

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR
JAIPUR BENCH : JAIPUR

O.A. No. 28/2001.
T.A. No.

198

DATE OF DECISION _____

Hazari Lal Dangi Petitioner

C. B. Sharma Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Arun Chaturvedi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr. A. K. Bhandari, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(A. K. BHANDARI)
MEMBER (A)

(G. L. GUPTA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 21-10-03

O.A. No. 28/2001

Hazari Lal Dangi S/o Shri Shiv Narain, aged about 41 years, resident of Village and Post Gardan Kheri Post Dola via Sunel District Jhalawar Ex. Post man Bhawani Mandi Post Office (Removed from service).

... Applicant.

v e r s u s

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur 302007.
3. Senior Superintendent of Post Offices Kota Postal Division Kota.
4. Sub-Post Master Bawani Mani Post Office District Kota.

... Respondents.

Mr. C. B. Sharma counsel for the applicant.
Mr. Arun Chaturvedi counsel for the respondents.


CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. G. L. Gupta)

The order dated 07.07.1997 imposing the penalty of removal and order dated 21.09.1999 rejecting the petition of the applicant by the higher authority are under challenge in the instant OA.

2. The applicant was appointed as Post Master in the year 1982. Vide order dated 20.03.1996, he was served with a charge sheet for remaining absent from duty



unauthorisedly from 05.08.1995 to 16.12.1995 and 02.01.1996 to 28.01.1996. An Enquiry Officer was appointed. The Enquiry Officer, after holding the enquiry held that the applicant remained absent from duty without permission during the period under charge and thus it was a misconduct. He, however, observed that his absence was not wilful. The applicant did not prefer appeal against the order provided under the CCA Rules. Instead, he filed petition under Rule 29 of the CCA Rules on 28.05.1998 which was rejected by the authority vide order dated 21.09.1999.

2.1 The say of the applicant is that respondent No.4 Sub Post Master, Bhawani Mandi Post Office, was not competent to issue charge memo and that the Enquiry Officer did not follow the mandatory provisions of Rule 14 (18) of the CCA Rules and that the punishment awarded is harsh.

2.2 Alongwith the OA the applicant has filed MA for condonation of delay on the ground that he could not approach the Tribunal in time due to illness and financial hardship.

3. In the counter, the respondents case is that the OA has been filed after the expiry of the period of limitation from the original order dated 07.07.1997 and even against the order dated 21.09.1999 and hence is liable to be rejected on this ground alone. It is further stated that the enquiry was conducted in accordance with the rules. It is pointed out that the



applicant was habituated to remain absent and that he had been punished by demotion of two stages in service for remaining absent on 30.01.1995 but just after 8 months he again chose to remain absent. He canvassed that it was not necessary for the department to prove the absence was wilful and mere absence from duty without permission of the competent authority constituted the mis-conduct.

4. In the rejoinder, the applicant says that due to illness he was not in a position to undertake journey from his native place to Jaipur to seek legal remedy.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. The contention of Mr. Sharma was that the disciplinary authority has taken into consideration the past conduct of the applicant and, therefore, the order imposing penalty of removal has vitiated. His further contention was that looking to the nature of misconduct, the punishment is harsh.

7. On the other hand, Mr. Chaturvedi pointing out that the applicant had not even chosen to prefer appeal against the order passed by the Disciplinary authority, contended that this OA should be dismissed being barred by limitation. His further contention was that the misconduct proved against the applicant was not the solitary incident, rather the applicant was in the habit of remaining absent from duty without permission.

