

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2635/2012

Reserved on: 18.04.2018
Pronounced on: 01.06.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Shri Dharmendra Kumar
S/o Shri Ram Kishore Sharma,
Ex-Gramin Dak Sewak (GDS)
Runner Mohanpur B.O.
S.O. Ganj Dodwara, Distt. Etah,
R/o Village Matawali Gali,
Nai Basti Sohawar Gatae, Kasganj.
Address for service of notices
C/o Sh. Sant Lal, Advocate, CAT Bar Room
New Delhi – 110 001. ...Applicant

(By Advocate: Shri Pradeep Kumar)

Versus

Union of India through

1. Secretary,
Ministry of Communications & I.T.,
Department of Posts, Dak Bhawan,
New Delhi – 110 001.
2. The Supdt. of Post Offices,
Etah Division, Etah-207001.
3. The Asstt. Supdt. of Post Offices,
Kasganj Sub Div.
Distt. Etah – 207 123. ...Respondents

(By Advocate: Ms. Aishwarya Dabhal for Sh. Hilal Haider)

O R D E R

By Hon'ble Mr. Uday Kumar Varma, Member (A):

The instant OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

1. *To quash and set aside the impugned orders dated 05.12.2011 and 23.01.2012 (Annexure A-1 and Annexure A-2);*
2. *To direct the respondents to reinstate the applicant in service forthwith;*
3. *To grant all consequential benefits including full back wages and his seniority as if the impugned orders had not been passed;*
4. *To regularize the periods of put off duty as duty for all purposes.”*

2. Brief facts of the case are that the applicant was initially appointed as Gramin Dak Sewak (GDS) Runner/MD w.e.f. 11.03.1997 and was posted in Kas Ganj Sub Division of Etah Division. It is submitted that on 06.07.2009, the applicant was detained in police custody on account of some private criminal case. On account of his detention in police custody exceeding 48 hours, the applicant was deemed to have been put off duty vide order dated 17.07.2009. The applicant was released on bail by the Sessions Court vide order dated 28/31.07.2009 and soon thereafter he was taken back in service vide order dated 01.08.2009 with immediate effect. It is the contention of the applicant that after more than a year, he was again put off duty vide Memo dated 05.10.2010 with immediate effect, which was, however, served upon him on 18.10.2010. The applicant further submits that the respondent no.3 i.e. Assistant Superintendent of Post Offices, Kasganj Sub Division issued a chargesheet dated

18.10.2010 under Rule 10 of G.D.S. (Conduct & Employment) Rules, 2001 [hereinafter referred to as 'GDS Rules, 2001'] on the following Articles of Charge:-

“Article of Charge-1

Sh. Dharmender Kumar, Gramin Dak Sevak Mail Carrier (under Put Off duty) Branch Post Office Mohan Pur Accounts Office Ganjdudwara, Head Post Office, Etah submitted an application in his own hand writing (without date) to the Asstt. Superintendent of Post Offices, Kas Ganj Sub Division, Etah in which he had requested for grant of leave from 6.7.2009 to 16.7.2009 and the reason cited therefor was shown as going out for necessary work. And he submitted another application dated 31.7.2009 in his own handwriting in which he mentioned that I remained absent from my duties of post office from 17.7.2009 to 31.7.2009 because I was in jail under suspicious circumstances. Now that I have returned home today on 31.7.2009, I may be taken back on duty whereas as per the copy of the order dated 6.7.2009 of Upper Chief Judicial Magistrate Court No.18, Etah, the accused Dharmender had submitted an application for his bail in the criminal case no.318/2009 registered under Section 307 of the IPC at P.S. Jaithra, Distt. Etah which was rejected by the Hon'ble Court and the accused Dharmender Kumar was taken in judicial custody. According to the copy of the order dated 28.07.2009, the bail of Sh. Dharmender Kumar was accepted on 28.07.2009 and he was released from the jail on 31.7.2009. The leave of said Sh. Dharmender Kumar from 6.7.2009 to 16.7.2009 was alleged to have been sanctioned on the basis of above wrong information and he was placed under put off duty from 17.7.2009 to 31.7.2009.

