri S.M. Khandelwal, for two years. We note it down that it is a very very

meager and insufficient punishment in view of the long unauthorized absence of the applicant.

7. In the result, we find no merit in this Original Application, and so the same is hereby dismissed with no order as to costs. However, it is observed that in the ACR of Shri G.R. Harsenia, the then CAO, BSNL, Alwar, who was appointed as Inquiry Officer in this case, and who has submitted his enquiry report on 23.03.2004 (Annex. A/3), it is to be incorporated that the said officer had submitted a perverse enquiry report and had given sanctity to the modes of treatment by Sadhus, Ojhas, Tantra Mantra, etc. to explain the long absence of the applicant, which mode of treatment is not recognized by law.

8. The Deputy Registrar of this Bench of the Tribunal is directed to send a certified copy of this order, directly, to the respondent no. 1 i.e. the Union of India through the Secretary to the Government of India, Ministry of Communications, Department of Telecom, Sanchar Bhawan, New Delhi, for recording the above observation in the ACR of the above named officer.


(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER