

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 4.4.02

OA No.237/1998

Sua Lal Yadav s/o Shri Bijay Ram Yadav r/o Gram Pachar
Tehsil Jaipur, District Jaipur, Ex-Lineman, Telephone,
S.D.O.T., Kota.

..Applicant

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Telecommunications, New Delhi.
2. Chief General Manager, Telecommunications, Rajasthan Circle, Jaipur
3. Sub Divisional Officer, Telegraphs, Kota Jn., Kota.
4. Telecom District Engineer, Kota District, Kota.

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr. Bhanwar Bagri, counsel for respondents

CORAM:

Hon'ble Mr. H.O.Gupta, Member (Administrative)

Hon'ble Mr. J.K.Kaushik, Member (Judicial)

ORDER

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the order dated 16.5.1991 (Ann.A1) whereby he has been removed from service w.e.f. 16.5.1991. He is also aggrieved by the orders dated 28.1.1993 and 2.7.1997 (Ann.A2 and A3) whereby his appeal and revision petition were dismissed.



2. The case of the the applicant as made out, in brief, is as follows:-

2.1 He was appointed on the post of Lineman on 23.8.1972 after completion of the training. He became quasi-permanent on completion of three years' service w.e.f. 23.8.1975.

2.2 He proceeded on casual leave for two days on medical grounds w.e.f. 14.8.1975 with permission to leave the headquarters on 13.8.1975. He remained on medical leave due to sickness from 14.8.1975 to 4.7.1982 for which he sent applications under certificate of posting through his brother. On being declared medically fit, he reported to duty on 5.7.1982 with medical certificate, but he was not allowed to join his duty.

2.3 The respondent No.4 vide his order dated 20.5.1976 (Ann.A4) terminated his services w.e.f. 16.8.1975. He submitted a review application before the General Manager Telecommunications, who vide his order dated 29.1.1985 allowed the review and ordered his reinstatement to the post with the direction that the period from 22.10.82 to the date of reinstatement be treated as dies-non without break in service.

2.4 However, for the period between 16.8.75 to 21.10.82, a chargesheet under Rule 14 of the C.C.S. (C.C.A.) Rules was served on him. He was chargesheeted vide order dated 10.4.85 (Ann.A6) on the charge of having remained absent from 16.8.75 to 21.10.82 without information. He replied the above chargesheet stating that he had sent the information from time to time and resumed his duty on 5.7.82 (Ann.A7) with medical certificate and, therefore, he was on leave on medical grounds. Thereafter,

Enquiry Officer was appointed and enquiry was conducted. The Enquiry Officer submitted his report on 27.12.89 (Ann.A8) holding him guilty of absence without intimation w.e.f. 16.8.75 to 4.7.82. It was further held that he was absent from 5.7.82 to 21.10.82 because of his termination of services. He gave his written defence on the Enquiry Report and the Disciplinary Authority vide order dated 16.5.1991 (Ann.A1) removed him from service holding him guilty of prolonged absence from duty from 16.8.75 to 21.10.82 without any intimation. Thereafter, he filed an appeal before the Telecom District Engineer, Kota, which was rejected vide order dated 28.1.1993 (Ann.A2).

2.5 He filed an OA No.375/1993 and vide order dated 23.11.94 (Ann.A10), he was allowed to file a revision petition and accordingly he filed a revision petition (Ann.A11) before the C.G.M.T. which was rejected vide order dated 2.7.1997 (Ann.A3).

3. The main grounds taken by the applicant are as under:-

3.1 The order of termination dated 20.5.76 (Ann.A4) was passed w.e.f. 16.8.1975. Therefore, the absence of the applicant was because of the order of termination. He could not be deemed to be absent from 16.8.75 till 22.10.82 because of the order of termination.

