

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3844/2016

Thursday, this the 14th day of March 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Shri Radhey Shyam Boyal
Age 53 (Mail Motor Service)
Son of L R Boyal
Residing at Boyal Bhawan
Gothra, PO Khetri Nagar
District Jhunjhunu, Rajasthan
Pin 333 504
Group A

..Applicant
(Ms. Susmita Mahala, Advocate)

Versus

1. The Union of India
Service through its Secretary
Ministry of Communication & IT
Its office at Dak Bhawan, Sansad Marg
New Delhi – 110 001
2. The Secretary (Posts)
Govt. of India
Ministry of Communication & IT
Department of Post
Dak Bhawan, Sansad Marg
New Delhi – 110 001
3. Director General (Posts)
Govt. of India
Ministry of Communication & IT
Department of Post
Dak Bhawan, Sansad Marg
New Delhi – 110 001
4. Assistant Director General (SGP)
Govt. of India
Ministry of Communication & IT
Department of Post
Dak Bhawan, Sansad Marg
New Delhi – 110 001

5. Chief Post Master General
 Madhya Pradesh Circle
 Bhopal – 462 012 (MP) ..Respondents
 (Mr. Piyush Gaur, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant was appointed as Manager, Mail Motor Service (MMS) (Group 'A' Gazetted) in the Ministry of Communications & Information Technology, the 2nd respondent herein, and was posted in the Office of the Chief Postmaster General, Punjab Circle. He intended to visit Oman in the year 2003 and on his application, 'no objection certificate' was issued, enabling him to proceed to Oman for a period of 31 days. The applicant proceeded to Oman but did not return. The respondents went on issuing reminders and in fact, he was transferred to Bhopal as Manager, MMS on 17.05.2004. From there also, number of reminders were sent. On his part, the applicant was going on addressing letters seeking extension of leave. Through a letter dated 11.09.2006, the applicant was required to join duties immediately.

2. The applicant states that when he was on his way to join duties, he met with an accident, and on the advice given by the doctors, he had to be on bed rest for two months. He is said to have appeared before the Medical Board on 30.12.2006. Even

while any progress in the context of his joining the duty has taken place, the applicant submitted resignation on 29.04.2007. However, he said to have withdrawn the same on 24.02.2014.

3. The respondents issued notification dated 19.11.2015 in terms of Rule 12 (2) of CCS (Leave) Rules, 1972 (for short 'Rules'), stating that the applicant is deemed to have resigned from service w.e.f. 28.02.2004. The same is challenged in this O.A.

4. The applicant contends that Rule 12 of the Rules was amended w.e.f. 29.03.2012 and earlier to that, there was no provision for the deemed resignation. He submits that since the period of absence is the one that preceded the amendment, the impugned order cannot be sustained in law. It is also stated that no opportunity was given to the applicant before the notification was issued.

5. The respondents filed a detailed counter affidavit opposing the O.A. It is stated that the applicant left India in the year 2003 and thereafter he did not report for duty, in spite of repeated reminders and memos. They contend that as required under Rule 12 (2) of the Rules, a memorandum dated 09.09.2015 was issued requiring the applicant to explain as to why an order of deemed resignation be not passed against him, and that reply dated 07.10.2015 submitted by the applicant was treated as unsatisfactory. It is also stated that since the absence

continued by the time the Rule was amended, there existed every justification for passing the impugned order. Other grounds are also pleaded.

6. We heard Ms. Susmita Mahala, learned counsel for applicant and Mr. Piyush Gaur, learned counsel for respondents in detail.

7. It is a matter of record that the applicant was granted 'no objection certificate' in the year 2003 to visit Oman for a period of 31 days. The applicant did not report to duty not only after expiry of 31 days, but even more than a decade thereafter. Though it is mentioned that he made an attempt to join duty in the year 2006, but met with an accident, the record is not supportive of this. According to the applicant, he was suggested bed rest for two months. However, after expiry of this period, he did not join duty, but submitted a resignation on 29.04.2007.

8. Obviously because the applicant was not on duty, the respondents did not find it proper or appropriate to deal with the letter of resignation. It is fundamental that the resignation of an employee can be accepted only if he is in service and on duty. Having waited for years together, the applicant has withdrawn letter of resignation and that episode ended with the same.

9. It is not as if that applicant joined the duty after withdrawing the letter of resignation. He did not report to duty, nor did he make any effort in that direction. Rule 12 of the Rules, before its amendment, read as under:-

“12. Maximum amount of continuous leave.- Unless the President, in view of the exceptional circumstances of the case otherwise determines, no Government servant shall be granted leave of any kind for a continuous period exceeding five years.”

