IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD

O.A. No.231 of 2013

Date of CAV:06.11.2017. Date of Order : 01 .12.2017.

Between :

N.Surya Rao, s/o late N.Narayudu,
aged about 58 yrs, GDS/MC/MD, (Removed),
Kalavalapalli BO, a/w Nidadavole LSG/SO,
Tadepally Division, West Godavari District. ... Applicant

AND

1. Union of India, rep., by the
Chief Postmaster General,
A.P.Circle, Hyderabad.

2. The Postmaster General,
Vijayawada Region, Vijayawada.

3. The Superintendent of Post Offices,
Tadepalligudem Division,
Tadepalligudem-534 101.

4. The Inspector of Posts,
Nidadavole Sub-Division,
Nidadavole-534 301,
Tadepalligudem Division,
Dist. West Godavari. ... Respondents

Counsel for the Applicant … Mrs.Rachana Kumari
Counsel for the Respondents … Mrs.K.Rajitha, Sr.CGSC

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The factual matrix of the case is that the applicant was appointed as Gramin Dak Sevak/Mail Carrier/Mail Deliverer (GDS/MC/MD) at Kalavalapalli Branch Office in West Godavari District on 04.06.1981. While so, he fell sick with multiple ailments due to various domestic problems. Hence, he did not attend to duty from 21.02.2005 till 09.10.2007 for a period of 958 days. The applicant submits that during the entire period, he was undergoing medical treatment and the medical certificates were produced from time to time. When he represented to the 4th respondent to take him back to duty duly explaining the reasons for his absence, he was reinstated on 10.10.2007. Ever since he was working without any blemish. After the lapse of 3 years, the respondents issued a charge memo alleging unauthorized absence from duty for a period of 959 days from 21.02.2005 to 10.10.2007. It is the case of the applicant that the charges pertain to the very same period which had been condoned while taking him back to duty after considering his representation and his medical certificates and after exonerating him from the lapses. He points out that during the relevant period of absence, no show cause notice or charge memorandum was issued. Thus, the charge memorandum dated 27.07.2010 was issued after a lapse of 3 years. Based on the defective charge memo, the Inquiry Officer conducted the inquiry and concluded in one sitting that the charges wre proved. Based on the perfunctory inquiry, the 4th respondent imposed the penalty of removal with immediate effect, vide his orders dated 22.02.2011. Aggrieved by the same, the applicant submitted an appeal to the 3rd respondent on 14.03.2011. However, the 3rd respondent without considering the averments made by him in his appeal upheld the punishment imposed by the 4th respondent. Thereafter, the applicant submitted a representation to the 2nd respondent on 25.01.2012. The 2nd respondent has also confirmed the

punishment imposed by the 4th respondent without considering any of his averments. Pursuant to this, the 4th respondent issued a notification on 18.01.2013 inviting applications for filling up his post.

2. The respondents have resisted the pleas of the applicant in the OA. They point out that the applicant availed leave without allowance from 31.01.2005 to 20.02.2005. Although he was due to return to duty on 21.02.2005, he remained unauthorizedly absent from 21.02.2005 to 10.10.2007, which worked out to 959 days. He did not apply for leave at any point of time during his period of absence. He was issued letters by registered post by the 4th respondent on 11.03.2005, 02.04.2005 and 21.01.2005 with a direction to join duty immediately. However, all the three letters were received back with the remark “Addressee is not in the village and left without instructions, hence returned to sender”. On 08.10.2007, he submitted a letter to the 4th respondent stating that he was sick during the period of absence from duty and requested the 4th respondent to allow him to join duty. He also submitted Annexure.R-2 medical certificate dated 30.07.2007 issued by Sri K.Raja Rao, Deputy Civil Surgeon, Community Health Centre, Chintalapudi, in which the applicant was certified medically fit to return to duty on 30.07.2007. But he actually joined duty on 10.10.2007 although he was fit to return to duty on 30.07.2007. The applicant did not mention any reasons for his absence from 31.07.2007 to 07.10.2007, either during the period of his absence or on rejoining duty.

3. The respondents submit that the applicant was admitted to duty without any prejudice to disciplinary action under the relevant rules. They have cited the provisions of Rule 7 of Gramin Dak Sevak (Conduct & Employment) Rules 2001, which reads as

below:

> "*a) Where a GDS fails to resume duty on the expiry of the maximum period of leave admissible and granted to him, or*
>
> *b) Where such a GDS 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 upto which he could have granted such leave.*
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> *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."*

