

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01440/2018

DATED THIS THE 05th DAY OF SEPTEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

K.C.Channaraju
S/o Late K.P.Channamada Shetty
Aged 39 years
Ex-GDS BPM, Malgal BO
a/w Kanakapura SO-562 117.
Channapatna Division, residing at
No.63, 4th Main Road
Kasturiba Nagar
Mysore Road
Bengaluru-560 026.

....Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Department of Posts
Dak Bhavan
New Delhi-110 001.
2. The Postmaster General
Bengaluru HQ Region
Bengaluru-560 001.
3. The Director of Postal Services
O/o the Postmaster General
Bengaluru Region
Bengaluru-560 001.
4. The Superintendent of Post Offices
Channapatna Division
Channapatna-562 160.

....Respondents

(By Advocate Sri M.Vasudeva Rao, Sr.SC for CG)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that while working as GDS BMP at Malgal BO in Channapatna Division since 29.9.2007, he met with an accident on 20.01.2014 on his return from Kallahalli BO after attending the RPLI meeting. The applicant was riding a two wheeler when the accident occurred and he fell down suffering major injuries in his right leg below the knee and he suffered a bone fracture. He had to undergo a major surgery on 29.01.2014. Though the applicant had suffered injury in the course of his employment and arising out of his employment, the Postal Department did not pay any compensation to him. He had steel plates fixed in his leg and was under constant medical care till 9.3.2014. He had to shift his family from Malgal village to Bengaluru for taking medical treatment. He had to undergo further procedure to get the steel plates from his leg for which he applied for leave on medical grounds from 18.10.2014. He was sanctioned up to 30.11.2014. But he could not rejoin duty on 1.12.2014 and he was taking medical treatment in Bengaluru. After recovery from illness, he submitted a representation to the 4th respondent on 7.10.2015 to permit him to resume duty. In response to the same, the applicant was directed vide letter dtd.13.10.2015(Annexure-A1) to produce medical bills. In response to the same, the applicant furnished the documents sought for. However, 4th respondent vide letter dtd.9.11.2015(Annexure-A2) stated that there were some discrepancies in the prescription slips and also sought explanation for the gaps in the follow up treatment. Then the applicant has duly furnished the information sought for vide his representation dtd.18.11.2015(Annexure-A3). Thereafter, the disciplinary proceedings were initiated against the applicant under Rule 10 of the GDS (C&E) Rules, 2011 by issuing a memorandum dtd.17.11.2015 framing a charge that he

remained absent unauthorisedly from 1.12.2014(Annexure-A4). Thereafter, the 4th respondent, in response to the representation, informed the applicant vide letter dtd.1.12.2015(Annexure-A5) to shift his residence and provide accommodation for BO at Malgal as a condition precedent for his reinstatement. However, the same would be considered after verification of the treatment obtained by him in Victoria Hospital. But the applicant was requesting the 4th respondent to reinstate him in service. In response to the request, the 4th respondent stated in his letter dtd.26.4.2016(Annexure-A6) that he had taken treatment from only one doctor and that there are gaps in the duration of treatment taken by him. Then the applicant submitted a detailed representation to the 4th respondent on 7.5.2016 answering the queries of the 4th respondent(Annexure-A7). However, the 4th respondent in his letter dtd.30.5.2016(Annexure-A8) declined to concede to the request of the applicant on the ground that he was not residing in the Malgal village and he did not produce documents for having taken treatment continuously from 6.10.2014 and that he has attempted to produce a fake agreement for accommodation of the BO. In the meantime, the Inquiry Officer(IO) held an inquiry in to the charge against the applicant of unauthorised absence on 4.3.2016. The applicant has admitted that he remained absent on medical grounds. Without considering the ground urged by the applicant and the treatment taken by him, the IO recorded that the charge was admitted by the applicant. Accordingly, the IO has submitted his report dtd.7.3.2016 holding that the charge against the applicant has been proved. The 4th respondent by letter dtd.8.3.2016 directed the applicant to submit his representation on the findings of inquiry within 15 days(Annexure-A9 series). The applicant submitted his representation on 24.3.2016 explaining the

circumstances for his absence. Thereafter, the 4th respondent, without considering the reasons for absence, passed an order dtd.31.5.2016(Annexure-A10) removing the applicant from engagement with immediate effect. Then the applicant submitted an appeal to the 3rd respondent on 28.6.2016(Annexure-A11) against the order of penalty. The 3rd respondent, without considering the appeal as per Rule 18 of the GDS (C&E) Rules, 2011, rejected the same mechanically by order dtd.19.07.2017(Annexure-A12) confirming the order of the 4th respondent. Thereafter, the applicant submitted a petition to the 2nd respondent on 6.11.2017(Annexure-A13) seeking revision of the order passed by the 3rd respondent. However, the 2nd respondent rejected the same vide order dtd.7.2.2018(Annexure-A14) thereby upholding the orders of the disciplinary authority and appellate authority.

