

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00059/2017

DATED THIS THE 09TH DAY OF MAY, 2018

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Smt G. Roopa
W/o Shri S. Sundaresh
Aged: 44 years,
Postal Assistant,
Head Post Office,
Rajajinagar, Bangalore – 10
“Nimishamba”
H.No. 49, II Main,
13th Cross,
NGEF Layout II Stage,
Nagarbhavi,
Bangalore – 560 071

.....Applicant

(By Advocate Shri Ranganatha S. Jois)

Vs.

1. The Union of India,
Represented by its Secretary,
Telecommunication,
New Delhi – 110 002.

2. The Chief Post Master General
Karnataka Circle,
Bangalore – 560 001.

3. The Senior Superintendent of
Post offices, West Division,
Bangalore -86.

....Respondents

(By Shri S. Prakash Shetty, Senior Panel Counsel)

ORDER

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicant has filed the present OA seeking the following reliefs:

1. *Call for the records relating to the impugned order i. F/Disc-11/12-13 dated 30.06.2015 passed by the 3rd respondent vide Annexure-A5 ii. VIG/13-SMR/07/2015 dated 17.03.2016 passed by the 2nd respondent vide Annexure-A8, peruse and quash the same as arbitrary, illegal and void and without authority;*
2. *Issue consequential writ, order or direction to the respondents to reinstate the applicant into service with all consequential benefits in accordance with the order dated 30.06.2015 passed by the Disciplinary Authority and grant all the monetary benefits*
3. *Pass such orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, including the award of the costs of this application, in the interest of justice and equity.*

2. Based on the details mentioned in the OA as well the reply statement, the facts of the case is as follows; the applicant joined the respondent organization as Postal Assistant in 1994. While working in the said post she submitted leave application for 2 days CL on 04.03.2011 and was relieved under office arrangement. Simultaneously she submitted a leave application for grant of Child Care Leave from 04.03.2011 to 31.05.2011. The said leave was not granted on the ground of acute shortage of staff. However in spite of informing the applicant that her request for Child Care Leave has not been granted, she continued to remain absent. Several notices were sent to her between 06.04.2011 and 04.07.2011 directing her to rejoin duty. The applicant finally joined duty on 16.08.2011, worked for two days and again remained absent from 18.08.2011 unauthorizedly. Since the reasons provided by the applicant for absence from duty was not convincing, the period of absence

from 04.03.2011 to 15.08.2011 was treated as *dies non* vide communication dated 24.08.2011. Apparently the applicant submitted a representation on 17.08.2011 seeking voluntary retirement on medical grounds without producing any medical certificate. The applicant was then sent a communication on 26.09.2011 asking her to submit a representation specifically mentioning reasons for voluntary retirement/resignation. A reminder was also sent to her in this regard but neither she submitted a further communication for voluntary retirement nor joined duty. On 30.11.2011 the applicant submitted representation requesting grant of any kind of leave upto 31.01.2012. Further it appears that in spite of various reminders the applicant did not report to duty. On 12.06.2013 a Charge Memo was issued under Rule 14 of CCS(CCA) Rules, 1965 for unauthorized absence from duty from 18.08.2011 onwards (Annexure-A1). After the applicant submitted her response on 13.07.2013 (Annexure-A2) denying the charges, an Inquiry Officer was appointed. After the conclusion of the inquiry the Inquiry Officer submitted his report on 21.05.2015 (Annexure-A3) holding the charges as proved. The applicant in the meanwhile had resumed duties on 30.06.2014. After submission of representation to the Inquiry Report, the Disciplinary Authority imposed a penalty of withholding of one increment for a period of one year without cumulative effect vide order dated 30.06.2015.

3. The Appellate Authority under the provision of Rule 29 of CCS(CCA) Rules, 1965 took a *suo motu* review of the penalty order vide communication dated 11.08.2015 as he was of the view that the penalty imposed was not

commensurate with the gravity of the offence and a show cause notice was issued to the applicant vide memorandum dated 12.10.2015 (Annexure-A6) proposing to enhance the penalty as dismissal from service. The applicant submitted her representation dated 12.11.2015 (Annexure-A7) in response to the show cause notice. Thereafter the Appellate Authority i.e., Director of Postal Services issued an order dated 17.03.2016 (Annexure-A8) enhancing the penalty to that of removal from service with immediate effect. Following the same, the applicant was relieved on 22.03.2016. The applicant filed a revision petition dated 16.05.2016 addressed to the CPMG, Karnataka Circle requesting to treat her period of absence as CCL and other kinds of leave including EOL and reinstating her in service. It appears that the revision petition was forwarded to the Revision Authority but no decision has been taken as yet.

