

(13)

6-5-2011 Mr. Venoi Loyal, counsel for applicant.

Mr. Hemant Rathore, counsel for respondents.

Argument heard. The oral stand disposed of, by a separate order.

Anil Kumar

(Anil Kumar)

M(A)

K. S. Rathore

(Justice K. S. Rathore)

M(D)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 06th day of May, 2011

ORIGINAL APPLICATION NO. 422/2007

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

R.K. Kumawat son of Shri Mangi Lal Kumawat aged about 59 years, resident of behind Kalwati Bhawan, Jaipur Road, Mahuwa, District Dausa, retired as Postal Assistant.

.....Applicant

(By Advocate: Mr. Vinod Goyal)

VERSUS

1. Union of India through the Chef Post Master General, Rajasthan Circle, Jaipur.
2. The Director of Postal Services, Jaipur Region, Jaipur.
3. The Superintendent of Post Offices (MFL) Division, Department of Post, Jaipur.

.....Respondents

(By Advocate: Mr. Hemant Mathur)

ORDER (ORAL)

The present OA is directed against the charge sheet dated 06.12.2005, the impugned order dated 04.04.2007 and the impugned order dated 19.07.2007 (Annexure A/1, A/2 and A/3 respectively).

2. Brief facts of the case are that while holding the post of Postal Assistant at Mahuwa, a Memo of charge sheet dated 06.12.2005 (Annexure A/1) was served to the applicant stating therein that he was absent from duty without prior permission or sanction of competent authority from 30.09.2003 continuously and thus he had violated the provisions of Rules 62 of Posts and Telegraph Manual Volume 8.



3. After receiving the charge sheet, an application dated 06.12.2005 (Annexure A/4) was moved by the applicant to supply the documents annexed with the charge sheet as Annexure III & IV, which were the basis of the issuance of the charge sheet so that the reply to the charge sheet can be submitted. In response to this application dated 06.12.2005 (Annexure A/4), the respondents vide their letter dated 26.12.2005 (Annexure A/5) have stated that the applicant would be allowed to inspect documents at appropriate stage.

4. The Disciplinary Authority appointed one Shri Sita Ram Sharma, ASPs (HQ) as Inquiry Officer to inquire into the charges framed against the applicant vide order dated 04.01.2006 and one Shri O.P. Sharma, SDI (P) Lalsot Sub Division, Lalsot, as Presenting Officer.

5. The applicant submitted his objection/representaton against the appointment of Shri Sita Ram Sharma as Inquiry Officer stating therein that Shri Sita Ram Sharma being the direct and immediate subordinate to the disciplinary authority is not expected to impart any justice to him and there is likelihood of prejudice and bias on the part of the inquiry officer as the inquiry officer being working on the seat of ASP (HQ), Jaipur but the said representation filed by the applicant was rejected on 06.03.2006. The Inquiry officer started the inquiry proceedings and submitted his inquiry report on 30.08.2006 in which the charges leveled against the applicant were found to be proved.

6. The Disciplinary Authority passed the impugned order dated 04.04.2007 whereby the punishment of compulsory retirement was

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imposed upon the applicant under the provisions of CCS (CCA) Rules, 1965 against which the applicant preferred appeal before respondent no. 2 on 16.05.2007 but the same was rejected vide order dated 19.07.2007.

7. Learned counsel for the applicant submitted that another show cause was also issued by the respondents wherein it was alleged that the applicant remained absent from duty from 26.02.2003 to 25.09.2003 and from 30.09.2003 to 19.02.2006 and the impugned charge sheet in this case also says that the applicant was continuously remaining absent from 30.09.2003 as such two parallel proceedings have been initiated against the applicant for the same charges and finally the aforesaid period was declared to be dies non.

