

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.433/2001.

DATE OF DECISION : 22.10.2003

Shri B.U.Kedare

... Applicant.

Shri S.P.Kulkarni

... Advocate for
applicant.

Vs.

Union of India & Ors.

...Respondents.

Smt. H.P.Shah

...Advocate for
Respondents.

Coram: Hon'ble Shri S.Biswas, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

1. To be referred to the reporter or not?

2. Whether it needs to be circulated to other Benches
of the Tribunal?

✓ 3. Library?


(S.BISWAS)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.433/2001.

, this the 22nd day of Oct 2003.

Hon'ble Shri S.Biswas, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

Balkrishna Uttam Kedare,
Motha Rajwada Dani Chowk,
Wadala Naka H.No.3024,
AT P.O. Nashik - 422 006.
(By Advocate Shri S.P.Kulkarni)

...Applicant.

v.

1. Union of India through
Superintendent,
Postal Stores Depot,
Nashik Road,
At P.O. Nashik - 422 006.
2. Director of Postal Services,
Office of the Postmaster General,
Aurangabad Region,
At P.O.Aurangabad - 431 002.
(By Advocate Smt. H.P.Shah).

...Respondents.

: ORDER :

{S.Biswas, Member (A)}

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant has impugned the communication dt. 05.06.2000 (Annexure - D) issued by Respondent No.1. It has been stated that for technical violation like marginal delay etc. the said appeal was held back from consideration and therefore, the rejection of appeal dt. 22.11.2000 on technical grounds of delay again be treated as arbitrary, unreasonable, inasmuch as, earlier appeal dt. 05.06.2000 which was sent directly was not considered on the same ground of delay. The applicant be suitably given relief against this inaction and violation of the CCS (CCA) Rules thereby

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setting aside this order and communications.

2. The applicant has further impugned punishment order dt. 15.03.2000 on the ground that it was issued without giving him proper opportunity to examine the witnesses. Therefore, he seeks quashment of the order of punishment along with the appellate order dt. 9/12.03.2001.

3. The applicant is a compassionate appointee. He had been feeling sick occasionally, but submitted medical certificates of unfitness (barring a few spells of shorter duration) followed by certificate of fitness. He admittedly did not send necessary intimation about his illness before proceeding on all his leaves.

For the technical lapse in seeking leave as per rules, he was issued with a charged memo under Rule 14 of the CCS (CCA) Rules, 1965 on 11.08.1999 for a major penalty (Ex. - 'C') which he could not attend and the case was decided ex-parte. The undisputed fact is that he had produced medical certificate in support of his illness on resumption of duties. However, in respect of the third and fourth spell of leave he had submitted this before expiry of the leave. The authorities did not examine any witnesses and the documents which were taken on record to prove the charge were not testified. On receipt of the enquiry report, the applicant noticed that no concrete evidence except attendance book and Registered A.D. notices which were sent to him during the period June, 1999 to July, 1999 calling upon the applicant to resume duties, no other supporting evidence were deduced in the ex-parte enquiry. No other evidence was furnished to him. The outline of the charge is that on eight different occasions he remained absent and failed to produce medical certificates as

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stipulated under the rules. Subsequently, the applicant was removed vide order dt. 15.03.2000 w.e.f. 15.03.2000.

3. The applicant preferred an appeal addressed to the PMG on 05.06.2000. It was specifically pointed out in the appeal that out of eight spells of absence only the absence beyond 11.08.1999 and from 02.11.1999 till 15.03.2000 were held proved. On scrutiny of the report, however, the period 02.11.1999 to 15.03.2000 finds no mention as stated by the applicant. The absence period from 21.05.1999 to 11.08.1999 was not commented upon adversely by the Enquiry Officer. Since the punishment was shockingly harsh in the circumstances, the appeal was necessary to be to be considered sympathetically because he was awarded the punishment of removal in a case of alleged unauthorised leave which could be modified to compulsory retirement as no moral turpitude is committed by a patient availing unauthorised leave due to illness. The applicant further prayed in his appeal that full 16 years of his service is un-tainted to warrant such a harsh punishment.

