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Date of Decision: 27.10.02

OA 26/2002

S.C.Goyal s/o Shri Harish Chandra Goyal r/o 1 Ga 2, Jawahar Nagar, Jaipur, former Supdt., Customs & Central Excise, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Revenue (ADV Section), New Delhi.
2. Commissioner, Central Excise & Customs, New Central Revenue Building, Statue Circle, Jaipur.
3. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADM.MEMBER

For the Applicant

... Mr.Hemant Gupta

For the Respondents

... Ms.Shalini Sheorn, Adv. brief holder for Mr.Bhanwar Bagri

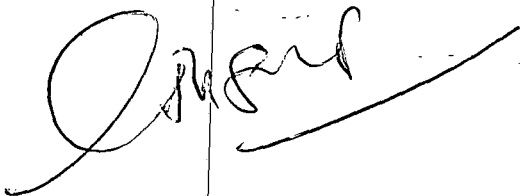
O R D E R

PER MR.JUSTICE G.L.GUPTA

The applicant through this application claims the following reliefs :

- "i) to declare the impugned orders dated 21.6.2001 (Ann.A/1), advise letter dated 2.5.2001 (Ann.A/2) and order dated 22.3.2000 (Ann.A/3) passed by the respondents to be illegal and unconstitutional and the same may kindly be quashed and set aside and direct the respondents to reinstate the applicant back in service with all consequential benefits;
- ii) In the alternative and without prejudice to the aforesaid prayer and rights of the applicant, the respondents may be directed to accept the application submitted by the applicant dated 11.1.2000 (Ann.A/5) seeking voluntary retirement from service with all consequential benefits."

2. It is averred that the applicant joined the Custom & Central Excise Department on 5.4.62 and he has served the department for more than 38 years with full devotion, honesty and sincerity yet on the ground that he remained absent for some period, extreme penalty of dismissal has been imposed upon him. The applicant was posted as Superintendent in the Central Excise Division, Ajmer, in 1994. He was transferred to Custom Range, Gadra Road. The case for the applicant is



that he being chronic patient of slip disc, high blood pressure and acute depression could not join his new place of posting at Gadra Road and applied for leave on medical grounds. His transfer order was not cancelled but he was transferred to Jaipur vide order dated 27.4.94. It is further stated that the applicant had to remain on leave for various periods on account of domestic work and illness.

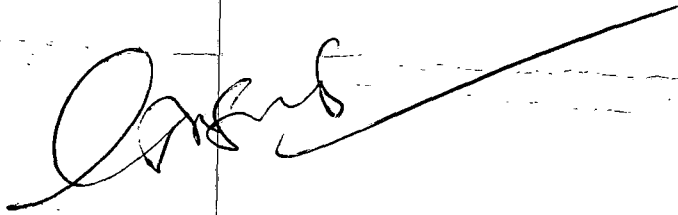
3. The respondents vide memorandum dated 26.2.98 held disciplinary proceedings against the applicant for unauthorised absence. The charge indicated that the applicant did not join his duty at Gadra Road and remained absent for 102 days. The charge further indicated that the applicant joined at Jaipur on 27.7.94 but thereafter he again remained absent for 532 days in various spells. Inquiry was held against the applicant and ultimately the disciplinary authority imposed the penalty of dismissal. Appeal preferred by the applicant to the appellate authority was dismissed vide order dated 21.6.2001 (Ann.A/1).

4. The grievance of the applicant is three folds. First, he had made a request seeking voluntary retirement vide communication dated 18.2.2000 but his request was not accepted. Second, he could not submit his reply to the memorandum due to ill health. Third, the penalty imposed is harsh.

5. In the counter, the respondents' case is that the applicant behaved in irresponsible manner when he remained absent from duty and did not make applications for leave in time even on the advice of the higher officers. It is stated that the applicant did not file reply to the charges and did not participate in the inquiry and hence ex parte proceedings were held. It is prayed that the OA be dismissed.

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

7. The learned counsel for the applicant contended that the applicant was not in fit state of mind and health and, therefore, he could not appear in the disciplinary proceedings. Pointing out that the applicant had unblemished service record for more than 37 years, he submitted that the penalty of dismissal be set aside and the applicant may be punished with any other penalty including the penalty of compulsory retirement. He faintly argued that the respondents were not justified in rejecting the prayer of the applicant seeking voluntary retirement. He cited the cases of Hussaini v. The Hon. The Chief Justice of High Court of Judicature at Allahabad & Ors. - AIR 1985 SC



75, Satyavir Singh & Ors. v. The Union of India & Ors. - 1986 (1) SLR 255, Shri Bhagat Ram v. State of Himachal Pradesh & Ors. - 1983 (1) SLR 626, and Shankar Dass v. Union of India & Anr. - 1985 (2) SLR 109.