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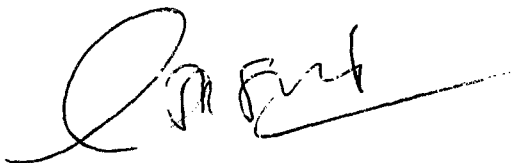
He canvassed that the charge sheet was given by the competent authority

8. We have given the matter our thoughtful consideration.

9. First it has to be seen whether the MA for condonation of delay should be allowed. In the MA it is stated that the delay of 4 months in filing the instant OA was caused due to illness of the applicant and financial hardship. It is seen that the MA is not signed by the applicant, rather it is signed by his advocate. Apart from that, the affidavit filed alongwith the MA is vague. In the affidavit, it is not stated as to what was the period of illness of the applicant. This fact was not even stated in the MA. In the affidavit it is also not stated as to what was the period during which the applicant remained under financial hardship. That fact was also not stated in the MA. The respondents in their reply have opposed the MA stating that no medical certificate has been submitted showing the period of illness or the disease.

9.1 Since the Miscellaneous application and the affidavit are vague, it cannot be found proved that the applicant was unable to file OA within the period of limitation due to illness or financial hardship. The MA, therefore, is liable to be rejected. Consequently, the OA is liable to be dismissed being barred by limitation.

10. Even on merits, the applicant cannot succeed. The applicant, it appears, was satisfied with the order

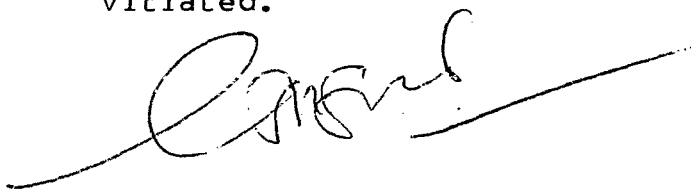
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dated 7.7.1997 passed by the disciplinary authority. He did not choose to avail the remedy of appeal provided in the CCA Rules. After the period for appeal was over he filed petition under Rule 29 of the CCA Rules on 28.05.1998 i.e. about more than 10 months after the order of the disciplinary authority. The competent authority dealing with the petition has recorded cogent reasons for dismissing the petition.

11. It is seen that the applicant was given full opportunity to defend himself. The Enquiry Officer adjourned the case again and again and did not hold ex-parte proceedings. The evidence was recorded in the presence of the applicant. The applicant was allowed to examine defence witnesses also. He was also given opportunity to file written summary which was not done by him.

12. As a matter of fact, there is no dispute on the factual aspect of the charge sheet. It is not denied by the applicant that he remained absent from duty without permission from 05.08.1995 to 16.12.1995 and 02.01.1996 to 23.01.1996. When there was no dispute on this fact and the applicant could not justify his absence without permission, the disciplinary authority rightly held the charge proved.

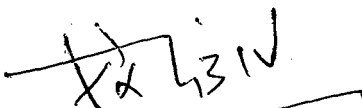
13. The penalty has been imposed by the competent Disciplinary Authority. Even if there was some flaw in the issuance of chargesheet, the enquiry is not vitiated.

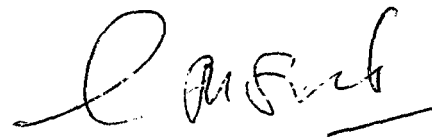
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14. Coming to the question of penalty, it is seen that the applicant remained absent earlier also for which an enquiry was held against him. He was punished with the penalty of demotion of 2 stages in service for a period of one year vide order dated 30.01.1995. Hardly 8 months were over, the applicant again remained absent for more than 4 months. Thereafter he joined for some days and again absented from 02.01.1996 to 28.01.1996. It is evident that the applicant was in the habit of remaining absent. In such circumstances, the penalty of removal cannot be said to be disproportionate to the misconduct proved.

15. One of the contention was that the disciplinary authority has taken into consideration the past conduct of the applicant, It may be stated that it has been done for imposing the penalty. There cannot be any valid objection in considering the past conduct for the purpose of considering the quantum of penalty.

16. Having considered the entire material on record we find no merit in the instant OA and dismiss it. No order as to costs.


(A. K. BHANDARI)
MEMBER (A)


(G. L. GUPTA)
VICE CHAIRMAN