

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-4385/2014

Reserved on : 29.08.2018.

Pronounced on : 03.10.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Harbhajan Singh, 60 years
S/o Sh. Gulzara Singh,
Retd as P/Asstt.
Under Hauz Khas,
Post Office, New Delhi. Applicant

(through Sh. Manjeet Singh Reen, Advocate)

Versus

Union of India & Others : through

1. The Secretary,
Ministry of Telecommunication
& I.T., Govt. of India,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi.
2. The Chief Post Master General,
Dept. of Posts,
Delhi Circle, Meghdoot Bhawan,
New Delhi-110 001.
3. The Sr. Supdt. Post Offices,
New Delhi,
South West Distt.,
New Delhi-110 021. Respondents

(through Dr. Chaudhary Shamsuddin Khan, Advocate)

ORDER

Brief facts of the case as stated by the applicant in this OA are that the applicant was initially appointed as a Postal Assistant on 29.2.1979 in the pay scale of Rs.260-440 (RPS). He was promoted to the post of Assistant Post Master during the year 2008 to 2010. He was again posted as Postal Assistant at Hauz Khas Post Office in the year 2011 in pay scale of Rs.9300-34800 in Grade Pay of Rs.4200/-.

2. The applicant submitted his applications dated 15.11.2011, 29.11.2011 and 4.12.2011 (Annexure A-4 colly.) to the respondents along with medical certificates issued by doctors advising him to take complete bed rest on different periods. However, the respondents vide Memo No.BH-16 dated 3.2.2012 (Annexure A-5) issued a show cause notice as to why the applicant absented himself un-authorizedly and submitted fake medical certificates and why the period of unauthorized absence from duty be treated as 'DIES NON'. The applicant again submitted his representation dated 24.4.2012 (Annexure A-6) against the said show cause notice dated 3.2.2012. The respondents vide Memo Sr. No.B.H/16 dated 15.5.2012 (Annexure A-7) served upon the applicant minor penalty charge sheet under Rule 16 of CCS (CCA) Rules, 1965 for remaining absent from duty, un-authorizedly. The applicant submitted his defence

statement dated 21.7.2012 (Annexure A-8) against the said charge sheet dated 15.5.2012.

3. According to the applicant, the Disciplinary Authority without considering his defence statement, vide order dated 21.8.2012 (Annexure A-1) imposed a penalty of reduction of his pay by one stage from Rs.14510 + 4200 GP to 13960+4200 GP for a period of one year without cumulative effect w.e.f. 1.8.2012. The applicant's appeal against the said punishment order was forwarded to the appellate authority by the respondents vide letter dated 20.11.2012. Despite his reminders dated 3.6.2013 & 17.11.2013 (Annexure A-10 Colly.) no decision was taken by the respondents on his appeal, the applicant then filed an OA-274/2014, which was dismissed as withdrawn, vide Order 1.4.2014, with liberty to seek further departmental remedies, and if not satisfied, to approach the Tribunal by way of fresh original proceedings. The aforesaid order was issued since the respondents had in the meanwhile disposed of his appeal vide order dated 13.2.2014 (Annexure A-2).

4. The applicant avers that he preferred a detailed revision petition dated 1.4.2014 (Annexure A-12) to the Revisionary Authority, which was rejected on 28.08.2014, without considering the entire position cited by the applicant. Aggrieved by the orders passed by the Disciplinary Authority, Appellate Authority and Revisionary

Authority, the applicant has filed the instant OA seeking the following reliefs:-

- “8.1 That this Hon'ble Tribunal may graciously be pleased to allow this original application and set-aside the impugned orders dated 21.8.2012, 13.2.2014 and 28.8.2014 with all consequential benefits.
- 8.2 That the Hon'ble Tribunal may graciously be pleased to allow this Original Application and direct the respondents to restore the pay of the applicant in it's original grade including arrears of pay alongwith 18% simple interest.
- 8.3 That any other or further relief which this Hon'ble Tribunal may be deem fit and proper under the circumstances of the case may also be granted in favour of the applicant.
- 8.4 That the cost of the proceedings may also be awarded in the favour of the applicant.”

5. The respondents in the counter affidavit submit that the applicant while working as Postal Assistant, had applied for Earned leave w.e.f. 7.10.2011 to 6.1.2012 on the ground of accompanying his parents to Punjab. But the leave for one week was granted to him only w.e.f. 10.10.2011 to 16.10.2011. On expiry of leave, the applicant did not report for duty and submitted an application for extension of leave upto 25.10.2011, which was granted. The applicant did not report for duty and submitted a medical certificate issued by a private doctor w.e.f. 17.10.2011 to 31.10.2011 and applied for E.L. The said medical certificate did not bear his signatures. The applicant was addressed at his last available address of Punjab and local address of Delhi and directed to report for duty since the leave applied for by him was denied vide letter dated 1.11.2011 (Annexure R-1).