Therefore, it is alleged that the said Sh. Dharmender Kumar, Gramin Dak Sevak Mail Carrier (Under Put off duty) Branch Post Office Mohan Pur Accounts Office Ganjdudwara, Head Post Office, Etah by furnishing the above said wrong information, has failed to maintain absolute integrity and lacked devotion to duty as per the provisions of Rule 28 & 21 of the Gramin Dak Sevak (Conduct & Employment) Rules, 2001.

Article of Charge-2

Sh. Dharmender Kumar, Gramin Dak Sevak Mail Carrier (under Put Off duty) Branch Post Office Mohan Pur Accounts Office Ganjdudwara, Head Post Office, Etah submitted the applications for grant of leave to the Asstt. Superintendent of Post Offices, Kas Ganj Sub Division, Etah on 31.5.2010, 02.07.2010, 29.07.2010,

19.08.2010 and 03.09.2010 respectively in which he had cited the reasons for grant of leave as personal affairs. The Asstt. Supdt. Of Post Offices, Kas Gaj had sanctioned the leave for all the dates as mentioned in the applications which included the dates from 14.6.2010 to 19.056.2010, 12.07.2010, 09.08.2010, 01.09.2010 & 09.09.2010. On these dates, the said Sh. Dharmender Kumar had appeared before the Hon'ble Court, Etah in the criminal case No.318/2009 under Section 307 of IPC and entered his appearance which fact is mentioned in the copy of the order sheet dated 09.06.2010 to 24.09.2010 of the concerned court, the copy of which has been obtained.

Therefore, it is alleged that the said Sh. Dharmender Kumar had furnished wrong information to the Asstt. Supdt. Of Post Offices, Kasganj Sub Division, Etah instead of correct information and has thereby failed to maintain absolute integrity and lacked devotion to duty as per the provisions of Rule 28 & 21 of the Gramin Dak Sevak (Conduct & Employment) Rules, 2001.

Article of Charge-3

The orders to place the said Sh. Dharmender Kumar, Gramin Dak Sevak Mail Carrier (under Put Off duty) Branch Post Office Mohan Pur Accounts Office Ganjdudwara, Head Post Office, Etah under put off duty were passed by the Asstt. Superintendent of Post Offices, Kas Ganj Sub Division, Etah vide memo no.B/Dharmender Kumar/GDS/2010 dated Kas Ganj 5.10.2010 and Sh. Sudhir Kumar Saxena Mail Oversear, 1st Sub Division Kas Ganj was directed to deliver the same. Sh. Sudhir Kumar Saxena Mail Oversear, 1st Sub Division Kas Ganj was directed in this regard. It was informed by Sh. Sudhir Kumar Saxena Mail Oversear, 1st Sub Division Kas Ganj vide his letter dated 5.10.2010 that the copy of the said memo of put off duty was tendered to Sh. Dharmender Kumar, Sub Post Office Ganjdudwara on 5.10.2010 at about 9.15 am but the said Sh. Dharmender Kumar had refused to receive the copy of the said put off duty memo and had also declined to sign the charge report and went out of the Sub Post Office Ganjdudwara.

It is, therefore, alleged that the said Sh. Dharmender Kumar had furnished wrong information to the Asstt. Supdt. Of Post Offices, Kasganj Sub Division, Etah by not accepting the copy of the put off duty memo and not signing the charge report relieving memo has failed to maintain absolute integrity and lacked devotion to duty as per the provisions of Rule 21 of the Gramin Dak Sevak (Conduct & Employment) Rules, 2001.”

3. The applicant submits that the disciplinary authority appointed the Inquiry and Presenting Officers vide memo dated 01.11.2010. The Inquiry Officer, who conducted the inquiry in haste and completed the same, submitted the inquiry report to the disciplinary authority on 27.09.2011 holding the charges as proved. The applicant was served with a copy of the enquiry report vide letter dated 03.10.2011 asking him to submit his representation against the findings of the inquiry officer, if he so desires. The applicant, pleading himself innocent having not committed any misconduct, submitted his reply to the disciplinary authority and the disciplinary authority without considering the submissions of the applicant and following the rule position, imposed upon him the extreme punishment of dismissal from service vide order dated 05.12.2011. Aggrieved, the applicant filed an appeal dated 16.12.2011 against the order of the disciplinary authority vide which he was imposed a major penalty of dismissal. It is to the dismay of the applicant that the appellate authority also did not apply its mind to his submissions and rejected the appeal vide order dated 23.01.2012 upholding the punishment of dismissal from service in a cryptic manner. Hence, the applicant has filed the instant OA on the following grounds:-

