

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : INDORE

Original Application No.201/01003/2014

Indore, this Friday, the 16th day of March, 2018

HON'BLE MR. UDAY KUMAR VARMA, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Girdhari Lal Katara, S/o Amar Singh Katar, Age : 57 Years,
Occupation – Ex. Mail Peon, R/o Gram :- Mein, Tahsil :- Mhow,
Indore, Pin Code 455224
-Applicant

(By Advocate – **Shri R.K. Shukla**)

V e r s u s

1. Union of India through Director General, Department of Post, Ministry of Communication & I.T., “Dak Bhavan”, Sansad Marg, New Delhi 110001.
2. Chief Post Master General, M.P. Circle, Dak Bhavan, Bhopal – 462001.
3. Director (Post), O/o Post Master General, Indore Region, GPO Compound, Indore 452001.
4. Senior Superintendent, Post Office, Indore City Dn. Indore 452007.
5. Asstt. Superintendent, Post Office (West), Indore City, Dn. Indore 452007
-Respondents

(By Advocate –**None**)

(Date of reserving order : 14.03.2018)

O R D E R

By Ramesh Singh Thakur, JM.-

Since nobody appeared for the respondents, even on second call, we proceed to decide the matter *ex-parte*, i.e after hearing

counsel for the applicant only and the documents placed before us by both the parties, while exercising our powers under Rule 16 (1) of the CAT (Procedure) Rules, 1987.

2. This Original Application has been filed by the applicant against the order of punishment dated 22.09.2009 (Annexure A-6) and also against dismissal of appeal and revision vide Annexure A-8 and A-10 respectively, whereby the punishment of removal from service has been imposed by the Disciplinary Authority, which has been upheld by the Appellate Authority and Revisional Authority.

3. The applicant has sought for the following reliefs:

“8.1 to call for original records of the case and to quash & set aside the impugned order dated 22.09.2009 (Annexure A-6), Appellate order dated 14.07.2010 (Annexure A-8) and order in Reversion dated 01.04.2014 (Annexure A-10).

8.2 It may kindly be set aside the punishment order (Annexure A-6) passed by the Respondent No.4; and the Appellate Order (Annexure A-8) passed by the Respondent No.3, revisional order (Annexure A-10) passed by the Respondent No.2.

8.3 The respondent authority is please directed to modify the punishment of removal to that of Compulsory Retirement and pay pension and pensioner benefits.

8.4 The impugned order at Annexure A-6, A-8 and A-10 is please quash and set aside considering the punishment of “Removal from service” after 30 years of service and after 59 years of age is too much and disproportionate punishment, when there is no loss to the department and no loss to any public

member. In the light of case of C.B. Chaturvedi & others, reported in 1995 (6) SCC 749 at page 764, the relevant part of the judgment as under:-

“Constitution of India, Article 226, 142-Administrative Tribunals Act (13 of 1985) sec.19-imposition of punishment on Government servant by disciplinary and appellate authority interference by High Court/Tribunal-Punishment shocking conscience of High Court/Tribunal-It can direct authority to reconsider punishment- It may itself, to shorten litigation impose appropriate punishment with cogent reasons in support thereof.”

8.5 Pl. allowed my application in the light of judgment passed by Hon'ble Supreme Court in case of Rrushnkant B.Parmar vs. Union of India, (2012) 3 SCC 178.

8.6 Direct the respondent to grant with all the consequential benefits.”

4. Precisely, the case of the applicant is that the applicant, while working on the post of Mail Peon, was issued with a chargesheet dated 20.06.2006 (Annexure A-1) under Rule 14 of the CCS (CCA) Rules, 1965. On 26.02.2007, the applicant filed reply to the charges levelled against him. The Inquiry Officer has submitted the inquiry report to respondent No.5 (Annexure A-3). On 11.05.2009 (Annexure A-4), the respondent No.5 sent a copy of the inquiry report to the applicant and the applicant has submitted his representation dated 29.05.2009 (Annexure A-5) to the inquiry report. Vide Annexure A-6, the order of punishment was passed on 22.09.2009 and the applicant was removed from service. Against the order of punishment, the applicant filed appeal before the respondent No.3 on 15.01.2010 (Annexure A-7).