4. The applicant has contended in the OA that due to her pressing family problems, she requested for Child Care Leave which was denied. She was also subject to a disciplinary proceeding and the Disciplinary Authority imposed a penalty of stoppage of one increment. The entire period of absence was also treated as *dies non*. Since the applicant felt that the order was reasonable she did not challenge the same before any authority and accepted the same. However a *suo motu* enhancement of the penalty by the Appellate Authority without review proceedings was unwarranted and unjustified. Her dismissal from service ignoring the long service of 17 years and also the fact that her absence was to take care of family for which she applied Child Care

Leave appears unreasonable and unjustified. The absence of the applicant was not intentional and was due to pressing family problems. Her application for voluntary retirement was also not considered. The applicant further mentioned that the initiation of proceeding under Rule 29 was also without authority. The revised order of punishment ought to have been issued within 6 months. However it was issued after 9 months. Therefore the applicant prayed for granting the relief as sought by her.

5. The respondents in their reply statement had mentioned that the absence of the applicant without proper sanction of leave and failure to join duty in spite of repeated reminders was in violation of the Conduct Rules. The penalty imposed by the Disciplinary Authority was considered inadequate by the Appellate Authority and hence a *suo motu* review was taken. The proposal for revision of penalty was initiated after 45 days of limitation period of appeal is over and well within 6 months as stipulated under the relevant rules. Hence there is no violation of relevant provisions in this regard. As regards the request for voluntary retirement is concerned, the applicant had requested for discharge from duty on medical grounds but without indicating any medical certificate. Though she was asked to specify the reason for voluntary retirement, she did not respond to the same. When the leave sanctioning authority was not satisfied with the reason attributed by the applicant and the same was conveyed to the applicant through various communication, she did not make any attempt to join duty which shows that the applicant willfully remained absent from duty and failed to respond to the notice issued by the

authorities. As regards the revision petition is concerned the respondents mentioned that the applicant did prefer a revision petition. However the CPMG is the Revisionary Authority for all the departmental officials in the Karnataka Circle and such being the case all the revision petitions throughout the circle received are being considered on priority as per their seniority of receipt. Therefore the respondents submits that the order issued by the Appellate Authority does not warrant any interference.

6. The applicant has filed a rejoinder in which she submits that the Rule 29 of CCS(CCA) Rules provide that the Appellate Authority shall revise the order within 6 months from the date of order. But in the present case the order modifying the penalty has been issued nearly 9 months that is 3 months later than the expiry of 6 months. She also referred to a judgment of Principal Bench in O.A. No. 685/2011 in support of the contention. She further mentioned that the disciplinary proceeding should have been completed within 6 months from the initiation but the inquiry nearly took 2 years. Since there is an unreasonable delay in the departmental inquiry, the same is also vitiated. The applicant cited an order of the Hon'ble Apex Court in Prem Nath Bali Vs. Registrar, High Court of Delhi to support this contention. She further mentioned that there is no dispute to the fact that she was eligible for Child Care Leave including the Extraordinary leave which was not sanctioned. The applicant also joined on 30.06.2014 which clearly shows the intention of the applicant to discharge her duties. The leave sanctioning authority did not pass specific orders on her leave applications.

7. The applicant further submits that the applicant had pressing family problems forcing her to apply for leave. She joined on 16.08.2011 but her family problems forced her to take care of children for which she took further leave. The exigency of the applicant should have been taken note of by the respondents. Even the applicant reported for duty before the conclusion of departmental proceeding which indicates her intention to continue in the service. Even though the absence of duty amount to unauthorized absence, but does not mean it is willful. There is also no allegation of willful absence in the Charge Memo and reference was made to decision of Hon'ble Apex Court in the case of Krushna Kant B. Parmar Vs. Union of India reported in AIR 2012 (3) SCC 178 in this regard. The applicant also cited cases wherein the court had upheld the significance of female employees. She also mentioned that the authority has sanctioned Child Care Leave to other employees but it was not sanctioned in her case. She further mentioned that the Review Authority did not provide any specific ground as to why the punishment order of the Disciplinary Authority is disproportionate to the charges framed and hence the applicant was deprived of any opportunity to contest on the same grounds. Therefore she submits that the impugned order of the Appellate Authority is grossly unjustified.

