

23/07/2012

O.A. 168/2010

Present : Mr. C.B. Sharma counsel for the applicant.
Mr. Mukesh Agarwal counsel for the respondents.

This case has been listed before Joint Registrar due to non-availability of Division Bench. Let the matter be placed before the Hon'ble Bench on 17/08/2012.


Joint Registrar

20

17/08/2012

O.A. No. 168/2010

Mr. C.B. Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar

[Anil Kumar]
Member (A)

12. S. Rathore

[Justice K.S. Rathore]
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 168/2010

DATE OF ORDER: 17.08.2012

CORAM

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

Amolak Chand Rajwanshi S/o Shri Ram Karan Rajwanshi, aged about 44 years, R/o village & post Deoli Bhanchi, Via Tonk Head Office, Tonk Postal Division, Tonk. Last employed as Gramin Dak Sewak, Branch Post Master, Deoli Bhanchi Via Tonk Head Post Office, (removed from services).

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi - 110001.
2. Director Postal Services, Rajasthan Southern Region, Ajmer - 305001.
3. Senior Superintendent of Post Offices, Kota Postal Division, Kota.
4. Superintendent of Post Offices, Tonk Postal Division, Tonk.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER (ORAL)

The applicant has filed this Original Application seeking the following reliefs: -

- i) That entire record relating to the case be called for and after perusing the same memo dated 26/10/2009 (Annexure-A/1 - Appellate order) with the memo dated 22/04/2009 (Annexure-A/2-Punishment order) be quashed and set-aside with all consequential benefits.

Anil Kumar

- ii) That the charge memo dated 14/08/2007 (Annexure-A/12) be quashed and set aside with the enquiry proceedings with all consequential benefits.
- iii) That the respondents be further directed to reinstate the applicant on the post of Gramin Dak Sevak Branch Post Master, Deoli Bhanchi, Branch Post Office (Tonk) with all consequential benefits.
- iv) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case.
- v) That the costs of this application may be awarded."

2. This Original Application is made against the memo dated 26.10.2009 issued by the respondent no. 2 by which appeal preferred by the applicant has been rejected against the punishment of removal from employment imposed by respondent no. 3 vide memo dated 22.04.2009 on the allegations that the applicant not joined duties after sanctioned leave for 180 days from 24.10.2005 to 21.04.2006 and remained unauthorized absence during the period from 22.04.2006 to 11.06.2007. Thus, applicant violated Rule 7 of Gramin Dak Sevak (Conduct & Employment) Rules, 2001 in spite of fact that applicant at the relevant time facing mental diseases and was not in a position to perform his duties and the applicant from time to time informed the respondent no. 4 for his illness. Thus, the action of the respondents is against the provisions of Article 14, 16 and 21 of the Constitution of India and also the procedure of enquiry proceedings not followed by respondents.

3. Learned counsel for the applicant submitted that the applicant faced mental diseases and the condition of the applicant was not good and therefore he could not join his duties. On

Amil Kumar,

02.08.2006 (Annexure A/6), the respondent no. 4 called for explanation of the applicant that he is absent from duties without sanctioned leave. In response to this notice, the applicant apprised the position vide request dated 14.08.2006 (Annexure A/7) stating therein that now he is in a position to perform his duties so he may be allowed to join his duties. The respondent no. 4 vide letter dated 22.11.2006 directed the applicant to submit application in prescribed proforma for leave and in pursuance to that, the applicant applied the same and the respondent no. 4 also sanctioned the leave and thereafter the applicant allowed to join the post vide letter dated 09.04.2007 in spite of the fact that the applicant pursued the matter for joining his duties since August, 2006, which is evident from Annexure A/7.