- a). The impugned orders are arbitrary, illegal, discriminatory and violative of Articles 14 & 16 of the Constitution of India as also principles of natural justice;
- b). It is true that the applicant was deemed to have been put off duty w.e.f. 17.07.2009 due to criminal case but was put back on duty after releasing on bail. However, the act of the respondents again putting him off duty vide order dated 05.10.2010 is not only arbitrary, illegal but also mala fide;
- c). The allegation of the disciplinary authority as mentioned on page 10 of the impugned order dated 05.12.2011 that the applicant had obtained orders dated 30.06.2009 (K-3), 17.7.2009 (K-4) and 01.08.2009 (K-5) under threat from the concerned authority is false and frivolous as the same are prosecution documents listed by the disciplinary authority along with the chargesheet. The issuing authority of the aforesaid documents was examined in the inquiry proceedings and admitted of the documents having been issued;

d). The Article of Charge-III pertaining to refusal to accept the order of put off duty dated 05.10.2010 is also false and baseless. In the first instance the said put off duty order is against the provisions of Rules and secondly the applicant was sick and under medical treatment which fact was confirmed by the treating doctor, who issued the requisite medical certificate, in his evidence. Though the put off duty order was not served upon the applicant yet the same was implemented treating him to be on put off duty w.e.f. 05.10.2010 irrespective of the fact that he was on medical leave.

e) The applicant submits that his case is fully covered by the decision of this Tribunal in the case of **Sh. Jai Bhagwan Sharma vs. Govt. of NCT of Delhi & Ors.** [2003 (1) ATJ 544] wherein the Tribunal observed as under:-

“It is not disputed that even after revocation of suspension, the services can be placed again under suspension, if the circumstances so warranted. But in the instant case, I find that once a conscious decision has been taken by the Dy. Director of Education to revoke the suspension of the applicant, in absence of any justified reason, later action of the respondents again to put the applicant under suspension, cannot be sustained.

As no such material has been produced which could have justified their action, the impugned orders are not legally sustainable and

are accordingly quashed and set aside. Applicant is to be treated as on duty from 09.07.2002 till the suspension is revoked on 12.11.2002, and shall be entitled to all consequential benefits within two months from the date of receipt of a copy of this order. OA is accordingly disposed of.”

- f). Applicant submits that it is a case of ‘no evidence, and the findings of the disciplinary authority are based on presumption, conjectures and surmises and are accordingly perverse and *mala fide*.
- g). It is wrong to assume that the applicant had suppressed or concealed the factum of his involvement in criminal case and arrest on 6.7.2009 on the ground that when the application for bail was refused by the court of ACJM, he was already on leave duly sanctioned by the competent authority upto 13.07.2009. However, when the bail was rejected, this fact was known to the respondent no.3 who issued the order of deemed suspension w.e.f. 14.07.2009 vide order dated 17.07.2009 after the expiry of the period of leave already sanctioned to him vide order dated 30.06.2009.
- h) That the inquiry officer has acted as a prosecutor and judge at the same time. He has cross-examined the applicant which is not permissible

under the rules and is against the principle of natural justice.

- i). Orders of the disciplinary and appellate authorities are not only non-speaking and cryptic orders, but have been passed in violation of the rules.
- j). Without prejudice to the submissions made in the grounds, it is also submitted that it is well settled principle of law that the punishment imposed must be commensurate to the gravity of charges levelled against the charged official. The applicant further submits that he has performed his duties most efficiently, diligently and without any complaint from any quarter and has also refuted the charges and pleaded innocence. Therefore, the punishment imposed upon him is disproportionate to the charges levelled against him.