2. The applicant submits that the allegation that he failed to reside in the BO village is not a part of charge and no inquiry was held in to the same. The 4th respondent has not only relied on the findings of the inquiry wherein the applicant admitted the charge but also the information collected by him outside the inquiry for imposing the penalty on the applicant. The findings of the 4th respondent are different from the article of charge. Hence, the penalty imposed on the applicant based on such findings is in violation of principles of natural justice. The procedure adopted by the 4th respondent to impose penalty is not in accordance with law. He has not considered the reasons given by the applicant for remaining absent. The 3rd respondent has failed to discharge his statutory obligations as per GDS (C&E) Rules, 2011. The applicant submits that the penalty imposed on him is disproportionate to the gravity of the charge against him. The alleged misconduct against him has not resulted in any loss to the Government, nor has

caused any inconvenience to the concerned authorities. He remained absent due to reasons beyond his control and his absence is not wilful. Hence, the penalty imposed on him is not justified. Accordingly, he filed the present OA seeking the following relief:

- i. *To quash the (a) memo No.F/disc/CKC/15-16 dated at Channapatna the 31.05.2016, issued by the respondent No.4, Annexure-A10, (b) Memo No.BGR/Vig/16-1/2017 dated at Bengaluru-560001 the 04/19.07.2017, issued by the respondent No.3, Annexure-A12 and (c) Memo No.BGR/Vig/15-01/2017 dated at Bengaluru-560001 the 07.02.2018, issued by the respondent No.2, Annexure-A14 .*
 - ii. *Direct the respondents to reinstate the applicant in service and treat his 'put off' duty period and the interregnum period from the date of removal to the date of reinstatement as on duty and extend him consequential benefits accordingly including continuity of service.*
3. The respondents, on the other hand, have submitted in their reply statement that the applicant while working as GDSBPM, Malgal BO Kanakapura SO did not turn up for duty on 1.12.2014 after availing LWA on medical grounds on 18.10.14 to 30.11.14. He was directed by IP vide letter dtd.8.12.2014 to rejoin duty. But, the letters addressed to his official address and residential address i.e. Malgal BO and Kolagondanahalli village, Kodihalli which were sent by IP, Kanakapura Sub Division were received back as undelivered with the remarks 'Party left the place' and 'Party not in village' respectively. By letter dtd.23.2.2015, the applicant was directed to rejoin duty with the direction that, if he fails to rejoin duty within 27.2.2015, his unauthorised absence will be treated as 'dies non' besides initiating suitable disciplinary action. But the said letter was also received back at SP, CNA with the remarks 'party left the place' and 'addressee not residing in the village' respectively. Again vide letter dtd.18.3.2015, the 4th respondent directed the applicant to rejoin duty at once with the same warning but the said letters were received back with the above said remarks. Further, the letters of IP,

Kanakapura Sub Division directing the applicant to rejoin duty were also received back with the same remarks. As all the letters sent by the 4th respondent and IO, Kanakapura Sub Division to the applicant to his residential address and official address were received back to the senders without being delivered, the arrangements were made to paste a notice to his house about his absence. Accordingly, the Mail Overseer, Kanakapura Sub Division on 18.5.2015 has pasted a notice dtd.12.5.2015 to the door of the applicant's residence at Kolagondanahalli village. A mahazar was also being drawn in this regard in the presence of independent witnesses of the Kolagondanahalli village. IP, Kanakapura Sub Division had also reported that whereabouts of the applicant was not known. Hence, in order to bring it to the notice of the applicant through wide publicity, a notice was published in local daily news paper 'Bayaluseeme' dtd.21.7.2015 in which he was directed that, he should be present at the O/o Supdt. of Post Offices, Channapatna Division within 10 days of publishing the notice failing which it will be considered that this is the final notice to him and the action will be taken against him as per the provisions of the Rules. The applicant vide his letter dtd.7.10.2015 has requested the 4th respondent to rejoin duty at Malgal BO. In his representation he had informed that, he was not well and taking treatment at Bengaluru and also residing at Bengaluru. Hence, the memo of articles of charge was addressed to his address at Bengaluru. 4th respondent vide letter dtd.13.10.2015 directed the applicant to produce supporting documents relating to his medical treatment and also to confirm his place of residence for disposing his representation dtd.7.10.2015. For this, the applicant had sent some medical documents. Again SP, CNA office had addressed him on 9.11.2015, as the documents submitted by him was not covering the points