3.2 The chargesheet was ordered to be given under the direction and dictate of the G.M.T., Jaipur vide his order dated 29.1.85. He being the Reviewing Authority, now designated as C.G.M.T., had no jurisdiction to direct the subordinate officers to issue the chargesheet against the applicant. He thereby became the Disciplinary Authority



and, therefore, he could not hear the revision petition or appeal of the applicant.

3.3 The Disciplinary Authority committed a grave illegality, inasmuch as, Shri S.K.Jain, Junior Engineer has stated that he regularly sent the monthly absentee statement to SDOT, Kota, but none of the absentee statements was filed before the Enquiry Officer and, therefore, it cannot be said that he was absent without intimation.

3.4 The previous record of the office was not shown and has not been relied upon in the chargesheet. The chargesheet could not be proved against the applicant without producing the attendance register and absentees' statement as given by the Junior Engineer. The order of the Disciplinary Authority is illegal as he has differed from the report of the Enquiry Officer who did not hold him guilty of absent for the period commencing from 5.7.82 to 21.10.82. No show-cause notice was issued to him before passing the said order whereby the Disciplinary Authority differed from the Enquiry Officer. It was incumbent on the Disciplinary Authority to record his reasons for disagreement on the finding of the Enquiry Officer in accordance with Rule 15(2) of CCS (CCA) Rules, 1965.

3.5 The applicant's services were terminated from 16.8.75 and he was ordered to be reinstated vide G.M.T order dated 29.1.85, as such he could not be deemed to be absent without information for the period of termination of service. In any case, from 20.2.76 i.e. the date of passing the order till 29.1.85 i.e. the date of reinstating the applicant, the order is vague and not a speaking order. The order of the Disciplinary Authority is



in total violation of Rule 14(16), Rule 14 (18) and Rule 15(2) of C.C.S. (C.C.A.) Rules, 1965.

3.6 The order of the Reviewing Authority also does not discuss the allegations and charges against the applicant. The order is not a reasoned order. It does not meet the requirements of Rule 29 (3) of the C.C.S. (C.C.A.) Rules. The appellate order also does not meet the requirements of Rule 27 of CCS (CCA) Rules.

4. The respondents have contested this application. It has been submitted that the applicant remained absent wilfully without permission from 14.8.1975 to 4.7.1982. It is denied that any application was submitted by the applicant for grant of any kind of leave. It is also denied that any leave was sanctioned to him and permission was granted to leave the headquarters. The applicant remained continuously absent from 14.8.75 to 4.7.82. It was only on 5.7.82 that the applicant himself appeared and submitted an application for leave. They have also submitted that the medical certificate for 2514 days was issued by the medical officer who was not authorised to issue medical certificate for such a long period of seven years. The services of the applicant were terminated by the Disciplinary Authority w.e.f. 16.8.1975 under Rule 12(2) of the CCS (CCA) Rules, 1965. It is denied that there has been non-compliance of provisions of Rules 14(15), 14(18), 15(2) and 27 of the CCS (CCA) Rules, 1965. The respondents have also denied various other contentions of the applicant.

5. The applicant has not filed any rejoinder.



6. Heard the learned counsel for the parties and perused the record.

6.1 The services of the applicant were earlier terminated vide order dated 20.5.76 (Ann.A4) w.e.f. 16.8.75. His services were terminated on the ground that he remained unauthorisedly absent from duty from 16.8.1975 onwards under Rule 5 of CCS (TS) Rule, 1949 and Leave Rules, 1933 as also under the provisions of Rule 11/(IX) (VIII)(b) of CCS (CCA) Rules, 1965. The Revising/Reviewing Authority, based on the petition filed by the applicant on 22.11.1982 under the provisions of Rule 29 of the C.C.S. (C.C.A.) Rules, 1965, vide his order dated 29.1.85, held the termination as void and ordered the applicant to be reinstated without further loss of time. The relevant para 4 and 5 of the said order are as under:-

"4. In exercise of powers delegated and after taking a lenient view, the General Manager Telecom Rajasthan Circle, Jaipur finds that the termination order ibid passed by the SDOT, Kota without giving a months notice to the said Sh. Suwa Lal Yadav was against the spirit of law and has decided that the said termination order be taken as a void and the said Shri Suwa Lal Yadav be re-instated without further loss of time.

