

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH**

CIRCUIT SITTING AT BILASPUR

OA No. 898/05

Bilaspur, this the 4th day of July 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

Arvind Kumar Jha
S/o Shri Amarnath Jha
R/o Village Sakarra
Dist. Bilaspur (CG)

Applicant

(By advocate Mr. Awadh Tripathi)

Versus

1. Union of India through
Director General
Post & Telegraph Department
New Delhi.
2. Director of Postal Services
Raipur Region
Raipur.
3. Superintendent of Post Offices
Bilaspur Division
Bilaspur.
4. Enquiry Officer
Assistant Superintendent of Post
Offices, Bilaspur Division
Bilaspur (CG). Respondents

(By advocate Mr.S.P.Singh)

O R D E R

By A.K.Gaur, Judicial Member

By means of filing this OA, the applicant seeks to
quash the order dated 4.8.05 (A-6) and the order dated
19.7.94 (A-4) dismissing him from service.

2. The contention of the applicant is that he was working as SPM and posted at Haldi Bazar under the respondents. On 18.2.92 the applicant fell sick and left the office at about 12 noon ⁱⁿ. On the same day, the S.D.I (P) of Jamnipali visited the Haldi Bazar Post

Office in connection with a suspected fraud case, and not seeing the applicant in the post office, the S.D.I(P) reported the matter to the higher authorities ^{suspecting h} ~~has h~~ that the applicant ^{has h} absconded from the office. Subsequently, a charge sheet was issued to the applicant on 25.11.92 (Annexure A-1). The sole charge levelled against the applicant was that on 18.2.92 when the S.D.I(P) Jamnipali visited the Haldi Bazar Post Office at about 12.30 ^h.m. the applicant stepped away from the office without prior knowledge and permission and since then he was absconding. The applicant submitted his reply to the charge sheet, denying the allegation levelled against him. According to the applicant, he fell sick and, therefore, could not attend the office during the period. Medical certificate regarding the sickness of the applicant was filed during the enquiry, but the enquiry officer, without considering the reply as well as the medical certificate, submitted his enquiry report dated 1.5.94 (A-2). After receiving the enquiry report, the applicant submitted a representation to the Superintendent of Post Offices (A-3). After considering the enquiry report, respondent No.3 (Superintendent of Post Offices, Bilaspur) passed an order dated 19.7.94 holding the applicant guilty of the charges levelled against him ^{for} ~~and imposed the penalty of dismissal from~~ (A-4). Against ~~service~~ this order, the applicant preferred an appeal before respondent No.4 and vide order dated 18.4.95, the appeal of the applicant was dismissed. Subsequently, the order dated 18.4.95 was challenged before this

Tribunal and this Tribunal set aside the order 18.4.95 and remitted the matter to the appellate authority to consider the proportionality of the punishment in view of the fact that a criminal case No.195/97 had been decided on 30.12.2003 by the competent criminal court and the applicant was exonerated from all the charges and particularly ⁱⁿ because of the ⁱⁿ fact that in the light of the date of birth of the applicant, he was still having 15 years of service to serve under the respondents. Respondent No.2 again vide order dated 4.8.05 modified the punishment of dismissal from service to compulsory retirement (A-6). The applicant is aggrieved by the operative portion of the order passed by the Director of Postal Services, Chhattisgarh Circle, Raipur dated 4.8.05 (A-6), which reads as follows:

"Considering the gravity of the offence, I, therefore, modify the punishment of "dismissal from service" to "compulsory retirement from service" with immediate effect. I further decide that the period of absence from duty since his absconding till this order of compulsory retirement will be treated as "non duty" for all purposes including pensionary benefits."

3. The applicant has ^{merely} challenged the validity ⁱⁿ of this portion of the order dated 4.8.05, ^{on the ground that it is 'harsh'} It is submitted that since the applicant has put in a very few years of service, he may not be in a position to get the pensionary benefits. However, no such pleading specifically has been raised by the applicant either in the OA or in the rejoinder. It is merely an apprehension of the applicant. On the other hand, in the counter reply filed on behalf of the respondents, in para 22, it is clearly stated that "it is denied

that the applicant is not entitled for pensionary benefit. It is submitted that he will get the pensionary benefits as per rules."

4. The allegation of the applicant is that the modified punishment is not less than that of termination and is against the dictum of the decision rendered by the Tribunal in OA No. 280/96.

5. We have carefully gone through the pleadings and heard the arguments of the respective counsel.

6. In view of the observations made by the appellate authority and the grounds taken by the applicant in the OA, we do not find any merit in the submissions advanced by the learned counsel for the applicant. The respondents have clearly submitted in their reply that the applicant will get the pensionary benefits as per rules. On the contrary, the applicant has not raised any specific plea that he has put in only 9 $\frac{1}{2}$ years of service and he will not get any pensionary benefits. The case is to be decided on the basis of the pleadings of the parties. ^Q Since no such specific pleading has been raised by the applicant in his OA, that the order modifying the punishment of dismissal from service to compulsory retirement will not provide him the pensionary benefit and since he has not put in the qualifying years of service, he would not be entitled for pensionary benefits. It is further argued that the order dated 4.8.05 has been issued to maintain the same punishment by the appellate authority, without entering into the question of proportionality, as desired by the Tribunal. This argument is not valid in as much as the penalty of compulsory retirement does not carry the disabilities that follow dismissal from service.

7. Having considered the respective pleadings of the parties, we are of the considered view that no case for our interference is called for in the impugned order. The OA is accordingly dismissed, parties to bear their costs.

A.K.Gaur
(A.K.Gaur)
Judicial Member

Gaurat
(Dr.G.C.Srivastava)
Vice Chairman

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प्रलंबन से ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अवृद्धितः—

(1) सचिव, उच्च व्यायालय बांद एसोसिएशन, जबलपुर
(2) गोदाराज श्री/महिला/यु.....के काउंसल
(3) प्रस्तावी श्री/श्रीमती/यु.....के काउंसल
(4) ग्रामपाल, ले.ए.पा., जबलपुर ज्यायपील
सूचना एवं आवश्यक कार्यकारी देखना

Dwarka Tripathi
Dr. Bileshi
S.P. Singh
Dr. JBR

उप रजिस्ट्रार

Agreed
5.7.06