

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No OA 976 of 1997

Date of Order: 1.12.2004

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member  
Hon'ble Mr. M.K. Misra, Administrative Member

RUPAI HANSDA

VS.

UNION OF INDIA (G.S.I.)

For the applicant : Mr. S. Mustafi

For the respondents : Ms. U. Sanyal

O R D E R (ORAL)

Mr. Mukesh Kumar Gupta, JM:

The applicant, a member of ST community, in this application challenges the validity of charge sheet dated 9.11.95; enquiry report dated 12.8.96; order of removal from service dated 27.2.97 and appellate authority's order dated 6.8.97 with all consequential benefits. The facts to be noticed are that the applicant who was absconding since 17.10.94 was proceeded with charge memorandum under Rule 14 of CCS (CCA) Rules 1965 dated 9.11.95 alleging that the applicant remained absent from duty in unauthorised manner since 17.10.94 without prior permission of the competent authority. After holding an oral enquiry, the enquiry officer submitted his findings dated 12/8/96 and based on the same, a penalty of removal was imposed vide order dated 27.2.97. On an appeal filed, the said penalty was modified and reduced to compulsory retirement with effect from 27.2.97.

2. In the present application, the aforesaid proceedings have been challenged on the ground that the applicant had been suffering from various diseases and was unfit to resume duty; no proper enquiry was held by the enquiry officer and in fact he was denied the

Q

reasonable opportunity of being heard; there had been violation of Rule 14 (11) and 14 (19) of CCS (CCA) Rule 1965; that the penalty reduced from removal to compulsory retirement by the appellate authority was harsh and disproportionate. For this purpose, reliance was placed on 2003 (8) SCC 9 in Dev Singh Vs. Punjab Tourism Development and another. It was contended that the punishment imposed in the present case is shockingly disproportionate and this Tribunal would like to direct the concerned authorities to reconsider the penalty imposed upon the applicant.

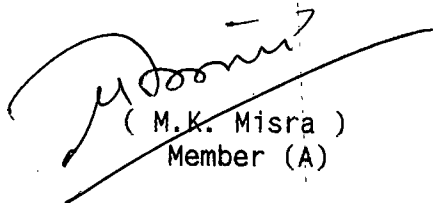
The respondents on the other hand contested the applicant's claim and stated that the applicant remained absent unauthorisedly since 17.10.94 and despite various notices issued to him, he did not either join the office or submitted any written application explaining the reasons for such unauthorised absence. The allegations of violation of Rule 14 (11) as well as 14 (19) were denied. It was contended that the illness could not be a reason for prolonged unauthorised absence. Even if the applicant was ill, he could have sent the leave application supported by medical certificate. On examination of applicant's appeal, the appellate authority, Director General, Geological Survey of India took a lenient view and reduced the penalty of removal to compulsory retirement so that the applicant is eligible for retirement benefits.

3. We heard learned counsel for the parties and perused the pleadings carefully. On bestowing our careful consideration to the entire facts as noted hereinabove we do not find any justification for the applicant's continuous unauthorised absence. The reliance placed on the Dev Singh judgement (supra) is misplaced in as much as the allegations proved against the applicant are serious enough to invite




major punishment. We do not find that the punishment of compulsory retirement as modified by the appellate authority is either disproportionate to the misconduct alleged or shocks our judicial conscience. We are in agreement with the learned counsel for respondents that a lenient view had already been taken by the appellate authority. It is an admitted fact that the applicant even did not participate in the enquiry held, for which various dates of hearing were fixed. We have noticed that some time the applicant had taken the stand in his appeal that he was not well and in other part of the said appeal he stated that there was disruption of Railway Traffic etc. We do not find any justification to accept such reasons offered. We are satisfied that the principles of natural justice were observed and the applicant was afforded reasonable opportunity of being heard, which he did not avail.

4. In view of the findings recorded hereinabove, the present application lacks merit and accordingly the same is dismissed. No costs.



( M.K. Misra )  
Member (A)



(Mukesh Kumar Gupta)  
Member (J)

tcv