However, the Appellate Authority has rejected the appeal vide order dated 14.07.2010 (Annexure A-8). Thereafter, the applicant preferred revision petition to the respondent No.2 on 30.04.2013 (Annexure A-9). The Revisional Authority had also rejected the revision vide order dated 01.04.2014 (Annexure A-10). Hence this Original Application.

5. The main ground of the applicant is that the order passed by the Disciplinary Authority is illegal, arbitrary and without proper application of mind. The other ground of challenge is that the applicant being in need of documents, were not made available by the respondents intentionally and the documents have also not been produced intentionally. Therefore, the applicant could not produce his defence strongly. It has been submitted that the appeal preferred by the applicant has not been considered by the Appellate Authority and the Appellate Authority has not passed the speaking order. Similarly, the Revisional Authority has passed the order in a mechanical manner, without proper application of mind.

6. The respondents have filed their reply. It has been submitted by the respondents that the applicant was continuously absent from

duty since 30.08.2005, without prior information and sanctioned leave. A notice was served upon him on 24.03.2006 directing him to join the duty, but the applicant neither assumed the charge nor replied to the notice. Therefore, as per procedure contained in Rule 62 and 63 of Postal Manual, Vol.III, a disciplinary action was initiated and chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued.

7. It has been further submitted by the respondents that during the departmental inquiry, the applicant did not produce any defence document for justifying the unauthorised absence and the Inquiry Officer found the charges proved vide its report dated 02.05.2009. It has also been submitted that before taking decision on the charges levelled against the applicant, a copy of inquiry report was sent to the applicant giving him reasonable opportunity to defend himself and to submit the representation against the inquiry report. However, the applicant failed to submit the representation. Therefore, the Disciplinary Authority has passed the order dated 22.09.2009, awarding punishment of removal from service. The appeal and the revision filed by the applicant were also discussed in detail and were rejected by way of detailed order.

8. The respondents have further submitted in their reply that the punishment order has been passed after thorough examination of the relevant documents and the evidence adduced before the Inquiry Officer and reasonable opportunity was afforded to the applicant before passing the order of removal from service. The Appellate Authority has discussed all the points raised in the appeal in detail and has passed a speaking order. Similarly, the Revisional Authority, after carefully examining the points raised by the applicant in revision petition, has passed a reasoned and speaking order. Thus, the order of punishment passed by the above authorities, are as per law.

9. The applicant has also filed rejoinder to the reply and has reiterated the submissions made in the O.A. It has been submitted by the applicant that during the pendency of inquiry, the applicant has submitted a medical certificate, which has neither been taken on record nor being sent to the competent authority.

10. We have gone through the pleadings.

11. As per Annexure A-1 dated 20.06.2006, a chargesheet has been served upon the applicant. In Article I of the charges, specific

charge regarding the absence from duty since 30.08.2005, without any information and sanctioned from the competent authority, has been levelled against the applicant. Along with the chargesheet, list of documents relied upon and name of witnesses, were also supplied to the applicant. It is relevant to mention that the applicant has not made any representation against the memo of chargesheet, therefore, the department had proceeded further in the matter and the Inquiry Officer was appointed accordingly.

12. The applicant appeared in the inquiry and made application (Annexure A-2) to the Inquiry Officer and has sought for some documents, which are to be used in his defence. The Inquiry Officer has specifically dealt with the application of the applicant and has allowed the applicant to do so. So, the contention of the applicant that he was not allowed to produce the defence documents, does not seem to be valid. It is clear from the inquiry report (Annexure A-3, running page 5) that the application made by the applicant was accepted but the documents relied upon by him were not produced before the Inquiry Officer, as they were not available with the custodian officer.

13. The next contention of the applicant is that in the inquiry report, the Inquiry Officer found one charge partly proved and regarding the absence from duty w.e.f. 30.08.2005 to 04.09.2005, the charge has not been proved. Regarding this contention, the Inquiry Officer, in its report (Annexure A-3, running page 7) has dealt this issue. Though, the Inquiry Officer has held that the applicant, as per document P-4/A, was absent and he has submitted medical certificate for justifying his absence w.e.f. 31.08.2005, however, the Inquiry Officer has further, in the next immediate para, has explained the position regarding the further absence w.e.f. 03.09.2005. It has been observed by the Inquiry Officer that there is no explanation or document or evidence on record, which proves the justified absence of the applicant. So, the contention of the applicant in this regard is totally vague and is not maintainable because the Inquiry Officer has already dealt with this issue in detail.

