

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 837/1998

THIS THE 15TH DAY OF JUNE, 2002

COURT: HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

Shri Anil Laxman Bijlani
IDA (Staff No.40878),
Bandra Telephone Exchange,
Bandra, Mumbai-400 050. Applicant

By Advocate Shri K.R. Yelwe.

Versus

1. Union of India through
Secretary, Ministry of
Communication, New Delhi.
2. The Dy. General manager (CCF),
Maharashtra Telecom Circle,
11 Floor, Telephone House,
Dadar (West) Mumbai-400 028.
3. The Chief General Manager,
Maharashtra Telecom Circle,
8th Floor, Telecom Building-II,
Fort, Mumbai-400 001. Respondents

By Advocate Shri V.S. Masurkar.

ORDER (OKAL)
Hon'ble Shri Shanker Raju. Member (J)

The applicant is aggrieved by the order of the Disciplinary Authority dated 16.02.1997 wherein after holding the departmental proceedings, penalty of reduction to the minimum stage of Rs.950/- in the time scale of Rs.950-1500 for a period of two years with immediate effect without cumulative effect has been imposed upon the applicant and not adversely affecting his pension. The applicant also will not earn the increments of pay during the period of reduction and

that on expiry of period, the reduction will not have the effect of postponing his future increments of pay. The entire period of absence with effect from 26.7.92 shall be treated as break in service and not counted for any purpose whatsoever but the past services will not be forfeited. The appeal of the applicant against the aforesaid order has been rejected vide order dated 03.11.1997. But however modified the order to the extent that the period of absence from duty from 26.7.1992 to 03.7.1995 be treated as 'diss-non' instead of break in service.

2. The applicant, has been proceeded against for remaining absent without intimation, for a major penalty. The charge sheet was served upon the applicant on 27.7.94 which was returned undelivered by the postal authority with the remark "unclaimed". Thereafter, during one of the hearings, the applicant appeared in the inquiry and a statement was made regarding fitness of the applicant and physical and mental status. The statement was recorded and during the inquiry the Inquiry Officer provided to the applicant the Medical Certificate and EL form and the inquiry was adjourned sine die. The Inquiry Officer vide letter dated 05.01.1995 sent to the AGM (A-1) requested to send Welfare Inspector at the residence of the applicant to find out his physical and mental condition. The applicant informed over telephone that he had already

sent leave application along with medical certificate upto 31.01.1995 and agreed to meet the Inquiry Officer in next week. The Inquiry Officer sought clarification from the Disciplinary Authority vide letter dated 08.3.1995, which has been replied to that neither the applicant joined duty on 01.02.1995 nor any medical certificate etc., has been received from him. Thereafter, preliminary hearing was held and notice was sent which has been acknowledged by the applicant on 08.4.1995. However, he remained absent in the preliminary inquiry on 20.4.95, which resulted in ex parte decision by taking permission from the Disciplinary Authority. On completion of the inquiry, the Inquiry Officer held the applicant guilty of charges and submitted his report to the Disciplinary Authority. On receipt of the representation of the applicant against the aforesaid penalty, which has been upheld by the Appellate Authority and Revisional Authority giving rise to the present OA.

3. The applicant had challenged the proceedings on the following legal grounds: (i) that the inquiry has been proceeded ex parte without following the rules and principles of natural justice and therefore, not biding on him; (ii) the allegations levelled against him are vague depriving reasonable opportunity to defend his case; (iii) As he was sick, no prior information has been given as required; (iv) it is contended that the inquiry

Officer has failed to examine the applicant as provided under Rule 14 (18) of the CCS (CCA) Rules. It is stated that the orders passed by the authorities are mechanical without recording any reason. It is also stated that as the applicant has been promoted and thereafter was regularised, the misconduct is condoned and no punishment can be imposed.