4. Further, as per the DG instructions at (5) and (6) under Rule 7 of Gramin Dak Sevak (Conduct & Employment) Rules 2001, if a GDS remains on leave for more than 180 days at a stretch, he will be liable to be proceeded against under Rule 8 of EDAs (now GDSs) Service & Conduct Rules, 1964. They further submit that the Inquiry Officer conducted the inquiry and submitted his report to the 4th respondent, which was despatched to the applicant under registered letter dated 27.01.2011. He has submitted his representation on 02.02.2011 to the 4th respondent stating that he will not be absent from duty without applying for leave in future and that he would be applying for leave well in advance. He admitted unconditionally the charges framed against him. After carefully considering the case with all connected records, the 4th respondent awarded the penalty of removal from service on 22.02.2011. The applicant was accordingly relieved from duty on the same day. The appeal submitted to the 3rd respondent and the revision given to the 2nd respondent were rejected thereby confirming the decision of the disciplinary authority. They have refuted the contention of the applicant that he has produced medical certificates from time to time as no such certificates or leave applications were received inspite of sending three registered

letters on 11.03.2005, 02.04.2005 and 21.10.2005. It is also the case of the respondents that the applicant was allowed to join duty pending disciplinary action against him as per the departmental rules. Hence, giving permission to join the post does not mean that disciplinary action would not be initiated.

5. The respondents also state that the delay that has occurred in issuing the charge memorandum is due to technical and administrative reasons. They point out that the inquiry against the applicant was held in accordance with the prescribed rules by appointing an Inquiry Officer and a Presenting Officer and after considering his various representations. It is also stated that filling up of the posts of GDS due to the removal of the applicant is inevitable. As such the action of the respondents is in accordance with the rules and regulations.

6. Heard the learned counsel on both sides and perused the record.

7. The learned counsel for the Applicant argued that the punishment was grossly disproportionate and relied on the judgment of the Hon'ble Supreme Court in *Jai Bhagwan v. Commissioner of Police & Others* in Civil Appeal Nos.5162-63 of 2013 in which the Hon'ble Supreme Court had held that the punishment of dismissal from service for the misconduct proved against the appellant was grossly disproportionate. He also placed reliance on the judgment in *Krushnakant B Parmar v. Union of India & Another* in Civil Appeal No.2106/2012 in which the Hon'ble Supreme Court had allowed the appeal on the ground that the disciplinary authority failed to prove that the appellant's absence from duty was wilful and that no such finding has been given by the Inquiry Officer. In the instant case also there is no finding that the absence of the

applicant was wilful. He also cited the judgment of the Coordinate Bench of this Tribunal at Cuttack in *Abdul Raheman v. Union of India & Others* (1987 (3) ATC 947) to buttress his point that illness is beyond the control of the Government servant. Such absence from duty will not amount to gross negligence to duty and cannot be construed as lack of integrity or lack of devotion to duty. He also cited the judgment of the Madras Bench of this Tribunal in *T.J.Mohanam v. Union of India & Others* (1989 (10) ATC 701) and the judgment of the Ernakulam Bench in *K.Ravi Kumar v. Inspector of RMS, RMS 'TV'2ND Sub-Division, Kottayam & 6 Others* (1991 (15) ATC 603) in support of his pleas.

8. From the narration of the aforesaid facts, it is evident that the respondents have justified their action of removing the applicant from service on the ground that he was unauthorisedly absent for a period of 959 days from 21.02.2005 to 10.10.2007 without submitting any leave application or producing any medical certificates during the relevant period. They point out that the applicant had been admitted to duty on the basis of his representation dated 08.10.2007 duly informing him that he has been admitted to duty pending disciplinary action to be taken against him for his unauthorized absence without applying or obtaining permission from the concerned authorities. They also point out that they have sent three registered letters on 11.03.2005, 02.04.2005 and 21.10.2005, directing him to report for duty but that they were returned back with the endorsement that the addressee is not in the village. They concede that when he was allowed to rejoin duty on 08.10.2007, the applicant had submitted a medical certificate issued by Dr.K.Raja Rao, Deputy Civil Surgeon, Community Health Centre, Chintalapudi, in which it was certified that the applicant was medically fit to return to duty on 30.07.2007. They have also relied on the

provisions of the Gramin Dak Sevak (Conduct & Employment) Rules 2001, cited in Para 3 supra, in justification of their action to remove the applicant from service. Another point that has been raised by the respondents is that the applicant has not mentioned about his illhealth in response to the charge memorandum dated 27.07.2010, and that he only admitted his mistake.