8. The respondents have filed an additional reply in which they have submitted that Rule 29(2) of the CCS (CCA) Rules, 1965 states that no proceeding for revision shall be commenced until after:

- i. The expiry of the period of limitation for an appeal.

ii.The disposal of the appeal, where any such appeal has been preferred.

As per Rule-25 of CCS(CCA) Rules, 1965, the period of limitation of appeal is 45 days. In this case, the show cause notice was issued on 12.10.2015 against the disciplinary proceedings dated 30.06.2015. Therefore it is undisputed that the revision was taken up only after the expiry of period of limitation of appeal. Further as per DG P&T Order at SI No. 4 of Rule-29 CCS(CCA) Rules, 1965 it is clearly specified that the Appellate Authority to intimate the intention to revise the orders within a period of six months from the date of order proposed to be revised. Accordingly, in the instance case, the Appellate Authority has correctly issued the show cause notice well within the six months period from the date of issue of disciplinary proceedings, by proposing for revision of penalty. They also mentioned that the cases cited by the applicant is not relevant here as in that case it was taken up after the retirement of the government servant. They also mentioned that the delay in conducting departmental inquiry does not dispute the charge of unauthorized absence and deny the power to review the case. Even though the period of absence from 04.03.2011 to 15.08.2011 was treated as *dies non*, the applicant remained on unauthorized absence from 18.08.2011 to 29.06.2014 without any prior sanction of leave. Moreover it is also a settled position that leave cannot be claimed as a matter of right and the unauthorized absence from duty of the applicant for unusually long period of 39 months is clear violation of the relevant provisions of leave rules. They have also mentioned that it is true that Government of India allow Child Care Leave to women employees to take

care of their children in times of their need but this does not mean that CCL should disrupt the functioning of the government offices. While the employee requests for CCL under no circumstances she can proceed on leave without proper approval from the leave sanctioning authority. The respondents also referred to each of the cases cited by the applicant in their rejoinder and expressed how they were not relevant to the present case. He submits that the revision of penalty order was taken and reasonable opportunity was given to the applicant to represent on the proposed revision of penalty and detailed order have been passed citing reason as to why the offence committed by the applicant call for harsher punishment. Hence they contend that there is nothing unjustified or irregular in the action taken by the respondents and the penalty imposed on the applicant.

9. We have heard the learned counsel for either side. The learned counsel for the applicant referred in detail to the submission made in the OA and the rejoinder and virtually questioned the sanctity of the revision order saying that the order was passed after 9 months from the date of issue of the order by the Disciplinary Authority. The learned counsel also highlighted the fact that the applicant have been making request for sanctioning leave and hence her absence cannot be considered as willful. He submitted that the applicant had unblemish record in the 17 years of service and the family issues compelled her to apply for Child Care Leave but the authority denied her the Child Care Leave which is entitled to her and hence the applicant was forced to proceed on leave. This fact should have been taken into consideration and a lenient

view taken rather than imposing a very harsh punishment of dismissal or removal from service.

10. The learned counsel for the respondents highlighted the submission made in the reply statement and the additional reply and referred to various provisions of CCS (CCA) Rules indicating that the action has been initiated by the Appellate Authority within 6 months period. He also emphasized the fact that the applicant remained on unauthorized absence for more than 39 months which is in gross violation of the conduct rules and invites very harsh punishment. The Disciplinary Authority had taken a very lenient view and it was rightly felt by the Appellate Authority that the penalty imposed is grossly inadequate keeping in view the unauthorized absence of more than 3 years by the applicant. Therefore order was passed by the Appellate Authority after giving proper opportunity to the applicant to represent her case. The Appellate Authority has also passed a detailed order justifying the ground for enhancement of the penalty. Therefore the contention made by the applicant does not merit any consideration.

11. We have carefully considered the facts of the case and submissions made by either side. It is clearly evident from the records that the applicant was on unauthorized absence for which a charge memo was issued to her. A regular inquiry proceeding was held and the inquiry authority held the charges as proved. After obtaining representation from the applicant the Disciplinary Authority took a lenient view and imposed a minor penalty. However the Appellate Authority was of the view that the penalty imposed is grossly

inadequate vis-à-vis the charges and hence he proposed to revise the penalty. After giving an opportunity to the applicant to represent on the proposed enhancement of the penalty he passed a detailed order enhancing the penalty to that of removal from service. The issue for consideration in the present case is that whether the action taken by the Appellate Authority is in terms of the relevant provisions and whether the enhancement of penalty to that of removal from service is justified.

