

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH.CIRCUIT COURT SITTING AT BILASPUROriginal Application No 280 of 1996*Indore*, this the 27th day of April, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
 Hon'ble Mr. Madan Mohan, Judicial Member

Arvind Kumar Jha, son of
 Shri Amarnath Jha, aged about 35 years,
 R/o Village Sakarra, District-
 Bilaspur(M.P.)

Applicant.

(By Advocate – Shri Awadh Tripathi)

V E R S U S

1. Union of India,
 Through the Director General of
 Post & Telegraph Department,
 New Delhi.
 2. Director of Postal Services,
 Raipur Region, Raipur.
 3. Superintendent of Post Office,
 Bilaspur Division, Bilaspur.
 4. The Enquiry Officer/Assistant
 Superintendent of Post Office,
 Bilaspur Division, Bilaspur.
- Respondents.

(By Advocate – Shri Shri S.A.Dharmadhikari)

O R D E RBy Madan Mohan, Judicial Member –

By filing this original application, the applicant has sought the following main relief :-

- (ii) to quash the order of punishment of removal from service passed against the applicant (Annexure A-4 & A-6)."



2. The brief facts of the case are that the applicant was working as S.P.M under the respondents. On 18.2.1992, he left his office at about 12 a.m., felling sick. According to the applicant the SDI(P) Jamnipali visisted the Hardi Bazar Post Office in connection with a suspected fraud case and the said SDI(P) Jamnipali reported the matter to the higher authorities that during the inspection the applicant absconded from the office. A charge sheet was issued to him on 25.11.92 and the charge levelled against him was that when SDI(P) Jaminpali visited Hardi Bazar Post Office at about 12.30 a.m. he stepped away from the office and since then he is absconding. The applicant submitted his reply against the charge-sheet and denied the allegation levelled against him. He submitted that due to sickness he could not attend the office during the aforesaid period. The enquiry officer submitted his report on 1.5.94(Annexure-A-2) and has held the charge has been proved keeping in mind that there was a criminal case pending against the applicant for embezzlement. The applicant submitted written argument/representation(Annexure-A-3) against the report of the enquiry officer and the disciplinary authority has passed the order dated 19.7.94(Annexure-A-4) bywhich he was removed from service. Thereafter, he has preferred an appeal dated 5.9.1994 before the appellate authority, which was also dismissed by the appellate authority. Hence, this OA.

3. Heard the learned counsel for the parties and carefully perused the records.

4. The learned counsel for the applicant argued that in the chare sheet only allegation against the applicant is that he was absconded from office when the office was inspected by SDI(P) on 18.2.1992 at about 12.30 a.m., while the enquiry officer in his report mentioned about the embezzlement in which the applicant was duly acquitted by the competent court vide order dated 30.12.2003. The punishment



order or removal from service is passed on the basis of fraud committed by the applicant while there was no such allegation in the charge sheet and no departmental enquiry has been conducted in this regard by the respondents. He further argued that the applicant is presently 35 years of age and the punishment awarded to him is too harsh, which was passed only on the basis that the applicant was absconding from his office during the duty hours, and this has not been proved by any evidence. The applicant fell ill and he has submitted a medical certificate during the enquiry proceedings before the enquiry officer. But, this document was not relied upon by the enquiry officer. Hence, the orders passed the disciplinary authority as well as the appellate authority are illegal and are liable to be quashed and set aside.

5. In reply the learned counsel for the respondents argued that SDI(P) had asked, the applicant to produce concerned records for investigation. While producing the concerned records he stepped away from the back door of Hardi Bazar post office at 12.30 Hrs. on 18.2.1992. The SDI(P) tried to search him but could not trace. On detailed investigation it was noticed that the applicant has committed fraud/misappropriation to the tune of Rs.2,85,299/- for which an FIR was lodged against him and a charge sheet was issued to him. The applicant appeared in the office of the respondents on 13.3.93 with an application dated 13.1.1993 alongwith an order issued by the High Court and medical certificate dated 13.1.93. He was placed under suspension for the period of absconding of the applicant from 18.2.92 to 13.1.93. The learned counsel for the respondents further argued that the charge against the applicant were proved and the authority concerned awarded the punishment of removal from service and he preferred an appeal, which was dully considered and rejected. The respondents have conducted the departmental enquiry proceedings in accordance with the rules and thereafter they passed the impugned orders.



6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that the charge leveled against the applicant is of absconding from services with effect from 18.2.1992 and remaining absent till 3.12.1992. The charge against the applicant has been proved and on the basis of this charge the punishment of removal from service has been passed. We further find that a criminal case No. 195/1997 was also lodged against the applicant and vide order dated 30.12.2003 the applicant was exonerated from all the charges. The respondents have not issued any charge sheet against the applicant for the aforesaid misconduct which was the subject matter in the criminal case. As per the date of birth recorded by the applicant in this OA he is still having 15 years of service to serve under the respondents.

7. Considering all the facts and circumstances of the case, we are of the considered opinion that the order passed by the appellate authority order dated 18.4.95 is liable to be quashed and set aside and the matter is remitted back to the appellate authority to consider the proportionality of the punishment within a period of three months from the date of receipt of a copy of this order. We do so accordingly.

8. In this view of the matter the Original Application is partly allowed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

skm

प्रमाणित सं ओ/न्या.....जबलपुर, दि.....
प्रमाणित सं ओ/न्या.....
(1) सचिव, उच्च न्यायालय, जबलपुर
(2) आवेदन / दिनांक.....के कार्यालय
(3) प्रत्यक्षी श्री/श्री/श्री.....के कार्यालय
(4) वायदात, को.पु.नं., जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Awadh Pratap Singh
Bisla
S. A. Sharma
D. N. B. B.

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