4. In view of the above grounds, the applicant pleads that the instant OA deserves to be allowed, which may be allowed.

5. The respondents have filed their counter affidavit denying the averments of the applicant made in the OA. The respondents submit that the applicant moved an

application for granting leave w.e.f. 06.07.2009 to 16.07.2009 mentioning the reason of leave for going outside for an urgent work. When he did not turn up for duty on 17.07.2009, it came to light that he was involved in a criminal case and has been put behind the bars, therefore, he was placed under put off duty vide Memo dated 17.07.2009. On 31.07.2009 the applicant submitted an application, informing that he remained absent w.e.f. 17.07.2009 to 31.07.2009 on account of his being in jail in connection with a criminal case on doubtful condition, but now he has come out on bail. Therefore, he was taken back in service on his original post of GD SMS instead of deploying him to the post of GD SBPM, Badaria. Aggrieved, the applicant approached this Tribunal by way of OA No.544/2010 which was disposed by the Tribunal vide order dated 18.02.2010 at the admission stage itself without going into the merits of the case and directing the respondents to consider the representation of the applicant and pass a speaking order. Accordingly, the representation of the applicant was considered and rejected by passing a speaking order dated 23/24.08.2010. It is the contention of the respondents that the inquiry officer investigated the matter thoroughly and submitted his report and the applicant was afforded an opportunity to file his

representation against the inquiry report which he did file. The disciplinary authority considered the representation of the applicant in its letter and spirit and passed a reasoned order imposing the punishment of dismissal from service on him. The appeal of the applicant was also considered and decided by the appellate authority affirming the order of the disciplinary authority. The respondents further submit that as the applicant concealed the factum of his involvement in the criminal case and sought leave on several occasions on the ground that he was going to outside for personal work whereas on all the occasions he attended the criminal case pending against him concealing this material fact from the respondents. Hence, the disciplinary authority issued a chargesheet and initiated departmental enquiry against the applicant. The charges levelled against the applicant were proved by the inquiry officer and the applicant was imposed the punishment of dismissal from service. As the applicant has misled the department by concealing the factum of his involvement in a criminal case and the charges in the departmental inquiry having been proved against him, he has rightly been punished with dismissal from service.

6. The applicant has filed the rejoinder denying the submissions of the respondents in the counter reply and re-asserting the averments made in the OA.

7. We have gone through the pleadings of this case and heard the learned counsel for the parties.

8. The applicant has based his arguments with regard to inappropriateness and illegality of the impugned orders on the following:-

a) That the second put off duty order issued on 05.10.2010 was without application of mind and exhibits bias on the part of the respondents because the applicant, after his first put off notice dated 17.07.2009, was allowed to join his duties.

b) It is clear from the record that the applicant has moved an application for leave for the period between 06.07.2009 to 16.07.2009 on 30.06.2009 itself and was also sanctioned leave on the same date. Therefore, the charge that he misled the respondents is entirely baseless. It was his contention that the applicant had dutifully applied for the leave and has himself brought to the notice of the respondents that he was involved in a criminal case. The applicant, thus, argued that he has not committed any

misconduct either under Rule 21 or Rule 28 of the GDS Rules, 2001 and that he has been made a victim for no fault of his.

c) It is further argued that the government official, who was a witness in the departmental enquiry [SW-10] and who was the Superintendent of Shahjahan Pur Post Office has, in his deposition, admitted that he had received the leave application of the applicant on 30.06.2009 and he had himself received this leave application. Therefore, the contention of the respondents that the leave application was back dated has been proved completely wrong.

9. We have perused the case file. The charge against the applicant was that even though he was involved in a criminal case under Section 307 IPC and in spite of the fact that he was in judicial custody, and that his bail application was rejected on 06.07.2009 and that he continued in judicial custody till he was released on bail vide order dated 28.07.2009, he did not inform the department about these incidents at all. He informed the department only when he was already in custody and only when he was subsequently released on bail, which is a violation of Rule 21 and 23 of GDS Rules, 2001. We have seen his leave application dated 30.06.2009. This four line

application mentions that he has to go out for some urgent work from 06.07.2009 and, therefore, he could be granted leave from 06.07.2009 to 16.07.2009. This application has been received by somebody but the date of receipt has been clearly overwritten and a date which was sometime in the month of July, 2009 has been converted into 30.06.2009. It is the contention of the respondents that this overwriting was done under the pressure of the applicant. In any case, this application does not, in any way, indicate the reasons for taking leave that he is facing criminal charge or that he is going to appear before the judicial court to seek bail. To this extent, it is clear that the applicant has not complied with the requirements of Rules 21 & 28 of the GDS Rules, 2001. It is true that he informed the respondents that he was arrested and was in jail subsequently once, but in all his subsequent leave applications, he did not inform that the reason for taking leave was in fact to pursue the judicial case pending against him.