9. The applicant was admittedly absent without any leave application from 21.02.2005 to 10.10.2007 for a period of 959 days. Under the provisions of the GDS Rules, cited by the respondents, any GDS who remains absent from duty in excess of the limit up to which he could have been granted leave has to be removed from service in accordance with the procedure laid down in Rule 10. The respondents had issued registered letters on 11.03.2005, 03.05.2005 and 21.10.2005, which have been returned undelivered as the addressee was reportedly not in the village. Therefore, in terms of the GDS Rules, the respondents ought to have immediately taken action to remove the applicant from service following due procedure. Admittedly, no such action was taken. The applicant has pleaded that he left Kalavalapalli village and went to Chintalapudi on personal work and that he suffered from severe ill-health and had to stay in his relatives house till he recovered completely. While submitting his letter dated 08.10.2007 requesting for permission to join duty, he also submitted a medical certificate issued by the Deputy Civil Surgeon, Community Health Centre, Chintalapudi, who certified that he was under his treatment and was advised rest from 21.02.2005 to 29.07.2007. The respondents do not have a case that the medical certificate was not genuine. They only point out that even though he was permitted to report for duty on 30.07.2007, he continued to be absent up to 07.10.2007, without any application.

10. Be that as it may, the applicant has rejoined duty on 10.10.2007 and has been working thereafter. It is only after the passing of three more years that the respondents finally issued the charge memorandum on 27.07.2010. The inordinate delay of 5 years that has occurred in issuing the charge memorandum for unauthorized absence which began in 2005 has vitiated the entire disciplinary proceedings. The respondents have tried to explain the delay by stating that it was due to technical and administrative reasons. However, it is a settled principle of law that if the delay is unexplained, prejudice is caused to the delinquent employee. The Hon'ble Supreme Court in *State of Madhya Pradesh v. Bani Singh & Another* (AIR 1990 SC 1308) has observed as follows:

> *"There is no satisfactory explanation for the inordinate delay in issuing the charge memorandum and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case, there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."*

11. A similar view has been expressed by the Hon'ble Supreme Court in *State of Andhra Pradesh v. N.Radhakishan* (1998 (4) SCC 154) in which the Hon'ble Apex Court held as follows:

> *"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee*

has a right that disciplinary proceedings against him are concluded expeditiously and he is not make to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform this duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

12. The ratio decided by the Hon'ble Supreme Court in the aforesaid cases would squarely apply in this case as the respondents have not taken timely action in accordance with the Gramin Dak Sevak (Conduct & Employment) Rules 2001, for proceeding against the applicant, who has been absent from duty from 21.02.2005 onwards and has issued the charge memo after the lapse of five years. There is nothing on record to show that the applicant is responsible for the delay in the conduct of disciplinary proceedings. The respondents have also not furnished any reasons for the delay other than stating that delay occurred due to administrative and technical reason. Hence, the disciplinary proceedings against the applicant are vitiated on this ground.

13. Admittedly the applicant while giving his reply to the charge memorandum has only apologized for his lapses and has not given any reason for his absence. However, in his Annexure.R-10 appeal to the 3rd respondent he has submitted that he was not able to discharge his duties because of his ill health and that he had already submitted a medical certificate in support of this issued by the Deputy Civil Surgeon, Chintalapudi. He also submitted that he could not apply for leave from 21.02.2005 due to his ill health, illiteracy of his family members and proper support and that he had undergone treatment in his uncle's house at Chintalapudi, and pleaded for a humanitarian consideration taking into consideration his family misfortunes including the death of his son and son-in-law, which cast heavy responsibilities on him. As already observed, the respondents have not raised any doubts about the genuineness of the medical certificate produced by him. In the light of this, the Appellate Authority ought to have given due consideration to the fact that at the time of joining duty on 08.10.2007 , the applicant had submitted a medical certificate issued by a Government Doctor in support of his absence from 21.02.2005 to 30.07.2007. In the light of this medical certificate, which has not been disputed by the respondents, there can be no case that the applicant was wilfully absent from duty. Further, even if the applicant has no medical certificate to justify his absence for a period of 89 days from 30.07.2007 to 08.10.2007, the imposition of the extreme penalty of removal from service would be disproportionate to the misconduct of unexplained absence for 89 days.

14. In *Krushnakant B Parmar*'s case, the Hon'ble Supreme Court has held as follows:

> "*16. The question whether 'unauthorised absence from duty amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.*

17. *If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful.*

18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct."

15. Applying the aforesaid ratio, we hold that even if his absence is construed as unauthorized absence, there is no finding that it is wilful in nature and that in the absence of such a finding, the imposition of the penalty of removal from service is unjustified.

16. Having regard to the aforesaid circumstances, the OA is allowed. The respondents are directed to reinstate the applicant into service with immediate effect. The applicant shall be entitled to pay and allowances from the date of his reinstatement. The interim stay for filling up the post of Gramin Dak Sevak Mail Carrier/Mail Deliverer, Kalavalapalli BO, is made absolute. Two months time granted for compliance. There shall be no order as to costs.

(MINNIE MATHEW) **(JUSTICE R. KANTHA RAO)**
MEMBER (ADMN.) **MEMBER (JUDL.)**

Dated:this the 1st day of December, 2017p

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