12. Rule 29 of the CCS (CCA) Rules provide for revision of the penalty order. Rule 29 (1) says as follows:

“(1) Notwithstanding anything contained in these rules-

- (i) the President; or*
- (ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or*
- (iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or*
- (iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or*
- (v) the appellate authority, within six months of the date of the order proposed to be revised or*
- (vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;*

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation

is necessary, and may-

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit."

Under Note 4 pertaining to Director General, P&T's order pertain to how to reckon the period of 6 months. The said note reads as follows:

"(4) How to reckon the period of revision of six months.- According to Rule 29 (1) (v), an Appellate Authority may within a period of six months of the date of the order proposed to be revised call for the records of any enquiry at any time either on his own motion or otherwise and revise any order made under these rules. In D.G., P & T., Letter No.15/10/67-Disc., dated the 22nd May, 1968 (not printed), it was stated that the Appellate Authority, calling for the relevant records of the case with a view to revising an order already passed within six months of the date of the order to be revised would be acting well within this time-limit. It has now become necessary, however, to revise this order in view of a recent judgment of a High Court. Accordingly, it is hereby clarified that it will be incumbent upon the Appellate Authority to make a specific mention of the fact that it proposes to revise the order already passed, when calling for the papers. In other words, the Appellate Authority should clearly indicate in the order calling for the records of the case that it proposes to revise the order already passed, when calling for the papers. In other words, the Appellate Authority should clearly indicate in the order calling for the records of the case that it proposes to revise the order and it is in this connection the papers are being called for. At the same time, the Government servant should also be informed that the Appellate Authority proposes to revise the order. It is necessary to ensure that the intention of the Appellate Authority to revise the orders in this way is conveyed to all concerned within the stipulated period of six months from the date of the order proposed to be revised."

It is clear from the aforesaid provisions that the Appellate Authority initiated the process within a period of 6 months from the date of order. Therefore we do

not find any violation of the rules on the part of the Appellate Authority in this regard as contended by the applicant.

13. Coming to the enhancement of the penalty itself it is an undisputed fact that the applicant even after the initial period of absence from 04.03.2011 to 15.08.2011 was treated as *dies non*, proceeded on leave after working for 2 days and remained absent for nearly 3 years. Simply sending leave applications and not responding to orders for rejoining the duties would clearly establish it not only as a case of unauthorized absence but also willful as the applicant completely ignored the notices sent asking her to resume the duties. If the CCL was not sanctioned by the sanctioning authority, the applicant could have approached the higher authority for sanction of CCL explaining her pressing requirement but it does not justify her action to simply remaining absent without any sanction of leave and ignoring communications for joining duties. A regular departmental inquiry was held after giving opportunity to the applicant to defend herself and the charges were held as proved. No doubt the charges were serious enough calling for a major penalty though the Disciplinary Authority imposed only a minor penalty. Therefore the action on the part of the Appellate Authority to propose for enhancement of penalty cannot be considered as unjustified. We have also gone through the detailed order passed by the Appellate Authority giving reasons for enhancement of the penalty and find merit in the argument put forth by the Appellate Authority. Therefore we do not find it inappropriate in enhancement of the penalty earlier passed by the Disciplinary Authority. However we note that the applicant had

put in 17 years service earlier without any blemish or similar unauthorized absence. At least nothing has been brought out by the respondents to that effect. We also take note of the submission of the applicant that she had serious personal problems compelling her to proceed on leave. The respondents should have also taken sympathetic view to sanction her some days of CCL. However even the compelling circumstances does not justify unauthorized absence for more than 3 years. On detailed consideration of facts and circumstances of the case we are of the view that the Appellate Authority could have considered her previous records of 17 years and also her compelling circumstances while enhancing the penalty. Therefore it would meet the ends of justice if the enhancement of penalty is modified to compulsory retirement instead of removal from service which will deny her of all benefits of the past services. Therefore keeping in view the totality of circumstances we are inclined to interfere in the revised penalty imposed by the Appellate Authority and modify penalty imposed by the Appellate Authority as that of removal from service to that of compulsory retirement from service.

14. Therefore the OA is partly allowed modifying the penalty of removal from service to that of compulsory retirement. We also hold that the applicant will be entitled to get necessary consequent benefits based on the penalty of compulsory retirement which shall be provided within a period of three months from receipt of a copy of this order.