10. The contention of the applicant about illegality in issuing second put off duty is also not convincing. Rule 12 of the GDS Rules, 2001 provides that if either criminal case or departmental enquiry is pending or contemplated against an employee, he could be under put off duty. The respondents have in their arguments stated that the

applicant had approached the Tribunal in OA No. 544/2010 because he was returned back to GDS Mohanpur Branch from GDS SP Badaria. This OA was disposed of by the Tribunal vide order dated 18.02.2010 directing the respondents to consider his representation which the respondents rejected after due consideration.

11. The respondents claimed that they had revoked the first put off duty when the applicant was released on bail but since the departmental enquiry initiated against him was contemplated, he was again placed under put off duty on second time and there is no illegality in the same.

12. We have considered this matter. There is no dispute that the applicant was involved in a criminal case and was charged under Section 307 IPC. Under the rules, he was supposed to inform the department about it. It is clear from the records that he has failed to do so. It is also clear that he was indeed arrested and put behind the bars; his bail was rejected on 06.07.2009 but eventually the bail was granted by the court vide order dated 28.07.2009. It is also a fact that he made applications seeking leave without mentioning that he needs the leave to pursue the criminal case pending against him. The applicant never argued that the conduct

like this does violate the provisions of Rules 21 & 28 of the GDS Rules, 2001. His contention is confined to the fact that the second put off duty by the respondents is wrong as he has been taking leave and getting them duly sanctioned. He further maintains that he has not been hiding anything from the respondents. These contentions of the applicant are not borne out by the facts from the record and his conduct seems clearly violative of the provisions of Rules 21 & 28 of the GDS Rules, 2001.

13. The two judgments placed by the applicant in the case of ***Shri Jai Bhagwan Sharma vs. Govt. of NCT of Delhi & Ors.*** [OA No.1849/2002 decided CAT, Principal Bench on 11.12.2002] and ***Shri Ashok Ganpatrao Lacharwar vs. Union of India & Ors.*** (OA No.506/2002 decided by CAT Mumbai Bench on 03.01.2003], in our view, do not seem to be applicable in the instant case. In ***Shri Jai Bhagwan Sharma vs. Govt. of NCT of Delhi & Ors.*** (supra), the second suspension order was revoked because no justifiable reasons were given for his second suspension. In the instant case, the respondents have clarified why the second put off duty was ordered against the applicant. In so far as the decision in ***Shri Ashok Ganpatrao Lacharwar vs. Union of India & Ors.*** (supra) is concerned, the applicant in that case was released and the

fact of arrest by police could not be taken as a suppressed fact because such fact was in the knowledge of the authorities and once they already knew about applicant's arrest, the alleged suppression of facts could not amount to misconduct. First of all, this judgment is in the context of Civil Service (Conduct) Rules, 1964 which are quite distinct from the GDS Rules, 2001. Secondly, in this cited case the fact of arrest was known to the authorities long before the disciplinary proceedings were initiated against the applicant. The arrest was in the year 1991 whereas the chargesheet was issued in 1999. There was a long gap and the authorities could not take a plea that they were not aware of applicant's arrest. Whereas, in this case, the fact of the matter is that not only the applicant did not inform the authorities about filing of FIR against him, but also the fact of his arrest, the fact of denial of bail and his subsequent release. The only communication he sent to the authorities was about his being in the jail that too at a belated stage. Even in subsequent communications with regard to leave, he never mentioned about the judicial proceedings pending against him. Therefore, the two citations offered by him are distinguishable.

14. The respondents, on the other hand, have relied upon the decision of the Hon'ble Supreme Court in the case of

Devendra Kumar vs. State of Uttarakhand & Ors. [Civil Appeal No.1155 of 2006 decided on 29.07.2013] wherein the court has held as under:-

“24. The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case.”

15. In view of the above discussion, we are of the considered opinion that it will be inappropriate to interfere in this matter. We are satisfied that the punishment awarded to the applicant seems to be in consonance with the rule position and does not suffer from any legal infirmity and, therefore, the instant OA deserves to be dismissed and is accordingly dismissed. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/Ahuja/