4. The respondents in the reply stated that after the inquiry kept on sine die despite promising the inquiry Officer and by acknowledging the notice ^{he} had neither sent any information regarding his illness nor sent any application to the competent authority along with medical certificate. It is also stated that the applicant has failed to attend the inquiry which has inordinately delayed and ex parte decision was taken in accordance with CCS (CCA) Rules. It is stated that leave cannot be claimed as a matter of right and as the applicant failed to inform the authorities as well as failed to submit medical record, the proceedings cannot be said to have been vitiated. It is further stated that the inquiry has been proceeded in accordance with the rules and the order passed by the authorities are speaking dealing with the contentions of the applicant. It is lastly stated that the misconduct has been proved and rather a lenient view has been taken by the Disciplinary Authority.

5. We have heard the parties and perused the record. Learned counsel has failed to furnish any proof of having submitted his medical record to the competent authority or any other proof to show that after inquiry proceeding had been adjourned sine die on 26.10.1994 and before 04.7.1995 when he resumed duty he had informed the authority having sent the medical record. The Inquiry Officer was informed by the applicant regarding submission of medical certificate to the competent authority. On verification from the Disciplinary Authority, it was found that no such application for leave was received by the Disciplinary Authority nor any medical record existed. Moreover a reasonable opportunity had been afforded to the applicant by sending a notice, which was acknowledged by him on 08.4.95. Despite this the applicant had failed to report either to competent authority i.e. Disciplinary Authority or before the Inquiry Officer as the applicant deliberately without any just cause did not participate in the inquiry and avoided the same, which resulted in ex parte proceedings. In our considered view, this is in accordance with the rules.

6. As regards the submission that the applicant was given promotion and thereafter he has been regularised retrospectively amounts to condonation of misconduct and no punishment can be sustained, we find that the officiating promotion had been given in the

cadre of IOA (G) under the OIBP scheme which was due on account of rendering length of service, which cannot be equated to a regular promotion. In this view of the matter, as the promotion was ^{on} account of length of service as per the OIBP scheme, the same will not condone the charge as the applicant was entitled on completion of length of service and this has been accorded to all the similarly placed persons.

7. In so far as the contention that the applicant has not been cross examined by the Inquiry Officer as per Rule 14 (18) of the CCS (CCA) Rules is in view of his own fault and not joining the duty without justifying reason. He himself is responsible for his non-examination by the Inquiry Officer. Had he been available to the Inquiry Officer, certainly the Inquiry Officer would have resorted to the cross examination. As the provision had not been complied with without any fault on the part of the respondents, the same would not vitiate the inquiry.

8. As regards the contention that the applicant was ill, it was mandated upon him to inform the authority and to seek permission. In so far as allowing him to join duty on 04.7.95 without any medical certificate, the contention that the respondents are estopped from proceeding him in a departmental proceedings is concerned, the same will not hold water.

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According to CCS (Leave) Rules 1972, leave cannot be claimed as a matter of right. In case of sickness, medical certificate has to be submitted to the competent authority. As the applicant had neither sent any information to the competent authority despite promising the inquiry officer nor submitted the medical record, he cannot escape by taking recourse to the provision of Rule 132 of UGMI. After the inquiry had been adjourned sine die on a specific statement the leave as well as medical form had been handed over to the applicant. But later on he had not sent the requisite information. This casts doubt over the genuineness of medical record of the applicant, which he could not submit till the conclusion of the proceedings. In this view of the matter, the contention of the applicant is rejected.

9. Lastly it is stated that the order passed by the authorities are non-speaking. We have carefully perused the orders passed by the Disciplinary, Appellate and Revisional Authorities. We find that all the orders passed by the respondents are in order and the contention of the applicant is baseless and ^{orders} are in compliance of the CCS (CCA) Rules, 1965, and these orders cannot be faulted.

10. Having regard to the above, as the applicant had miserably failed to establish the case on merit, the OA is accordingly dismissed. No order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER (J.)

Shanta Shastri

(Smt. SHANTA SHASTRY)
MEMBER (A)