4. His second appeal dt. 22.11.2000 was rejected on 09.03.2001 on technical grounds of delay. Though it is contended by the applicant that his earlier appeal dt. 05.06.2000 was held back and not forwarded and it was incumbent on the Appellate Authority to condone the delay rather than withholding it at an intermediary stage through which it is to be routed. In the grounds stated in the appeal these points have been further elaborated which we have gone through.

5. Heard the Counsel for both the parties and we have also gone through the relevant factual points, as well as, legal

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issues involved and raised during the hearing of the case.

6. The applicant has been charged with major penalty memo under Rule 14 of CCS (CCA) Rules, 1965, which culminated in an order of removal dt. 15.03.2000, after holding an ex-parte inquiry, the charged officer did not attend the inquiry due to domestic problem. The applicant's first appeal dt. 05.06.2000 was not at all forwarded to the appellate authority on the ground of 45 days delay and also because it was addressed to PMG, not to the appellate authority i.e. D.P.S., Aurangabad. He promptly on receipt of this letter dt. 19.07.2000 made his appeal dt. 22.11.2000 (receipt date) to D.P.S., which has also been rejected as time-barred.

7. The Learned Counsel for the respondents has filed an elaborate reply to the O.A. stating, inter alia that the charge sheet was necessary to be issued against the applicant under rule 14 of the CCS (CCA) Rules, 1965 and a formal inquiry was instituted. The departmental inquiry held on 24.09.2000 was not attended by the applicant. In the result, the Enquiry Officer submitted an ex-parte report holding the charges as proved. The main contention of the applicant to this is that witness was necessary to be examined, but neither the Enquiry Officer nor the Disciplinary Authority thought that it as a justified demand, the charge of unauthorised absence was held proved on attendance register and despatches made to the applicant requesting him to join.

8. The respondents have also refuted the allegation of not forwarding the appeal dt. 05.06.2000 as there was a clear delay in submission of the appeal by 45 days and the appeal was not

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addressed to D.P.S. and such appeal is therefore not admissible as per Rules. In the situation, the said appeal dt. 05.06.2000 was not considered for being forwarded to the prescribed authority. The respondents have also brought to our notice that the medical certificates covering the illness were not produced as per the Rules. In fact, it is incumbent on the applicant to produce such certificates within 48 hours. The enquiry was held ex-parte as the applicant did not attend the enquiry despite notice.

9. We have considered the submissions of rival parties carefully. On perusal of the Chart at Annexure - I to the O.A., we find that on number of occasions the applicant remained absent in all for 148 days in eight spells of unauthorised absence. Medical certificates were given in a few cases only which were admittedly not as per Rules. Such admission has been made by the applicant himself in the O.A. The only mis-conduct alleged on his part is that he failed to strictly comply with the provisions of C.C.S. (Leave) Rules, but his absence was compelling due to ailment or family problems. He admittedly did not send intimation of illness before the commencement of his leave on medical grounds and did not furnish requisite medical certificate of unfitness within 48 hours as per Rules. The applicant has also admitted that the medical certificates of unfitness were produced showing the date of receipt of the same on resumption of duties i.e. after the expiry of the date of leave period. In our view, we do not consider further rigorous proof is necessary as these absence were partly admitted.

10. We have also considered the submission of the applicant

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in his appeal dt. 05.06.2000 where he wanted that his removal if at all unavoidable should be converted to compulsory retirement, as unauthorised absence cases are not cases of moral turpitude. This was not favourably considered. The applicant has also claimed that in 16 years of service he was never held responsible for any other illegal or immoral activities. We find there is considerable force in this plea that removal for unauthorised absence is a harsh judgment.