4. Learned counsel for the applicant further argued that the applicant joined the post on 12.04.2007 and the respondent no. 4 sanctioned the leave for the period from 24.10.2005 to 21.04.2006 (180 days). In spite of the request made by the applicant for joining his duties, the respondent no. 4 took almost 08 months' time to allow the applicant to join his duties. The respondent no. 4 also did not regularize the period of absence of the applicant from 22.04.2006 to 11.04.2007. The respondent no. 4 treated the period from 22.04.2006 to 11.04.2007 as unauthorized absence in spite of the fact that the applicant was on medical leave and further not allowed to join his duties for more than 08 months by the respondent No. 4. The applicant was served a charge memo dated 14.08.2007 under Rule 10 of Gramin Dak Sevak (Conduct & Employment) Rules, 2001 on the

Anil Kumar

allegations that the applicant remained unauthorized absence for the period from 22.04.2006 to 11.04.2007 and also the applicant violated the provisions of Rule 7 of Gramin Dak Sevak (Conduct & Employment) Rules, 2001. Thereafter, an enquiry was conducted. The Inquiry Officer submitted his report on 04.02.2009 and proved the charges with the findings that, as per enquiry, the condition of the applicant was so under which he could not perform his duties. The enquiry report was sent to the respondent no. 3. The respondent no. 3 made available a copy of the enquiry report to the applicant vide letter dated 17.03.2009 (Annexure A/16).

5. The learned counsel for the applicant further submitted that the applicant submitted his representation dated 16.04.2009 against the enquiry report and without due consideration, the respondent no. 3 imposed punishment of removal from employment vide memo dated 22.04.2009 (Annexure A/2). The applicant preferred an appeal before the Appellate Authority. The Appellate Authority without due consideration rejected the appeal vide memo dated 26.10.2009 (Annexure A/1).

6. Learned counsel for the applicant further argued that the charge memo at Annexure A/12 has been issued by the respondent no. 4 and for punishment, matter referred to respondent no. 3 in spite of the fact that the respondent no. 4 not competent to issue charge memo and the respondents nowhere appointed adhoc disciplinary authority in the matter of the applicant. The enquiry was not conducted as per the procedure laid down. The charge memo at Annexure A/12 has been issued

Anil Kumar

by respondent no. 4 as per the directions of the appellate authority i.e. respondent no. 2 and, therefore, the same is not sustainable as higher authority cannot direct for initiation of disciplinary action. The punishment awarded by respondent no. 3 is beyond jurisdiction and without competency and therefore the same is liable to be quashed and set aside. The case of the applicant was referred to the respondent no. 2 for regularization the period of absence as per Rule 7 but no action was taken by respondent no. 2 instead directions were issued to serve charge memo to the applicant. The punishment awarded to the applicant is disproportionate to the gravity of the charges and the authority did not consider this fact while passing the orders. Therefore, the learned counsel for the applicant argued that the Original Application be allowed and the charge memo, the punishment order passed by the disciplinary authority and the appellate order be quashed and set aside.

7. To support his averments, the learned counsel for the applicant also referred to the judgment rendered by the Hon'ble Supreme Court in the case of **Bhagwan Lal Arya vs. Commissioner of Police, Delhi & Ors.** reported in 2004 (3) ATJ 555, and further referred to the judgment rendered by the Hon'ble Rajasthan High Court, Jaipur Bench in the case of **Siya Ram Sharma vs. Union of India & Ors.** reported in 2011 (3) WLC (Raj.) 214.

8. Per contra, learned counsel for the respondents argued that the applicant was sanctioned 180 days leave according to the provisions of Rule 7 of Gramin Dak Sevak (Conduct &

Anil Kumar,

Employment) Rules, 2001. He further argued that beyond 180 days, leave can only be sanctioned by Heads of Circles on account of genuine illness. The case of the applicant was referred to the Regional Office, Ajmer for sanction of leave beyond 180 days. However, the Regional Office, Ajmer declined to sanction leave in absence of submission of genuine medical certificate by the applicant vide letter dated 25.05.2007 (Annexure R/14) and directed the respondent no. 4 to take suitable action against the official as required in D.G.'s instruction No. 2 (5), below Rule 7 of GDS (Conduct and Employment) Rules, 2001.