8. On the other hand, the learned counsel for the respondents contended that the Tribunal cannot be justified in interfering with the penalty imposed by the disciplinary authority and affirmed by the appellate authority.

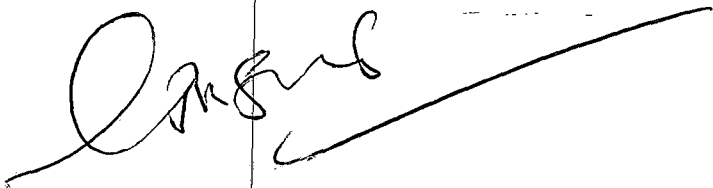
9. We have given the matter our thoughtful consideration. It is evident from the record that the applicant was served with the charge-sheet but he did not file reply. He did not participate in the inquiry despite various notices sent to him. It seems that he avoided the inquiry. The inquiry officer, therefore, had no alternate but to proceed *ex parte* against the applicant. The inquiry officer decided the inquiry on the basis of the material on record. The disciplinary authority agreed with the report of the inquiry officer and imposed the penalty of dismissal. Thereafter, the applicant preferred appeal on 5.5.2000 (Ann.A/7) enclosing various medical certificates and prescriptions issued by the Medical Officers. He was not in a position to show good cause for not filing the reply or participating in the inquiry. The appellate authority, therefore, upheld the order of the disciplinary authority.

10. The learned counsel for the applicant was not in a position to find fault in the procedure adopted by the inquiry officer or in the order passed by the disciplinary authority holding the charge as proved. We are also satisfied that proper inquiry was held and the disciplinary authority was not unfair when it found the charge established.

11. There is also merit in the contention of the learned counsel for the respondents that since the disciplinary proceedings were pending against the applicant, the authorities were perfectly justified in declining the request of the applicant for voluntary retirement in view of the guidelines issued under Rule 48-A of the CCS (Pension) Rules.

12. The only point to be considered now is whether the penalty imposed is harsh in the circumstances of the case.

13. In the grounds stated at para-5 of the OA, it is averred that the applicant had unblemished service record for more than 37 years and it is only because of his mental and physical condition that he absented



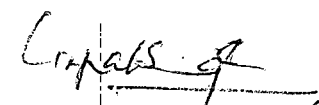
from duty and did not participate in the disciplinary proceedings. This fact has not been controverted by the respondents in the reply that the service record and conduct of the applicant for all the 37 years were satisfactory and there was no adverse material against him. The very fact that the applicant had 37 years unblemished service record goes to show that something extraordinary happened after the applicant was transferred from Ajmer that he did not join duties at Gadra Road and absented himself on various spells at Jaipur.

14. In the case of Hussaini (supra) their Lordships interfered in the order of dismissal and observing that there was some scope for taking a little lenient view in the matter of punishment awarded to the applicant, converted the order of dismissal into one of compulsory retirement. In the case of Bhagat Ram (supra) the punishment of dismissal was converted into withholding of increments.

15. However, it is laid down in the latter rulings that the Tribunal itself cannot be justified in substituting its view in the matter of penalty. See Union of India & Anr. v. G.Ganayutham - AIR 1997 SC 3387, and B.C.Chaturvedi v. Union of India - JT 1995 (8) SC 65.

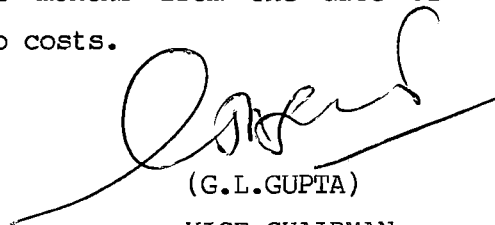
13. It is not the case where the applicant is charged with embezzlement and causing pecuniary loss to the department. It is the case of absence from duties by a person who had put in 37 years service without any complaint. The penalty of dismissal in the circumstances of the case is shockingly disproportionate to the misconduct charged. There was scope of taking a lenient view in the matter. However, it is settled legal position that the Tribunal itself cannot interfere in the matter of penalty imposed and at best it can send back the case to the authorities concerned for reconsidering the penalty to be imposed.

17. Consequently, while upholding the orders of holding the applicant guilty of charge, the penalty of dismissal is set aside. The matter is remitted to the respondents for reconsideration and to pass appropriate order of penalty within a period of four months from the date of communication of this order. No order as to costs.



(GOPAL SINGH)

MEMBER (A)



(G.L.GUPTA)

VICE CHAIRMAN