14. The applicant has also raised the contention that the respondent No.5 has recommended the respondent No.4 (Disciplinary Authority) to award the major punishment, which is an act of preconceived on behalf of the respondent No.4. However, as per Annexure A-6, though the Disciplinary Authority has

indicated in Para 9 that the document dated 30.08.2009 has also been received, but in the next Para 10, the Disciplinary Authority has given detailed reason and has specifically mentioned that after going through all the documents, i.e. inquiry report, prosecution witnesses and the defence taken by the applicant and after thorough examination, the contention of the applicant has been rejected and the Disciplinary Authority has awarded the punishment.

15. Further contention of the applicant is that the Inquiry Officer has not dealt with the issue of willful absence from duty. This contention of the applicant is also not maintainable due to the fact that in the inquiry report (Annexure A-3, internal page 8), the Inquiry Officer has clearly dealt this issue and it has been observed that the applicant failed to submit any evidence/document regarding his unauthorised absence. It has been further observed by the Inquiry Officer that the applicant has not put any defence or has not made any defence witness qua the fact that absence from duty was not willful. Rather, it has been specifically mentioned by the Inquiry Officer at internal page 11 of the inquiry report that the defence of the applicant was that due to the frequent transfer, he was mentally upset and could not join the duty. It is relevant to mention that the Inquiry Officer has also dealt with this issue and

has specifically observed that regarding this defence, there is no evidence has been produced in the inquiry. Further, in the internal page 9 of the inquiry report, it has been observed by the Inquiry Officer that the certificate regarding the illness of the applicant, has been made available to the Inquiry Officer after a period of three and half years, which is suspicious in nature. More so, the Inquiry Officer has further observed at page 11 of the inquiry report that despite the repeated notice given by the department, the applicant failed to report to the duty and also did not respond to the notice. Thus, this fact also proves that the applicant's absence from the duty was willful in nature.

16. The learned counsel for the applicant has relied upon the judgment of Hon'ble Supreme Court in the case of **Krushnakant B. Parmar vs. Union of India and another**, (2012) 3 SCC 178. In that case, the Hon'ble Supreme Court has held that if absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be willful. However, in the present case, the facts are otherwise. The Inquiry Officer has dealt with all the documents made available in the inquiry proceeding and has come to the conclusion that the unauthorised absence of the applicant was willful in nature. Hence,

the reliance placed by the applicant is distinguishable to the present case.

17. Regarding the contention of the applicant that the Appellate Authority has not dealt with the grounds of appeal, it is relevant to mention that as per Annexure A-8, the Appellate Authority has mentioned all the grounds raised by the applicant in his appeal and has given its reasoning in internal page 5 of the order. Thus, the argument put-forth by learned counsel for the applicant does not seem to be attractive, in view of the detailed order passed by the Appellate Authority.

18. The counsel for the applicant has also further raised the question regarding the non speaking order passed by the Revisional Authority. However, as per Annexure A-10, the Revisional Authority has dismissed the revision filed by the applicant and detailed order has been passed by the said authority after dealing with all the grounds raised by the applicant parawise. Therefore, the argument regarding the non speaking order passed by the Revisional Authority, is not sustainable.

19. It is well settled law that a Tribunal or court of law can interfere in disciplinary proceedings only on limited grounds. The Court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. Placing reliance on a number of decisions qua quantum of penalty, it has been held by the Hon'ble Apex Court that the punishment imposed by the disciplinary authority or the appellate authority, unless shocking to the conscience of the Court, cannot be subjected to judicial review.

20. From the documents along with the pleadings, it is clear that the Inquiry Officer has dealt with each and every documents, statements and evidence on record and due opportunity has been given to the applicant at every stage to defend himself. We also do not find any perversity in the orders passed by the above authorities. The Inquiry Officer, Disciplinary Authority, Appellate Authority and the Revisional Authoriy have dealt with the case of

the applicant as per law and we are of the considered view that there is no ambiguity/illegality in the orders of punishment at various level.

21. Resultantly, we do not find any reason to interfere with the punishment passed by the authorities. Hence, the O.A is dismissed being devoid of merit. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
am

(Uday Kumar Varma)
Administrative Member