9. He further argued that the applicant, in the meantime, requested vide his letter dated 14.08.2006 (Annexure A/7) that he is fully fit to resume duties, therefore, he should be allowed to join duties but the applicant did not submit his fitness certificate alongwith this application. A bare perusal of his letter dated 14.08.2006 (Annexure A/7) shows that the applicant has stated that he would submit his fitness certificate later. Subsequently, the applicant also submitted an application to the respondent no. 4 on 28.12.2006 (Annexure R/15) with the request to allow him to join the duties but the applicant neither submitted any medical certificate of his illness upto 28.12.2006 nor a certificate of fitness. He only submitted slip of discharge card, therefore, the applicant was directed to produce his medical certificate of fitness vide respondent no. 4 letter No. PF/H-116 dated 29.12.2006 (Annexure R/16). Thereafter, also upto long time, he did not produce the same. Ultimately, the applicant submitted his medical certificate of fitness vide application dated 04.04.2007 and not

Anil Kumar

submitted his sickness certificate. However, he was allowed to join duties with effect from 12.04.2007.

10. Learned counsel for the respondents further argued that as per the direction of the Regional Office, Ajmer vide letter dated 25.05.2007 (Annexure R/14), the applicant was served a charge-sheet (Annexure A/12) dated 14.08.2007 under Rule 10 of Gramin Dak Sevak (Conduct & Employment) Rules, 2001 for his unauthorized absence from duty during the period from 22.04.2006 to 11.04.2007. That respondent No. 4 was competent to issue charge sheet to the applicant. On refusal of charges by the applicant, an enquiry was conducted. In the enquiry report, the charges leveled against the applicant were found proved beyond doubt. Since respondent no. 4, Shri Prahalad Sharma himself was a state witness in this case, as such, the disciplinary case was forwarded to the respondent no. 2 for the decision in the matter. The respondent no. 3 (SSPOs Kota) was nominated as adhoc disciplinary authority to decide the case vide respondent no. 2 letter No. Vig/SR/Ad-hoc Disc. Cases/corr. Dated 12.03.2009 (Annexure R/20). The respondent no. 3 after taking into consideration the circumstances of the case awarded the penalty of removal from employment to the applicant vide memo dated 22.04.2009 (Annexure A/2). Copy of the decision was delivered to the applicant on 20.05.2009. The applicant preferred an appeal to the respondent no. 2 against the order of penalty of removal from service. The respondent no. 2 after considering the appeal preferred by the applicant rejected the same by a well reasoned and speaking order dated 26.10.2009 (Annexure A/1).

Anil Kumar

Therefore, the entire action of the respondents against the applicant is as per rules on the subject and there is no merit in the Original Application, therefore, it should be dismissed with costs.

11. Heard rival submissions of the respective parties and perused the relevant documents available on record and also the case law referred to by the learned counsel for the applicant. It is admitted position that the applicant could not perform his duties from 24.10.2005 to 21.04.2006 on account of his illness. He was sanctioned leave for 180 days for this period. The applicant further remained absent from duty with effect from 22.04.2006 to 11.06.2007. The case was forwarded to the Regional Office, Ajmer for sanction of leave beyond 180 days, but the Regional Office, Ajmer declined to sanction leave in the absence of submission of genuine medical certificate by the applicant vide letter dated 25.05.2007 (Annexure R/14). The Regional Office, Ajmer further directed the respondent no. 4 to take suitable action against the official as required in D.G.'s instruction No. 2 (5), below Rule 7 of GDS (Conduct and Employment) Rules, 2001. Rule 7 of the Gramin Dak Sevak (Conduct and Employment) Rule, 2001, reads as follows: -

"7. Leave

The Sevaks shall be entitled to such leave, as may be determined by the Government, from time to time:

Provided that -

- (a) where a Sevak fails to resume duty on the expiry of the maximum period of leave admissible and granted to him, or

Anil Kumar

- (b) where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave.

he shall, unless the Government, in view of exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10."

12. Accordingly, a charge-sheet was served to the applicant and on the denial of the charges by the applicant, an Inquiry Officer was appointed by the respondents. The Inquiry Officer conducted the enquiry after following the due procedure. He submitted the enquiry report to the Disciplinary Authority. A copy of the enquiry report was made available to the applicant as required under the Rules. The respondent no. 3 (SSPOs Kota) was nominated as adhoc disciplinary authority to decide the case of the applicant vide respondent no. 2's letter No. Vig/SR/Ad-hoc Disc. Cases/corr. dated 12.03.2009 (Annexure R/20), thus, in our view, the respondent No. 3, as Disciplinary Authority, was competent to pass the penalty order against the applicant. The Disciplinary Authority after going through the material available on record and the facts and circumstances of the case, awarded the punishment of removal from employment by a speaking and reasoned order dated 22.04.2009 (Annexure A/2). The applicant filed an appeal against this order of removal from employment passed by the Disciplinary Authority. The Appellate Authority considered the facts given in appeal and all other relevant material and rejected the appeal by a reasoned and speaking order dated 26th October, 2009 (Annexure A/1). Thus, we do not find any infirmity either in the order of the Disciplinary Authority or in the order of the