6. It is contended that though the medical certificate was issued by a doctor of Punjab but the leave application along with MC was sent through a registered letter booked from Vikaspuri, New Delhi-110018 showing address of sender as Village and Post Office-Ghar Shankar, Hoshiarpur (Punjab). The letter dated 1.11.2011 sent at applicant's local address was received back with the remarks "baar baar jane par praptkarta nahi milta atah vapis". The applicant submitted medical certificates w.e.f. 01.11.2011 for two weeks issued by a doctor of Punjab, which reportedly bore fake signature of the applicant. The applicant was again addressed at his last available address of Punjab as well as at his local Delhi address vide letter dated 14.11.2011 mentioning that the medical certificate submitted by him issued by a private doctor has not been accepted, with directions to report for duty immediately. The applicant again submitted a medical certificate w.e.f. 14.11.2011 issued by the same doctor of Punjab recommending rest for two weeks. The letter dated 14.11.2011 sent at applicant's Punjab address was received back with the remark "refused. Sent to sender". The respondents sent another letter dated 22.11.2011 at his Punjab & Delhi address asking the applicant to report for duty immediately but he failed to do so. All the letters addressed at his Punjab and Delhi address were returned back with remarks "No such person in this village. Returned to sender" and "baar baar jane par nahi milta atah vapis jay"

respectively. The applicant again submitted medical certificate w.e.f. 29.11.2011 to 13.12.2011 & 14.12.2011 to 03.01.2012 issued by a Doctor of Satnam Hospital and medical certificate w.e.f. from 04.01.2012 to 08.01.2012 issued by another doctor of Bhatti Clinic, Hoshiarpur.

7. The respondents submit that since the applicant was not reporting for duty despite being asked to do so, and was not found available at the last available address of Punjab and Delhi, he was issued charge sheet under Rule-16 of CCS (CCA) Rules, 1965. After considering his defence statement dated 20.07.2012, the Disciplinary Authority vide order dated 21.08.2012, awarded him a punishment of reduction of pay by one stage from Rs.14510+4200 GP to Rs.13960+4200 GP for a period of one year without cumulative effect w.e.f. 01.08.2012. The applicant filed an appeal to the Appellate Authority, and also filed an OA-274/2014 before this Tribunal challenging the order dated 21.08.2012, and for non-disposal of his appeal. During the pendency of the OA, the Appellate Authority rejected the appeal vide order dated 13.02.2014 by a reasoned and speaking order. On 01.04.2014, OA-274/2014 was dismissed as withdrawn with liberty as sought by the applicant. Subsequently, the revision petition filed by the applicant was also rejected by CPMG, Delhi Circle, New Delhi vide order dated 28.08.2014.

8. The respondents further contend that while they received the applications dated 15.11.2011, 29.11.2011 and 14.12.2011 they did not receive the application dated 04.12.2011. All the three applications with the medical certificates issued by the Doctor of Satnam Hospital, Hoshiarpur sent under Regd. Letters were found having the address of Village & P.O. Ghar Shankar, Hoshiarpur (Pb) but were booked from Vikaspuri, New Delhi-18 as per the receipt pasted on the envelope. These medical certificates did not bear the signature of the applicant, which is not acceptable. Medical certificates without the signature of the applicant have no value as per rules and procedures. After considering the representation of the applicant and other relevant documents, the Disciplinary Authority, Appellate Authority and the Revisionary Authority confirmed the punishment awarded to him by the Disciplinary Authority. Hence, the current O.A. has no merit and is liable to be dismissed.

9. I have carefully considered the facts of the case and considered the rival submissions made by both sides during the course of hearing. The applicant was issued a chargesheet under Rule-16 of CCS(CCA) Rules, 1965 vide Memo dated 15.05.2012/20.06.2012. The Disciplinary Authority vide order dated 21.08.2012 imposed upon him the penalty of reduction of pay by one stage from Rs.14510+4200 GP to Rs.13960+4200 GP for a period

of one year without cumulative effect w.e.f. 01.08.2012. The date of retirement of the applicant is 31.07.2013. His appeal and review application against the impugned order dated 21.08.2012 was decided by the Appellate Authority on 13.02.2014 and the revision petition was also rejected on 28.08.2014 by the Revisionary Authority.