8. The charge sheet dated 06.12.2005 (Annexure A/1) and the impugned order dated 04.04.2007 (Annexure A/2) and 19.07.2007 (Annexure A/3) have been challenged on the ground that Inquiry Officer without giving any cogent finding on each and every aspect of the charge sheet submitted the inquiry report on 30.08.2006 in which the charges leveled against the applicant were found to be proved. Further challenge is on the ground that Disciplinary Authority without hearing on the proposed punishment to be imposed upon the applicant passed the impugned order dated 04.04.2007 whereby punishment of compulsory retirement was imposed without screening the method of holding the Departmental inquiry and the long outstanding service rendered by the applicant. The applicant alleged that his contention had not been considered by the Disciplinary Authority that under which circumstances he was forced to remain absent which could have been

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stated to be willful absence from duty. With regard to another show cause notice, it was alleged that for the same charges, two parallel proceedings cannot be initiated against the applicant. Thus the impugned orders are ex-facie and patently illegal, arbitrary and unjustified and unconstitutional in as much as the applicant had not remained absent willfully but in the prevailing circumstances, he could not joined his duty.

9. Further challenge is on the ground that the applicant moved an application dated 17.02.2006 to the Disciplinary Authority for appointment of an officer belonging to a different division in accordance with the instructions contained in circular dated 21.09.1974 and 20.05.1976 but the said application was not decided by the Disciplinary Authority but it was forwarded contrary to the rules to the Circle office, Jaipur either by the Inquiry Officer at his own will or by the disciplinary Authority, which was not acceptable to the applicant, as the Disciplinary Authority was competent to pass the appropriate order. The said application was moved on the ground that the Inquiry Officer being the immediate subordinate of the Disciplinary Authority was not expected to conduct the fair inquiry.

10. It is also averred that the respondents have not considered this aspect of the matter that the main cause of absence from duty was that one Shri Chhaju Lal Meena, formerly posted as EDMC of Mahuwa, had not only unduly disturbed and abused the applicant on 30.09.2003 and at the instance of Shri B.P. Meena, then SPM Mehwa, also threatened to eliminate the applicant.

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11. Per contra, respondents have submitted that while working as PA Mauwa, the applicant had left the office suddenly on 30.09.2003 and remained absent till 19.02.2006 without sanction of leave by the competent authority. The applicant was informed about his absence and directed to attend his duty vide letter dated 17.10.2003, 05.11.2003, 17.11.2003, 27.03.2004, 18.04.2005, 16.06.2005, 03.10.2005 and 14.10.2005 by registered post but the applicant did not turn up and failed to resume his duty. Therefore disciplinary action was initiated against him. Even after the charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 was served upon the applicant; he did not submit any defense against this charge sheet. Therefore, Inquiry Officer and Presenting Officer were appointed to hold detailed inquiry under Rule 14 vide Memo dated 04.01.2006. It is further contended that ample opportunity has been provided to the applicant and due process has been followed and the applicant was also allowed to inspect the relevant documents and after holding the detailed inquiry, the Disciplinary Authority had imposed the penalty of compulsory retirement looking to the gravity of the charges of willful absence from duty 2003 till the impugned order was passed i.e. more than a period of 3 years.

12. Having heard the rival submission of the respective parties and upon perusal of the material available on record, as well as relevant position of law and upon careful perusal of the memorandum of charge sheet, it is not disputed that the applicant had remained absent from 20.09.2003 without prior sanction of leave by the competent authority. As submitted by the respondents that he was called upon to resume his duty vide number of letter since from the year 2003 but he failed

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to resume his duty. The plea taken by the applicant is that main cause of absence from duty was one Shri Chhaju Lal Meena, posted as EDMC Mahuwa, who disturbed and abused the applicant on 30.09.2003 and at the instance of mis-behaviour of B.P. Meena, then SPM Mehwa, who threatened to eliminate the applicant, the applicant has not joined his services. To this effect, the applicant has not made any complaint in this regard. Further the applicant was allowed to inspect the relevant documents but since the applicant is not having any valid reason for his willful absence. Therefore, the punishment of compulsory retirement cannot be said to be excessive as he will be entitled to all retirement benefits. Looking to the seriousness of the charges leveled against the applicant, the action of the disciplinary authority as well as the Appellate Authority is in favour of the applicant and not against him otherwise such willful absence from duty can even result into dismissal from service. In such circumstances, the applicant should thank himself that he has not been given major penalty of dismissal from service but he has been compulsorily retired from service as he proved being liability. Accordingly, we find no illegality in the impugned order in the charge sheet dated 06.12.2005, impugned order passed by the disciplinary authority dated 04.04.2007 and order upheld by the Appellate Authority dated 19.07.2007. Consequently, the present OA deserves to be dismissed being bereft of merit and the same is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)