called for by 4th respondent on 13.10.2015. He was further directed to intimate his residence at Malgal BO for examining his request for rejoining duty. The applicant in his representation dtd.18.11.2015 had intimated his proposed address at Malgal BO. As he failed to produce any agreement paper with the proposed landlord, 4th respondent directed him on 1.12.2015 to produce the same. The rent agreement papers sent by the applicant were sent to Inspector Posts, Kanakapura Sub Division on 20.1.2016 for verification of genuineness. The IP, Kanakapura Sub Division had reported that the rent agreement submitted by the applicant is not genuine as the said landlord denied to have given her house to anybody on rent and also refused to give statement in this regard. Further, a few villagers stated that the applicant is not residing in the Malgal village since two years. Finally, 4th respondent vide letter dtd.27.5.2016, informed the applicant that his request to rejoin duty at Malgal BO cannot be considered as he failed to provide proof of residence at Malgal BO which is mandatory for the GDSBPM to run the BO as per the provisions of the Rules. Further, it has come to the notice of 4th respondent from various sources that the applicant was in the money lending business using trust and faith of the department and had taken loan from many people in the villages to cover up his money lending business and was unable to repay the huge debt amount which is running into more than 10-15 lakhs. His probable residing in the BO villages is very remote as the people who had given money to him are waiting for him to visit the village and for this reason he is not residing in the BO village. All the efforts made to bring to the notice of the applicant about the directions of respondents to rejoin duty did not yield any results. Hence, as per the provisions of the rules, disciplinary action under Rule 10 of GDS (C&E) Rules, 2011 was initiated by issuing a memo of the

articles of charge to which the applicant had submitted his representation dtd.9.12.2015. IO and PO were appointed. In the preliminary sitting held on 4.3.2016, the applicant had accepted the articles of charge framed against him before the IO and given a letter to this effect(Annexure-R1). The IO report was sent to the CGDS on 8.3.2016. His representation for the same was received on 24.3.2016. Considering all the facts of the case, the applicant was removed from engagement vide SP, CNA office memo dtd.31.5.2016. After removal from engagement, the applicant had preferred appeal to the DPS vide his letter dtd.28.6.2016. His appeal was rejected by DPS, Bengaluru Region vide memo dtd.4/19.7.2017. Against which, the applicant had preferred revision petition dtd.6.11.2017 addressed to the PMG. The PMG, Bengaluru vide memo dtd.7.2.2018 had confirmed the orders of Appellate Authority.

4. The respondents submit that there is no provision in the department for medical reimbursement to the GDS and hence the accident expenses were not paid to applicant. If the applicant wanted to shift his family to Bengaluru for medical treatment, he should have informed the same to the department. He remained absent from duty without applying leave and thereby failed to follow the rules of the department. The department had served notices to his official address and his permanent residential address and directed to rejoin duty. But notices were not served and returned back as he was not available in those addresses. Even the villagers and neighbours failed to intimate his address and his whereabouts were not known to anyone for some time. If he had really shifted his family for medical treatment, his neighbours or any one of his colleagues might have known his address. Leaving his job abruptly without applying for leave and without informing his whereabouts to anyone sounds something fishy. During his

personal visit to DO, the GDS had accepted his financial commitment to the tune of Rs.15-20 lakhs and the possible threat of his life if he happens to reside in that village. His pleading on the ground of past ill health will not amount to his keeping quiet even without applying for leave for his absence from 1.12.2014 during which period he was unable to visit the hospital in Bangalore as an outpatient. If the applicant was able to apply leave up to 30.11.2014, he should have continued the same from 1.12.2014, if he really wanted leave for medical purpose. As a responsible GDS, if his intention was to come back to duty, he could have sent the leave application through his family members as he was conscious and was a senior GDS. He utterly failed to follow the rules of the department. The submissions of the applicant does not establish or reveal his motive for remaining absent from 1.12.2014 and producing some broken medical prescription for his treatment to broken organs which was cured during Jan 2014 and he had worked thereafter till the date of his absconding. This act is purposeful. The Post Office is not his own enterprise to enter when he wanted the necessity to rejoin. There are certain conditions and clarifications that has to be clarified by him to rejoin duty. But he failed to reply properly. Under the shelter of the medical treatment, he is trying to gain sympathy and hiding his unauthorised absence for which he has been charge sheeted by the department. As per the GDS and Conduct and Engagement Rules-2011, the GDS BPM should reside in the BO village. Hence, the applicant was asked to provide the proof for the same. But he had produced one Lease Agreement which was found fake during the investigation. When he decided to abscond from the place of his working without giving a clue to anyone about his whereabouts for the reasons best known to him, he should have known about the consequences of the same