10. The plea of the applicant is that the penalty order should be under Rule-9 of the CCS (Pension) Rules since the orders of the Appellate Authority and Reviewing Authority were issued after his retirement on 31.07.2013. The applicant avers that respondents have not been able to prove that his absence from duty was willful, and maintains that his absence was due to compelling circumstances due to which it was not possible for him to report for duty. The respondents, on the other hand, conted that the applicant remained willfully absent from duty and despite repeated communications from the respondents, he chose not to report at his place of work. Hence, his unbecoming behaviour resulted in issuance of minor penalty proceedings culminating in the order of punishment imposing penalty of reduction of pay, without cumulative effect.

11. I agree with the contention of the respondents that the applicant's absence from duty and the reasons for such absence are not convincing. Even the medical certificates produced by him,

at different points of time lack veracity for the anomalies already discussed in the counter affidavit filed by them. Some of the leave applications have been sent even without his signatures. For the detailed reasoning given in the order dated 21.08.2012, I do not consider it necessary to go over the sequence of events again, and feel that decision of the Disciplinary Authority dt. 21.08.2012 does not need any judicial intervention. The judicial pronouncements relied upon by the applicant are distinguishable on facts and do not come to his aid.

12. The second issue raised by the applicant is regarding the legality of the disciplinary proceeding initiated before his retirement but confirmed by the Appellate Authority on 13.02.2014 and Revisionary Authority on 28.08.2014, respectively. Keeping in view that the applicant already stood retired on 31.07.2013, the proceeding, it is averred, should have been under Rule 9 of CCS(CCA) Pension Rules. The applicant avers that the penalty has impacted his pension but has not been able to explain how it is so.

12.1 It is relevant to note here that the applicant was charged sheeted for minor penalty proceedings while he was still in service, which were concluded, before his superannuation. Minor penalty proceedings, do not have any effect on reducing or withholding of

pension, as clarified in O.M. No. 134/17/80-AVD-I dated 28.02.198. It is stipulated therein that:-

"(6) Minor penalty proceedings have no effect on pension.- Sub-rule (1) of Rule 9 of the CCS (Pension) Rules, 1972, confers on the President the right to withhold or withdraw the pension or a part thereof, either permanently or for specified period, and to order recovery from the pension, of the whole or a part of any pecuniary loss caused to the Government if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment on retirement. Sub-rule (2) of this Rule provides that the departmental proceedings, referred to in sub-rule (1), if instituted before the retirement of a Government servant or during his re-employment shall after his final retirement, be deemed to be proceedings under this Rule and shall be continued and concluded. Accordingly, the minor penalty proceedings and the major penalty proceedings, which are instituted against a Government servant while in service and which do not get concluded before the date of retirement, automatically become proceedings under Rule 9 *ibid*. However, since grave misconduct or negligence cannot be established as a result of minor penalty proceedings, action under Rule 9 *ibid* for withholding or withdrawing pension, etc., cannot be taken against a pensioner in respect of whom minor penalty proceedings had been instituted and have been continued after retirement. Such minor penalty proceedings continued after retirement, therefore, do not literally have any effect on the pension in the matter of reducing or withholding of his pension. The disciplinary authorities are requested to take note of this position and take steps to see that minor penalty proceedings instituted against Government servants, who are due to retire, are finalized quickly and in time before the date of retirement, so that the need for continuing such minor penalty proceedings beyond the date of retirement does not arise."

13. The charge sheet under Rule 16 (Minor Penalty) was instituted when the applicant was in service. The enquiry was concluded and penalty of reduction of his pay by one stage from Rs.14510 + 4200 GP

to 13960+4200 GP for a period of one year without cumulative effect w.e.f. 1.8.2012 was imposed upon the applicant on 21.08.2012. Thus, the proceedings were completed almost one year before applicant's superannuation on 31.07.2013. This order was confirmed by the Appellate Authority and Reviewing Authority on 13.02.2014 & 28.08.2014. This fact alone, in my view, would not render the earlier proceedings null & void or require fresh proceeding under Rule 9 of CCS (CCA) Pension Rules.

14. I, therefore, hold that since the proceedings were initiated and punishment imposed by the Disciplinary Authority before retirement of the applicant, there was no need to re-initiate disciplinary proceeding sunder Rule-9 of CCS(CCA) Pension Rules merely since the appeal and review were decided post retirement. O.A. is accordingly dismissed. No costs.

**(Praveen Mahajan)
Member (A)**

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