15. The OA is accordingly disposed of in terms of above. No order as to costs.

(PRASANNA KUMAR PRADHAN)
SURESH)
MEMBER (A)

(DR. K.B.
MEMBER (J)

/ksk/

Annexures referred to by the applicants in OA No. 170/00059/2017

Annexure A1 Copy of the charge memo dated 12.06.2013
Annexure A2 Copy of the reply to charge memo dated 13.07.2013
Annexure A3 Copy of the Inquiry Officer report dated 25.05.2015
Annexure A4 Copy of the reply submitted to the show cause notice
Annexure A5 Copy of the impugned order dated 30.06.2015
Annexure A6 Copy of the notice dated 21.10.2015
Annexure A7 Copy of the reply to the notice dated 12.11.2015
Annexure A8 Copy of the order dated 17.03.2016
Annexure A9 Copy of the judgment in Civil Appeal No. 4506/2014
Annexure A10 Copy of the review petition before the 2nd respondent filed by the applicant.

Annexures referred in Reply Statement

Annexure R1 Copy of the leave application dated 04.03.2011
Annexure R2 Copy of the office note on the leave application submitted by the applicant
Annexure R3 Copy of the letter No. B1/PF/GR dated 22.03.2011
Annexure R4 Copy of the letter No. 06/11-12 dated 08.04.2011
Annexure R5 Copy of the office note regarding the absence of the applicant.
Annexure R6A Copy of the letter No. B1/PF/GR dated 06.04.2011
Annexure R6B Copy of the letter No. B1/PF/GR dated 21.04.2011
Annexure R6C Copy of the letter No. B1/PF/GR dated 04.05.2011
Annexure R6D Copy of the letter No. B1/PF/GR dated 27.06.2011
Annexure R6E Copy of the letter No. B1/PF/GR dated 04.07.2011
Annexure R7 Copy of the letter dated 28.04.2011 on the applicant's absence
Annexure R8 Copy of the letter dated 26.08.2011 regarding unauthorized absence of the applicant
Annexure R9 Copy of the letter No. B1/PF/GR dated 24.08.2011
Annexure R10 Copy of the leave application dated 17.08.2011
Annexure R11 Copy of the letter No. B1/PF/GR dated 26.09.2011
Annexure R12 Copy of the letter No. B1/PF/GR dated 01.11.2011
Annexure R13 Copy of the letter submitted by the applicant requesting for sanction of leave dated nil
Annexure R14 Copy of the letter submitted by the applicant requesting for grant of leave dated nil
Annexure R15 Copy of letter No. B1/PF/GR dated 18.01.2012
Annexure R16A Copy of letter No. B1/PF/GR dated 28.02.2012

Annexure R16B Copy of letter No. B1/PF/GR dated 08.06.2012

Annexure R17 Copy of extract of Rule regarding kinds of leave due and admissible.

Annexure R18 Copy of the letter submitted by the applicant requesting for sanction of leave dated nil

Annexure R19 Copy of the letter No. B1/PF/GR dated 31.08.2012

Annexure R20 Copy of extract regarding Rule 220 of the Supplementary Rules

Annexure R21 Copy of the extract of Chapter II General Conditions Rule 7. Right to leave

Annexure R22 Copy of extract of P&T Manual Volume-III regarding resignation

Annexure R23 Copy of the relevant extract of Swamy's Leave Rules

Annexure R24 Copy of extract of relevant rules in Discipline Rules for departmental staff

Annexures referred in Rejoinder

Annexure A11 Copy of Central Administrative Tribunal, PB, New Delhi order dated 03.01.2014 in O.A. No. 685/2011

Annexure A12 Copy of the Hon'ble Supreme Court order in Civil Appeal No. 958/2010 dated 16.12.2015

Annexure A13 Copy of the Hon'ble Supreme Court order in Civil Appeal No. 2106 of 2012 dated 15.12.2012

Annexure A14 Copy of Central Administrative Tribunal, PB, New Delhi order dated 13.05.2015 in O.A. No. 2805/2013

Annexure A15 Copy of Central Administrative Tribunal, PB, New Delhi order dated 15.12.2014 in O.A. No. 143/2013

Annexure A16 Copy of Hon'ble High Court of Delhi order dated 20.11.2006

Annexure A17 Copies of letters from SSPOs, Postal Divisions, Bangalore issued under the RTI Act

Annexure A18 Copy of Central Administrative Tribunal, Hyderabad order in OA No. 123/2008 dated 23.07.2009

Annexure A19 Copy of Central Administrative Tribunal, Lucknow order in OA No. 516/2010 dated 10.08.2011

Annexures referred in Additional Reply Statement

Annexure AR1 Copy of extract of relevant provisions of Rule 43-C for Child Care Leave
