

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00402/2016

Reserved on : 11.04.2019
Pronounced on: 14 .05.2019

CORAM:

**HON'BLE MR.GOKUL CHANDRA PATI, MEMBER (ADMN.)
HON'BLE SWARUP KUMAR MISHRA, MEMBER (JUDL.)**

Shri Binod Bihari Modi, aged about 45 years, S/o. SHIROPANI Modi, resident At/Vill. Teranti, PO. Sendkap, Via-Raisuan, PS- Sadar Raisuan, Dist. Keonjhar, Odisha, PIN-758 013.

...Applicant

By the Advocate(s)-M/s.C.P.Sahani, P.K.Samal, D.P.Mohapatra

-VERSUS-

1. Union of India represented through its Secretary Cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Postmaster General, Odisha Circle, At/Po. Bhubaneswar, Dist. Khurda, Odisha-751001.
3. The Director of Postal Services, Sambalpur Region, Sambalpur-768001.
4. The Superintendent of Post Offices, Keonjhar Division, Keonjhargarh-758001.

...Respondents

By the Advocate(s)- Mr.D.K.Mallick

ORDER

GOKUL CHANDRA PATI, MEMBER(A)

The applicant has filed this Original Application (in short OA) under section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

“(i) Admit the Original Application; and

(ii) After hearing the counsels for the parties be further pleased to quash the impugned orders at Annexure-A/8

and Annexure-A/11 and direct the Departmental respondent(s) to release the reduced salary due to reduction to lower stage treating the period of suspension as duty for all purposes.

(iii) Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice."

2. The facts of the case in brief are that the applicant states that he fell ill on 10.12.2014 when he was working as the Sub-Postmaster (in short SPM), Jhumpura SO, for which he had to proceed on leave. He remained on leave upto 23.1.2015 due to illness and joined duty as SPM, Jhumpura on 24.1.2015. It is stated that the applicant again fell ill on 30.1.2015 for which he availed leave again from 30.1.2015 to 1.2.2015. On 2.2.2015, he reported duty as PA, Anandpur and then he was suspended vide order dated 29.1.2015 (Annexure-A/3). The suspension order was revoked vide order dated 13.5.2015 (Annexure-A/5) after which the applicant joined as PA, Anandpur on 14.5.2015. Charge-sheet under rule 16 for minor penalty was issued to the applicant vide order dated 13.5.2015 (Annexure-A/6).

3. The applicant submitted his reply to the charge-sheet and thereafter, the respondent no.4 imposed the punishment on the applicant vide order dated 12.6.2015 (Annexure-A/8), reducing the applicant's pay by one stage for one year without cumulative effect. Further, the period of suspension was treated as non-duty without break in service. Appeal was filed by the applicant on 29.6.2015 before the respondent no.3, with a request to stay the punishment order pending disposal of the appeal.

4. It is further stated in the OA that the respondent no. 4 sanctioned the medical leave of the applicant vide order dated 20.7.2015. Since there was delay in disposal of the appeal, the applicant filed the OA No. 910/2015 which was disposed of with a direction to the respondent no.3 to dispose of the appeal. Thereafter, the appeal was rejected by the respondent no. 3 vide order dated 11.2.2016 (Annexure-A/11).

5. Following main grounds have been advanced in the OA:-

(i) The applicant was directed to join as PA, Anandpur vide order dated 8.12.2014, which was received in Jhumpura SO on 11.12.2014 when the applicant was already on medical leave. There was not aware of the said order as he was on medical leave. Hence, there was no disobedience of the order.

(ii) Earlier, on 13.11.2014, the applicant was directed to relieve the PA of his office so that he can be deputed as SPM, Dhenkikote, since the regular SPM, Dhenkikote was proceeding on leave from 8.12.2014. However, on 13.11.2014, the applicant was on leave and he did not receive this order.

(iii) The applicant had explained his position as stated above in his written reply, which was ignored and punishment was imposed.

(iv) The appellate authority modified the punishment order treating the suspension period as duty, but upheld the punishment of reduction to lower stage as ordered by the disciplinary authority, without considering the grounds mentioned in the applicant's appeal.

