

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

OA/21/1138/2012
Date of Order: 06/09/2018

BETWEEN

A. Somaiah,
S/o. Late Narayana,
Aged about 50 years,
Occ: Retired Postal Assistant (TBOP),
Khairatabad Head Post Office,
Hyderabad,
R/o. 3-91, Khuda-Khuda, Suryapet,
Nalgonda District.

.... Applicant

AND

1. The Union of India rep. by its
Secretary,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi – 1.
2. The Chief Postmaster General,
A.P. Circle, Dak Sadan,
Hyderabad – 1.
3. The Director of Postal Services,
Hyderabad City Region,
O/o. CPMG, A.P. Circle,
Hyderabad – 1.
4. The Senior Superintendent of Post Offices,
Hyderabad City Division,
Hyderabad – 1.
5. The Senior Postmaster,
Khairatabad Head Post Office,
Khairatabad,
Hyderabad.

..... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar
Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM :

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl.)
Hon'ble Mrs. Naini Jayaseelan, Member (Admn.)

ORAL ORDER
(Per Hon'ble Mr. Justice R. Kantha Rao, Judicial Member)

Heard Dr. A. Raghu Kumar, learned counsel appearing for the applicant and Shri K. Laxman representing Smt. K. Rajitha, learned Senior Central Government Standing Counsel appearing for the Respondents.

2. The brief facts giving raise to filing of the present O.A. are as follows:

The applicant was issued a charge memo dated 11.6.2004 alleging that he was absent from duty without prior sanction of leave from 16.1.2004 to 11.6.2004 i.e. from the date of issuing of charge memo. In response to the charge memo, the applicant submitted a reply dated 8.12.2004 stating that he was having joint pains and was unable to travel and, therefore, he had to be on leave. He further stated that a tragic incident of demise of his grown up daughter occurred in May, 2004 and also stated that he was submitting leave applications up to 30.9.2004. But after the death of his daughter he became totally upset and could not submit any leave applications or join duty. However, he stated that he admits his mistakes and sincerely regretted for the same and requested to consider his case sympathetically by taking a lenient view.

3. The aforementioned reply submitted by the applicant was considered by the respondents as admission to the charge. An order dated 25.5.2005 was passed compulsorily retiring the applicant from service. The disciplinary authority treated the absence from duty for the aforementioned period as unauthorized absence. The aforementioned order passed by the disciplinary authority is impugned in the present O.A. The applicant availed the appellate and revisional remedies. But both the authorities confirmed the order passed by the disciplinary authority. Thereafter, he filed the present O.A seeking the following relief:

“to call for the records pertaining to the 4th respondent Memo No.F/Disc/ AS dated 25.5.2005 along with 3rd respondent Memo No.ST/Dis/16-HCR/35/2005 dated 7.2.2006 communicated to the applicant vide Lr.No. ST/Disc/16-HCR/35/2005 dated 9.4.2008 and 2nd respondent Memo No.ST/ BP-10/2008 dated 19.9.2008 and quash and set aside the same as illegal, arbitrary and violative of Article 14, 16 and 311 of the Constitution of India and rules on the subject matter and consequently direct the respondents to reinstate the applicant into service with all consequential benefits such as continuity of service, pay and allowances, seniority, promotion, etc., in the interest of justice, and be pleased to pass such other order or orders as this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.”

4. The respondents in their reply statement contended inter-alia that in view of the admission of the applicant of the charges levelled against him, the disciplinary authority imposed appropriate punishment and that the Tribunal cannot examine the quantum of punishment. It is further contended that the applicant was afforded several opportunities to join duty and, therefore, the punishment order passed by the disciplinary authority needs no interference in the present O.A. It is also pointed out by the respondents that after a lapse of six years the applicant vide his representation dated 10.2.2011 requested the

4th respondent to collect his pension papers and to sanction pensionary benefits by intimating his address. Though he was asked to submit pension papers, he did not do so. He also did not submit the life certificate which was required for grant of pension.

5. We have gone through the averments of the O.A. as well as the contentions advanced by the learned counsel on either side.

6. Though the applicant admitted the unauthorised absence, he explained in the reply to the charge memo about the circumstances which resulted in his absence from duty. However, since he admitted the guilt by offering some explanation, at this length of time, we are not inclined to remit the matter back to the disciplinary authority for the purpose of conducting fresh inquiry.

7. Though it is contended on behalf of the respondents that the Tribunal cannot examine the quantum of punishment unless it is disproportionate, we wish to state that the punishment of compulsory retirement, having regard to the reasons submitted by the applicant with regard to his absence for a period of four months and nine days is shockingly disproportionate and the Tribunal can examine the quantum of punishment.

8. Learned Standing Counsel appearing for the respondents relied on the following judgements:

- i) CDJ 2012 SC 128 (Krushnakant B. Parmar v. Union of India & Another)
- ii) CDJ 2014 SC 564 (Chhel Singh v. M.G.B. Gramin Bank Pali & Others)

9. On perusing the same, we are of the considered view that the facts of the above mentioned cases are different to the facts of the present case. On the

other hand, the facts of the present case are exactly identical to the facts of the case reported in **CDJ 2009 SC 1698**.

10. The Hon'ble Supreme Court in its judgement passed in the case cited above, held as follows:

“.....where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control, and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgement, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No.1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.

27. Consequently, both these appeals are allowed in part. The appellants shall reinstate Respondent No.1 forthwith but he will not be entitled to any back wages from the date of his removal until reinstatement. Parties will bear their own costs.”

11. In the instant case, the absence of the applicant from duty is 4 months 9 days. He explained the reasons for his absence which are purely personal as were in the above case before the Hon'ble Supreme Court. The reasons were his ill-health and the sudden demise of his grown up daughter.

12. Having regard to the aforementioned circumstances of the case, we are of the considered view that the punishment was unduly harsh and shockingly

disproportionate. Therefore, we are inclined to set aside the impugned order.

13. Consequently, the impugned order dated 25.05.2005 passed by the disciplinary authority imposing the punishment of 'compulsory retirement' on the applicant is set aside. The respondents are directed to reinstate the applicant forthwith. The respondents are directed to pass the order consequential to reinstatement by following the above cited judgment i.e. the judgement in **Chairman cum Managing Director Coal India Limited & Another v. Mukul Kumar Choudhuri & Others** reported in **CDJ 2009 SC 1698.**

14. The O.A. is allowed to the extent indicated above. There shall be no order as to costs.

(NAINI JAYASEELAN)
ADMN. MEMBER

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

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