

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 57 of 1998

Jabalpur, this the 28th day of March 2003.

Hon'ble Mr. Shanker Raju - Member (Judicial)
Hon'ble Mr. R.K. Upadhyaya - Member (Admnv.)

S.P. Tiwari, S/o Late Shri D.P. Tiwari (Deceased)
aged about 40 years, R/o 72, Indrapuri,
Grade Cottage, Narmada Road, Jabalpur. APPLICANT
through L.R. Smt. Archana Tiwari
(By Advocate - Ms. Nirmala Raikwar)

VERSUS

1. Union of India through the Secretary,
Ministry of Telecommunications,
New Delhi.
2. The Director, Postal Services,
Head Quarter Bhopal (M.P.)
3. The Superintendent (RMS)
M.P. Division, Bhopal (M.P.)

(By Advocate - Shri B. Dasilava)

RESPONDENTS

ORDER

Mr. Shanker Raju, Member (J):

As applicant has died during the pendency of the OA on 26.11.2002 MA-360/2003 for bringing his widow Smt. Archana Tiwari is allowed. Her name be substituted in place of deceased applicant as his legal heirs.

2. Deceased applicant in this OA has impugned respondents' removal order dated 30.8.96 on account of his absence since 3.2.87 and on the ground that after 14.2.92 he absented himself even without information and had left the headquarters without permission and had not submitted any medical record. Despite opportunity to applicant to participate in the enquiry and rejection of his request to hold enquiry at Jabalpur enquiry was completed ex-parte holding applicant guilty of charge.

3. On representation by the deceased against the enquiry report a major punishment of removal from service has been inflicted for unauthorisedly remaining absent for a period of 9 years and 7 months.

4. Appeal preferred against the punishment was rejected on 7.4.97, a copy of which has been served upon him through registered post but due to illness of applicant he misplaced this appeal and requested the authorities vide his application dated 30.11.97 and 27.12.97 for furnishing him a copy of the appellate order. The aforesaid request was turned down by an order dated 30.12.97 on the ground that there is no provision^u ~~proof~~ under which a copy can be supplied once delivered to him, giving rise to the present OA.

5. Learned counsel for applicant states that due to non-supply of the copy of the appellate order applicant has been greatly prejudiced as he could not effectively defend the conclusions arrived at by the appellate authority and could not take effective grounds to assail the impugned order. This according to the learned counsel has deprived applicant a reasonable opportunity which is in violation of principles of natural justice and fair play. If a genuine request has been made as the appellate order has been misplaced nothing prevented respondents from serving a copy of the appellate order.

6. On the other hand, respondents' counsel Shri B. Dasilva strongly rebutted the contentions and produced the disciplinary record which inter alia contains appellate order as well. He strongly supported the orders passed by the respondents on the ground that as applicant had remained absent for long period of

~~Nine~~ ^h years 7 months and as there is no violation of procedural rules, OA is liable to be dismissed.

7. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view orders passed by the respondents deprived the applicant a copy of the appellate order, cannot be countenanced and are not legally sustainable in the wake of principles of natural justice and fair play. Even though there is no provision for furnishing a copy of the appellate order, yet on genuine grounds of illness and the fact that appellate order has been misplaced by the deceased respondents being the custodian of official records should have furnished copy of the appellate order.

8. By non-supply of the appellate order present OA has been filed ~~sang~~ ^u the appellate order. This has deprived applicant an opportunity to rebut the grounds taken by the appellate authority to maintain the punishment. This has also deprived an opportunity to raise ~~the~~ ^h ground of proportionality of punishment. In this view of the matter though without commenting upon the merits of the impugned orders passed by the respondents OA is partly allowed to the extent that orders passed by the respondents depriving applicant a copy of the appellate order are quashed and set aside. They are directed to furnish the same to the legal heirs of deceased applicant, who in turn is at liberty to assail the same in appropriate proceedings.

No Costs.

(R.K. Upadhyaya)
(R.K. Upadhyaya)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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