6. Counter has been filed by the respondents stating that the applicant on 10.12.2014 proceeded on medical leave on his own accord without taking any prior permission from the respondent no. 4. It is stated that the applicant was well aware of his transfer as PA, Anandpur, but knowingly he remained absent from duty

unauthorizedly, for which the administration was put to an embarrassing situation. The applicant did not get himself relieved from Jhumpura till 29.1.2015 to join as PA, Anandpur and such action was deliberate on the part of the applicant.

7. In the Rejoinder, it is stated that due to sudden illness, the applicant went on medical leave which was known to the authorities, who had also sanctioned the medical leave and hence, the allegation of unauthorized absence from duty is baseless. It is also stated that there is no proof that the orders/letters referred in the charge-sheet have been delivered to the applicant.

8. Mr. C.P. Sahani, learned counsel for the applicant was heard. He stated that after sanction of the medical leave by the competent authority, it cannot be said that the period was unauthorized. He also submitted that as per the judgment of Hon'ble Apex Court, inquiry is necessary in some cases and in this case, such inquiry was essential before passing final order in the proceedings.

9. Mr. D.K. Mallick, learned counsel for the respondents was also heard. He reiterated the stand taken in the Counter. He stated that since copy of the orders have also been sent in the official e-mail id of the applicant. there was no chance that he had not received it.

10. We have considered the materials placed before us as well as the submissions of the learned counsels at the time of hearing. Learned counsel has also submitted written argument subsequent to the oral

hearing. Citing the judgment of Hon'ble Apex Court in the case of O.K. Bhardwaj vs. Union of India & others reported in (2001) 9 SCC 180, in which it was held that even in case of minor penalty, if the charges are factual and they are denied by the delinquent employee, an enquiry should be called for. He also cited the judgment of Hon'ble Apex Court in the case of Kuldip Singh vs. Commissioner of Police & others reported in AIR 1999 SC 677 in which it was held that suspicion or presumption cannot take the place of proof even in the domestic inquiry. The written note stressed on the point that the applicant denied the charges and without ascertaining the facts, the respondents have proceeded on presumption.

11. It is seen from the charge-sheet that the charge of the applicant remaining absent from duty from 10.12.2014 without taking prior approval of the Divisional office is included in Article-II. In the reply dated 18.5.2015 (Annexure-A/7), the applicant stated that he had informed the divisional office by phone and he was unable to give written information to the authorities about his proceeding on leave. The applicant has also not stated in his reply the name of the official in the divisional office to whom he had submitted the telephonic information. It is clear from the reply at A/7 that he got himself relieved after handing over the charge to the PA, without any order of the competent authority. It is not mentioned by the applicant how he was unable to send the intimation to the competent authority at least by e-mail, when he could call the divisional office telephonically as stated

in the reply dated 18.5.2015. No intimation about his proceeding on leave was given by the applicant or by the PA to whom he had handed over the charge, as copy of no such correspondence has been furnished in the OA. The applicant submitted the leave application on 15.12.2014 as stated in his reply dated 18.5.201. It is not the case of the applicant that he was so ill that he had to be rushed to the hospital so that he could not inform the authorities till 15.02.2014. It is clear from the submissions of the applicant in his letter dated 18.5.2015 that at least the charge that he proceeded on leave on 10.12.2014 without any intimation or approval of the competent authority has been established, even if the submissions of the applicant regarding other charges are accepted.

12. We take note of the fact that the scope for any interference in the disciplinary proceedings by way of judicial review by this Tribunal is very limited as laid down by Hon'ble Apex Court in a number of cases. In the case of **B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484**, while examining the scope of judicial review in disciplinary proceedings it was held by Hon'ble Apex Court as under:-

“A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High

Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.”

13. In the case of **Deputy Commissioner KVS vs. J. Hussain**, reported in **AIR 2014 SC 766**, it was held by Hon’ble Apex Court as under:-

“When the charge proved, as happened in the instant case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the disciplinary required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority.”

14. In view of the facts and the case laws as discussed above, we are not inclined to interfere in the matter since there is no apparent

error in the order dated 11.2.2016 (Annexure-A/11) of the appellate authority, by which the period of suspension of the applicant has been treated as duty. Accordingly, the OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(JUDL.)

(GOKUL CHANDRA PATI)
MEMBER(ADMN.)

BKS