5. So far regularisation of the period of the unauthorised from 16.8.75 to 21.10.82, the said Shri Suwa Lal Yadav, after his re-instatement be served with the memo under Rule 14 of CCS (CC&A) Rule, 1965 and case than be decided on merits, by the competent authority at his



level. The period from 22.10.82 till the date of re-instatement as dies-non without break in service."

6.2 The learned counsel for the applicant, during the arguments, submitted that the applicant could not file review petition earlier since he was sick and he had to file a review petition since his appeal was not maintainable after the prescribed time. He further submitted that based on his review petition, the competent authority passed the order holding the termination order by the S.D.O.(T.), Kota as void. The main contention of the learned counsel for the applicant is that since the order of termination was passed on 20.5.76, the applicant, notwithstanding the fact that he was sick, could not be permitted to join the duty after the termination order was passed. He also contended that the intention of the order dated 29.1.85 as contained in its para 5 was to regularise the period of unauthorised absence from 16.8.75 to 21.10.82, although the order also states that the chargesheet under rule 14 of C.C.S. (C.C.A.) Rules be issued to the applicant after his reinstatement. The case was required to be decided on merits. It was nowhere mentioned in the order of 29.1.85 that the applicant was unauthorisedly absent from duty. It only stated that the period from 20.10.82 till the date of reinstatement should be treated as dies-non. He also submitted that the impugned order dated 20.5.76 (Ann.A4) terminating the services is ab-initio void since the services of the applicant could not be terminated from back date and that such an order could not be issued without giving opportunity to the applicant. He also raised other grounds as contained in the OA. The learned counsel concluded by

submitting that in the circumstances the impugned orders do not sustain and prayed for quashing the said orders as also for exonerating the applicant of the charges.

6.3 We are inclined to agree with the contention of the learned counsel for the applicant that having terminated his services vide order dated 20.5.76, the applicant was prevented to join the services. It is immaterial whether the applicant was medically sick or otherwise. We find from the chargesheet dated 10.4.85 (Ann.A6) that the applicant was chargesheeted for being absent from duty from 16.8.75 to 21.10.82. On perusal of the order of the Reviewing Authority, it appears to us that the intention of the Reviewing authority was to proceed against the applicant under Rule 14 of the C.C.S. (C.C.A.) Rules for remaining absent from 16.8.75 to 19.5.76 and to regularise the period from 20.5.76 till 21.10.82. Based on facts and circumstances of the case, we hold that the action of the respondents to proceed against the applicant under Rule 14 of C.C.S. (C.C.A.) Rules for being unauthorisedly absent from 16.8.75 to 21.10.82 is illegal. Accordingly, the chargesheet, the orders of the Disciplinary Authority, the Appellate Authority and the Revising Authority cannot sustain. In the circumstances, we do not think it necessary to comment on merit on each and every other grounds taken by the applicant.

7. In view of above discussions, the chargesheet dated 10.4.85 (Ann.A6), the orders of the Disciplinary, Appellate and Revising Authority are quashed. The applicant shall be reinstated in service with immediate

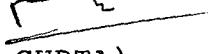


effect. The period of absence shall be decided in accordance with the provisions of rules and all consequential benefits as per rules shall be made available to the applicant within 4 months from today. In case the applicant has attained the age of superannuation, there being no mention about the date of birth of the applicant on record, implying that he cannot be reinstated in service, in that event, the applicant shall also be entitled for retirement benefits as per rules, which will also be made available to him within 4 months from today.

8. No order as to costs.


(J.K. KAUSHIK)

Member (Judicial)


(H.O. GUPTA)

Member (Administrative)