11. The respondents however brought to our notice the order dated 28.02.1996 in Civil Appeal No.4450 of 1991 in the case of Union of India & Ors Vs. Ram Phal in which the Hon'ble Supreme Court had held that "Border Security Force Act - Sections 11, 19 and 62 - Border Security Force Rules - Rule-20 Dismissal Absence from Duty. Charge of absence from duty without leave Dismissal from service ordered - Dismissal order was passed not because the misconduct of absence without leave was proved but because of his further continuance in the service was not desirable - Order was passed by way of penalty but by exercise of an independent and separate power confirmed by section 11 - Hence under the circumstances on treating the period of absence as extraordinary leave it cannot be said that no order of dismissal or removal can be passed thereafter. This is definitely a distinguishable case as the applicant's absence had been treated as extraordinary leave and the department had also come to the conclusion that his further continuance in service was not desirable.

12. The appeal in this removal case has been, in our view, rejected on highly technical ground that the first appeal dt. 05.06.2000 was not at all forwarded to the appropriate appellate

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authority viz. the D.P.S. though it was addressed to the P.G.M. The Superintendent of Postal Stores intervening in the transit has dismissed the appeal on the ground of limitation and further it was not addressed to the Director of Postal Service, Aurangabad who is the appropriate appellate authority. In our view, such interruption of a statutory appeal by an officer at an intermediary stage, who himself is not appellate authority is a highly objectional interference in legal process. It is only the appellate authority who could decide whether a legal violation was committed by addressing it to PMG instead of D.P.S. and the delay was necessary to be condoned or not.

13. The Superintendent of Postal Stores could not intervene to decide whether the statutory appeal should be dismissed by him who is not appellate authority himself. Nor he could decide whether the time barred appeal could be condoned and then considered. Hence, the appellant was denied the principles of natural justice, as his appeal whether delayed or otherwise was not placed before the appropriate authority for decision even on timebar issue and inappropriateness of the authority. Both are, in our view, technical dispensation of the appeal which could be condoned or otherwise by the appropriate authority not any one else.

14. The vital question of legal application involved in this case is further extendable by asking why the order of punishment dt. 15.03.2000 was not made explicit by indicating there itself as to what is the appellable period and who was the appellate authority. The disciplinary authority has also omitted to mention these in his order thereby preventing the appellant from availing the statutory appellate remedy.

15. The appellant practically pleaded guilty though, in the

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appeal dt. 05.06.2000 prayed for clemency such as reduction of the punishment to compulsory retirement. The prayer went in default as the appeal was dismissed by an unauthorised authority.


16. This unauthorised act has further compounded the misery of the appellant as his subsequent appeal dt. 22.11.2000 to the D.P.S. who is the appropriate appellate authority was delayed. He found it further delayed and summarily rejected altogether without considering the submissions. For the unauthorised act of intervention by the Superintendent of Postal Store, the appellant has suffered severe prejudice and civil consequences. The appeal in our considered view has been mindlessly thrown away.


17. The Learned Counsel for the applicant has placed before us a catena of judgments to show the tenor that for simple, unauthorised absence from duty does not warrant a harsh punishment like removal, particularly when the absence is not wilful but due to medical reasons. It may be correct that the applicant committed technical lapse in applying for leave in time or cover it up by medical certificate. After all behind every such defaulting person there is an innocent family and children requiring education - who becomes abruptly denied of self-sustaining livelihood by such award of punishment. After all no moral turpitude is alleged in a case of unauthorised absence because of technical lapses. It is definitely not the case of the respondent that the applicant remained absent wilfully or out of any ill will against the respondent or to his duties.

18. In the result, the order of punishment dt. 15.03.2000 along with the appellate order dt. 12.03.2001 are quashed with direction to reinstate the applicant within two weeks with all

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financial benefits. No interest is payable. Liberty is given to the respondent to go for a denovo disciplinary action subject to levy of final penalty only after issuing a detailed and speaking order under Rule 27(2) C of the CCS (CCA) Rules, 1965, if order of removal is to be awarded.


(MUZAFFAR HUSAIN)
MEMBER (J)


(S. BISWAS)
MEMBER (A)

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