

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 16.01.2013

MA No. 365/2011 (TA No. 09/2011) (CWP No. 629/2006)

Mr. Rajendra Soni, counsel for applicant.
Mr. Neeraj Batra, counsel for respondents.

MA No. 365/2011

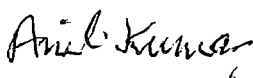
Heard on the Misc. Application for restoration of
Transferred Application No. 09/2011.


Having considered the submissions made on behalf of
the respective parties, and the reasons stated in the
Misc. Application, we are fully satisfied with the reasons
stated and, thus, the Misc. Application for restoration of
the Transferred Application stands allowed. The
Transferred Application is restored to its original number
and status and is taken up for final disposal today itself.

TA No. 09/2011 (CWP No. 629/2006)

Heard learned counsel for the parties.

T.A. is disposed of by a separate order on the separate
sheets for the reasons recorded therein.


(ANIL KUMAR)
MEMBER (A)


(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

TRANSFER APPLICATION No. 09/2011
IN
DB CIVIL WRIT PETITION NO. 629/2006

Jaipur, the 16th day of January, 2013

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

G.P. Meena son of Shri Sampat Ram Meena, aged about 54 years, resident of Outside Delhi Gate, Meenapara, Alwar. Presently posted as D.E. (Phones), Alwar.

... Applicant

(By Advocate : Mr. Rajendra Soni)

Versus

1. Union of India through Secretary, Ministry of Communications, Department of Telecommunication, Sanchar Bhawan, New Delhi.
2. Member (Services), Telecom Commission, Govt. of India, Ministry of Communications, Department of Telecommunications, Sanchar Bhawan, New Delhi.
3. Chief General Manager, Telecommunications, Rajasthan Circle, Jaipur.
4. Assistant Director General (VM-IV), Department of Telecommunications, Ministry of Communications, Government of India, West Block-I, Wing-II, Ground Floor, R.K. Puram, New Delhi.
5. Bharat Sanchar Nigam Limited through its Chief General Manager Telecom, Rajasthan Circle, Jaipur.
6. Central Administrative Tribunal, Jaipur Bench, Jaipur through its Registrar, Central Administrative Tribunal, Sahakar Marg, Near Jyoti Nagar, Jaipur.

... Respondents

(By Advocate : Mr. Neeraj Batra)

ORDER (ORAL)

The applicant had filed an OA No. 70/2001 before the Central Administrative Tribunal, Jaipur Bench, Jaipur against the punishment order dated 08.06.1997 punishing him for reduction of pay by 5 stages for a period of three years and against the order dated 17.10.2000 passed by the Union of India by which

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the appeal filed by the applicant was dismissed. This OA was dismissed by the Central Administrative Tribunal, Jaipur Bench for want of jurisdiction vide their order dated 24.02.2005.

2. Subsequently, the applicant filed a Writ Petition before the Hon'ble High Court of Rajasthan (Jaipur Bench) by way of DB Civil Writ Petition No. 629/2006. The Hon'ble High Court vide its order dated 17.07.2011 transferred this Writ Petition to this Tribunal and it was registered as TA No. 09/2011.

3. The brief facts, as stated by the learned counsel for the applicant, are that the applicant was issued charge memo dated 14.10.1995 for remaining unauthorized absence from his duties for the periods as mentioned below:-

- (i) 396 days - 05.11.1992 to 05.12.1993
- (ii) 3 days - 15.12.1993 to 17.12.1993
- (iii) 5 days - 27.12.1993 to 31.12.1993
- (iv) 8 days - 13.01.1994 to 20.01.1994
- (v) 54 days - 26.01.1994 to 21.03.1994

The applicant denied the charges. However, the Disciplinary Authority passed the punishment order dated 08.06.1997 thereby imposing the penalty of reducing the pay of the applicant by 5 stages from 2750/- to Rs.2375/- in the time scale of pay of Rs.2000-3500/- for a period of three years. It was further directed that the applicant will not earn increment of pay during the period of such reduction and on expiry of this period, the reduction will have the effect of postponing his future increments of pay. Learned counsel for the applicant argued that this penalty order is totally arbitrary and discriminatory and, therefore, the same deserves to be quashed and set aside.

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4. That the respondents have not afforded reasonable opportunity to follow the principles of natural justice as the additional documents required for defense have not been provided by the Presenting Officer to be produced and more so no assistance was provided for inspecting of the aforesaid documents which were relied upon by the applicant.

5. The Disciplinary Authority has not considered at all in his findings the material available on record. The applicant had challenged the administrative action of the respondents of transferring him from Alwar to Sikar in which stay was granted by the Civil Court against the transfer order and subsequently not allowed the applicant to work upon the post when he joined on 01.02.1993. The respondents have counted the period of stay from the Civil Court and also the period from 01.02.1993 when the applicant was not allowed to join his duty as absent without leave which is totally against the fact and evidence on record. The absence of the applicant from duty was not deliberate or intentional or unauthorized but due to mis-interpretation of the stay order. The order of penalty has been passed having malice against the applicant as he had challenged their administrative action in the court.