It was amended on 29.03.2012 and as of now, it reads:

“12. (1) No Government Servant shall be granted leave of any kind for a continuous period exceeding five years.

(2) Unless the President, in view of the exceptional circumstances of the case, otherwise determines, a Government servant who remains absent from duty for a continuous period exceeding five years other than on foreign service, with or without leave, shall be deemed to have resigned from the Government service:

Provided that a reasonable opportunity to explain the reasons for such absence shall be given to that Government servant before provisions of sub-rule (2) are invoked.”

10. It is true that the amendment came into force after the commencement of absence or leave, as the case may be, of the applicant. The fact, however, remains that the absence spilled much beyond the date of amendment and there is every justification for the respondents in invoking the Rule against the applicant.

11. Though the applicant pleaded that no opportunity was provided to him, as required under proviso to Rule 12 (2) of the Rules, the record discloses that he was issued a detailed memorandum dated 09.09.2015. The operative portion thereof reads as under:-

“5. Whereas, it is the fact that Shri Boyal is absent from duty from 01.04.2004 i.e. while working as Manager (MMS), Punjab Circle, he proceeded on four months' ex-India leave with NOC to visit abroad (Sultanate of Oman) and thereafter, never returned to the Department to assume the charge of the post in Madhya Pradesh Circle. He remained absent unauthorisedly and in violation of sanctioned ex-India leave (four months), overstayed in Oman from April, 2004 to till date. He repeatedly disobeyed the directions of Punjab Circle and Madhya Pradesh Circle. In nutshell, he abstained from duties for more than 11 years and 8 months i.e. w.e.f. 01.04.2004 to till date, whereas, Rule 12 of CCS (Leave) Rules, 1972 provides as under:-

12. (1) No Government Servant shall be granted leave of any kind for a continuous period exceeding five years.

(2) Unless the President, in view of the exceptional circumstances of the case, otherwise determines, a Government servant who remains absent from duty for a continuous period exceeding five years other than on foreign service, with or without leave, shall be deemed to have resigned from the Government service:

Provided that a reasonable opportunity to explain the reasons for such absence shall be given to that Government servant before provisions of sub-rule (2) are invoked.”

6. Accordingly, taking cognizance of Rule 12 (2) and proviso thereunder, Shri Radhey Shyam Boyal is directed to explain the reasons for remaining absent from duty for approximately 11 years and 8 months and continued to stay in a foreign country without NOC as well as explain why an action should not be taken against him in terms of

Rule 12 (2) of CCS (Leave) Rules, 1972 and other relevant rules.”

12. After receipt of this, the applicant submitted a reply dated 07.10.2015, which reads as under:-

“In reference to your letter dated 09/09/2015, please be informed that I had proceeded to Oman after obtaining NOC from Department of Posts, Dak Bhawan through proper channel. Copy of NOC is enclosed here with for your kind reference please.

Regarding unauthorized leave, please be informed that I had always applied for leave duly supported with medical certificates/unfitness statement from Govt. of Oman Hospital and when in India application was supported with Medical Unfit Certificate duly issued by Govt. authorized Chief Medical Officer, Govt. Hospital, Jhunjhunu (Rajasthan). Copies of these two letters are also hereby enclosed for your kind reference.

All records of my leave applications are available in the office of CPMG, MP Circle, Bhopal. Many of them were copied to DG (Posts), Dak Bhawan also for information and necessary action.

As far as my leave applications are concerned, they were regularly submitted to the Competent authority and as such I have never been at default.

I hope your good self will be satisfied with the above explanations.”

Nowhere in his reply, the applicant stated that the amended Rule does not apply to his case. He was going on making applications for extension of leave.

13. Learned counsel for applicant submitted that disciplinary inquiry was not conducted, as required under Article 311 (2) of the Constitution. That occasion would arise only if any

punishment is proposed to be imposed. In the instant case, it is not the case of punishment. Even if it is a case of an employee was absent for a period exceeding five years on leave, an order under Rule 12 can be passed. No Government can have the luxury of having an employee, who continued to stay in a foreign country for more than a decade, without leave.

14. We do not find any merit in this O.A. It is accordingly dismissed. We, however, direct that the respondents shall finalize the benefits that are payable to the applicant consequent upon deemed resignation, within a period of three months.

There shall be no order as to costs.

(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member (A) Chairman

March 14, 2019
/sunil/