Anil Kumar

Appellate Authority. Proper procedure has been followed by the respondents while taking action against the applicant according to the Gramin Dak Sevak (Conduct & Employment) Rules, 2001. Rule 7, which deals with 'Leave' as has been quoted in para 11 (above) provides that where a Sevak fails to resume duty on the expiry of the maximum period of leave admissible and granted to him, he shall, unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10. In this case, the respondents have proceeded against the applicant according to this Rule and have taken action against the applicant following the procedure laid down in Rule 10. The applicant was sanctioned leave for 180 days by the respondents and on expiry of his leave, the applicant neither submitted any medical certificate of his illness nor submitted a certificate of fitness. When the applicant submitted his fitness certificate vide his application dated 04.04.2007 (Annexure R/17), he was allowed to join on 12.04.2007. Action was taken against the applicant for unauthorized absence from duty during the period 22.04.2006 to 11.04.2007, which is according to the Rules on the subject.

13. Learned counsel for the applicant referred to the judgment rendered by the Hon'ble Supreme Court in the case of **Bhagwan Lal Arya vs. Commissioner of Police, Delhi and Ors.** (supra). In para 10 of the said judgment, the Hon'ble Supreme Court has held as under: -

"10. The disciplinary authority without caring to examine the medical aspect of the absence awarded to him the punishment of removal from service since their earlier order of termination of appellant's service under Temporary

Anil Kumar

Service Rules did not materialize. No reasonable disciplinary authority would term absence on medical grounds with proper medical certificates from government Doctors as grave misconduct in terms of Delhi Police (Punishment and Appeal Rules, 1980)."

It is clear that in the case of **Bhagwan Lal Arya vs. Commissioner of Police, Delhi and Ors.** (supra), there was a medical certificate from Government Doctors but the Disciplinary Authority did not consider that medical certificate in the right perspective and awarded punishment, whereas in the present case, there is no medical certificate from the applicant during the period of his unauthorized absence. Thus, the ratio decided by the Hon'ble Supreme Court in the case of **Bhagwan Lal Arya vs. Commissioner of Police, Delhi and Ors.** (supra) is not applicable under the facts and circumstances of the present case.

14. Learned counsel for the applicant also referred to the judgment rendered by the Hon'ble Rajasthan High Court, Jaipur Bench, in the case of **Siya Ram Sharma vs. Union of India & Ors.** (supra). In para 7 of the said judgment, the Hon'ble Rajasthan High Court, Jaipur Bench, has held as under: -

"7. The petitioner applied for extension of leave for the cited reason namely, his two brothers died in quick succession and further that the petitioner fell ill, which fact he supported by two medical certificates. These circumstances ought to have received consideration of the Government because in exceptional circumstances rigour of Rule 7 of the Rules of 2001 has been relaxed."

In the case of **Siya Ram Sharma vs. Union of India & Ors.** (supra), the petitioner applied for extension of leave on the ground that his two brothers died in quick succession and further that the petitioner fell ill, which fact he supported by two medical

Anil Kumar

certificates, whereas in the present case, the applicant did not submit any medical certificate or fitness certificate for the period of his unauthorized absence. Therefore, the facts of the case of **Siya Ram Sharma vs. Union of India & Ors.** (supra) and the facts and circumstances of the present case are quite different, hence, the ratio laid down by the Hon'ble Rajasthan High Court in the case of **Siya Ram Sharma vs. Union of India & Ors.** (supra) is not applicable in the present case.

15. Therefore, in view of the above, we do not find any ground for interference by this Tribunal in favour of the applicant, as such the Original Application deserves to be dismissed being devoid of any merit.

16. Consequently, the Original Application being bereft of merit is dismissed with no order as to costs.

Anil Kumar,
(ANIL KUMAR)
MEMBER (A)

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