by the department as per the provisions of the Rules. His unauthorised absence is not for medical reason. The disciplinary action has been initiated against him for his unauthorised absence without applying leave. After a gap of nearly a year followed by his unauthorised absence to duty from 1.12.2014, the applicant had appeared before IP, Kanakapura Sub Division on 7.10.2015 for rejoining duty by giving a letter to the appointing authority. Before allowing him to rejoin duty, permission from the appointing authority is required as the GDS has to fulfil certain conditions to work as BPM. Mere providing medical certificate for the period of absence will not entitle him for rejoining duty. He had failed to follow the departmental rules while remaining absent from duty. Whether it is for his own reason or medical grounds he should follow the rules. The acceptance of charge before the IO implies that he remained absent from duty without following departmental rules. The reasons for the same are not relevant. Being a Disciplinary Authority, there was no other option but to remove him for his act of absconding in the interest of the department as any other graded punishment would not have kept him away from his village where he is not able to reside due to his own misdeeds. He had deceived many innocent public and now he himself is posing innocent to gain lenience. The decision taken by the Disciplinary Authority, Appellate Authority and Revisionary Authority is in order. The applicant himself is responsible for his misconduct. No authority will dispose the cases casually. When the charge was accepted himself by the applicant, the decision taken by the concerned authority as per the rules prescribed is in order.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record. The applicant has filed written arguments note. The issue in this case is in a very small compass. The applicant was absent

unauthorisedly from 01.12.2014 and he was charge sheeted for the same. The applicant would claim that because of the medical treatment undergone by him and other personal problems, he was absent and in the inquiry he admitted the same and requested for being given lenient treatment vide Annexure-R1. He would also claim that his not staying in the village and giving a fake rental agreement etc., were not part of the charge and therefore the disciplinary authority discussing the same would vitiate the proceedings. The disciplinary authority himself has mentioned that though it is not part of the charge, it would be pertinent to mention the same to reinforce the point that the applicant was untrustworthy and that his integrity and devotion to duty were clearly doubtful. However, the conclusion on the disciplinary proceedings has been based on the charge being proved beyond doubt and the applicant had also admitted the same. The appellate authority has also correctly upheld the order of the disciplinary authority by concentrating on the unauthorised absence from 1.12.2014 to 07.10.2015. It is clear that the applicant was very much aware of the rules of the department since he himself had taken leave on earlier occasions on medical grounds and it is also a fact that even though the accident happened in January, 2014, the applicant was working with the department till October, 2014 and at any rate as noted by the appellate authority, he could have taken help from any of his family members or friends to submit the leave application and he could have taken permission from the competent authority before leaving his official address. The applicant had clearly not obtained leave from the competent authority and had also left the last known official address without any information as to where he could be reached. All these points clearly prove the dereliction of duty and lack of devotion to duty which he himself had admitted as

already noted. He has been given adequate opportunity to defend himself and we find no lacunae in the process adopted by the respondents.

6. The OA lacks merit and is therefore dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/01440/2018

Annexure-A1: Copy of the letter dtd.13.10.2015

Annexure-A2: Copy of the letter dtd.09.11.2015

Annexure-A3: Copy of applicant's representation dtd.18.1.2015

Annexure-A4: Copy of the memo dtd.17.11.2015

Annexure-A5: Copy of the letter dtd.01.12.2015
Annexure-A6: Copy of the letter dtd.26.04.2016
Annexure-A7: Copy of applicant's representation dtd.7.5.2016
Annexure-A8: Copy of the order dtd.30.5.2016
Annexure-A9: Copy of the letter dtd.8.3.2016 with the inquiry report dtd.7.3.2016
Annexure-A10: Copy of the order dtd.31.5.2016
Annexure-A11: Copy of applicant's appeal dtd.28.6.2016
Annexure-A12: Copy of the order dtd.19.7.2017
Annexure-A13: Copy of applicant's revision petition dtd.6.11.2017
Annexure-A14: Copy of the order dtd.7.2.2018

Annexures with reply statement:

Annexure-R1: Copy of letter dtd.4.3.2016