6. He further argued that the respondents have not at all considered the material aspect that their own order of transferring the applicant to Himachal Pradesh from Sikar was withdrawn by them suo-motto as the same was not justified. The

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applicant was not allowed to work on his post from 01.02.1993 anywhere till he joined back at Sikar in December, 1993. Therefore, he argued that the absent cannot be said to be unjustified.

7. The Disciplinary Authority has not at considered that the punishment of withholding of 5 grade increments is totally disproportionate and do not commensurate in the facts and circumstances of the present case.

8. He also argued that the Inquiry Officer and the respondents have not at all followed the rules and the principles laid down in Rule 14 of the CCS (CCA) Rules, 1965 as neither the applicant has been given to defend either orally or in writing before the closing of the case and, therefore, the impugned order dated 08.06.1997 be quashed and set aside (Annexure A/2).

9. Learned counsel for the applicant submitted that Appellate Authority has also not gone into the facts & circumstances of the present case and decided the appeal without going into the points raised by the applicant in his appeal. Therefore, the Appellate Authority's order dated 17.10.2000 (Annexure A/1) should also be quashed and set aside and the OA be allowed.

10. On the contrary, learned counsel for the respondents submitted that the charge memo was issued to the applicant

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under Rule 14 of the CCS (CCA) Rules 1965 vide office Memo No. CCA/7-128/GB dated 14.10.1995 for the following charges:-

"Shri G.P. Meena while working as Dy. TDE, Sikar during the period from 05.11.1992 to 21.03.1994 remained unauthorized absent from his duties for the periods as mentioned below:-

- (i) 396 days - 05.11.1992 to 05.12.1993
- (ii) 3 days - 15.12.1993 to 17.12.1993
- (iii) 5 days - 27.12.1993 to 31.12.1993
- (iv) 8 days - 13.01.1994 to 20.01.1994
- (v) 54 days - 26.01.1994 to 21.03.1994

Thus Shri G.P. Meena by his above act failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant thereby infringing Rule 3 1(ii) & (iii) of CCS (CCA) Rules 1965 and also contravened Rule 162 of P&T Manual Volume III.

11. Learned counsel for the respondents submitted on denial of the charges by the applicant, an oral inquiry was ordered to be held. The Inquiry Officer concluded in his findings that the charge is partly proved. A copy of the Inquiry Officer's report was given to the applicant for making representation against the inquiry Officer's findings. The applicant's representation was considered by the Disciplinary Authority and after taking into consideration the findings of the Inquiry officer and the submissions made by the applicant in his representation dated 15.04.1997 and perusing the records of the case and on an objective assessment of the facts and circumstances of the case, the competent authority ordered for imposition of penalty vide order dated 08.06.1997. The applicant has been given every reasonable opportunity to defend himself. The disciplinary proceedings and inquiry proceedings which are of quasi judicial nature have been held as per the prescribed procedure. The

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applicant had not made any complaint at any stage about the proper procedure not being followed. The penalty imposed is commensurate with the gravity of the charge. It has been confirmed by the Appellate Authority, in consultation with the UPSC. The Appellate Authority has considered the points raised by the applicant in his appeal. Thus the OA has no merit and it should be dismissed with costs.

12. Heard the rival submissions of the parties and perused the documents on record. From the perusal of the record, it is clear that the charge memo was issued to the applicant on 14.10.1995 for remaining unauthorized absence from his duty for the various periods mentioned in the charge-memo. The applicant denied the charges and, therefore, an oral inquiry was ordered to be held. The Inquiry officer in his report had partly proved the charges. He came to the conclusion that the applicant was absent part duty for 296 days. A copy of the Inquiry report was given to the applicant for making representation against the Inquiry officer's report. The applicant's representation was considered by the Disciplinary Authority and after taking into consideration the findings of the Inquiry Officer, the representation of the applicant and after perusing the record of the case, the competent authority ordered for imposition of penalty vide order dated 08.06.1997 (Annexure A/2). Thereafter the applicant filed an appeal and the Appellate Authority that is President of India in this case in consultation with the UPSC examined the appeal and after careful consideration of the appeal and other relevant material on record rejected the

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appeal, filed by the applicant vide order dated 17.10.2000 (Annexure A/1). We do not find any procedural lapses either in the conduct of the inquiry or in the passing of the penalty order dated 08.06.1997 (Annexure A/2) and the Appellate order dated 17.10.2000 (Annexure A/1).

13. However, looking to the facts & circumstances of the case, looking into the fact that the Inquiry Officer has only partly proved the charge and also the fact that the applicant remained absent from duty due to mis-interpretation of the stay order granted by the Civil Court and the transfer orders issued by the respondents from time to time, we are of the opinion that the penalty imposed on the applicant is shockingly disproportionate to the gravity of the charges and mis-conduct on the part of the applicant. Therefore, we are of the view that ends of justice would be met if the penalty imposed by the disciplinary authority and confirmed by the Appellate Authority of reducing the pay of the applicant by 5 stages from 2750/- to Rs.2375/- in the time scale of pay of Rs.2000-3500/- for a period of three years is modified to that of Censure. Accordingly, we modify the punishment imposed upon the applicant to the extent that the applicant be imposed the penalty of Censure.

14. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)