

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

O.A. 980 of 2016

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

ALOK HALDER,
Aged about 30 years,
Son of Late Haralal Halder,
Dismissal from service while working
to the post of MTS in the office of
Geological Survey of India,
Central Headquarters, 27,
Jawaharlal Nehru Road,
Kolkata – 700 016
And residing at Village and Post Office-Thakur Nager,
Police Station – Gaighata, Pin – 743 287,
District – 24-Parganas (North);

..... Applicant.

Versus

1. **UNION OF INDIA**
Service through the Secretary,
Ministry of Steel & Mines,
Udyog Bhavan,
New Delhi – 110 107.
2. **THE DIRECTOR GENERAL,**
Geological Survey of India,
Central Headquarters, 27,
Jawaharlal Nehru Road,
Kolkata – 700 016;
3. **THE DEPUTY DIRECTOR GENERAL (P&N)**
And Disciplinary Authority,
Geological Survey of India,
Central Headquarters, 27,
Jawaharlal Nehru Road,
Kolkata – 700 016;
4. **THE DEPUTY DIRECTOR (P&A)**
And Enquiry Officer,
Geological Survey of India,
Central Headquarters, 27,
Jawaharlal Nehru Road,
Kolkata – 700 016

..... Respondents.

For the applicant : Mr. P.C. Das, Counsel

For the respondents : Ms. P. Goswami, Counsel

Reserved on : 18.06.2019

Date of Order : 5.9.19.

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:

- "8.a) To quash and/or set aside the impugned memorandum of charge-sheet dated 12th August, 2011 issued by the respondent authority.
- b) To quash and/or set aside the impugned enquiry report submitted by the Enquiry Officer vide office memo dated 12.06.2015 being Annexure A-5 of this original application.
- c) To quash and/or set aside the impugned penalty order of punishment of dismissal from service imposed by the Disciplinary Authority on 17.08.2015 being No. 8926/C-13014/01.2009-Vig(Admn.) being Annexure A-6 of this original application.
- d) To quash and/or set aside the impugned show-cause notice dated 12.11.2015 issued by the respondent authority by which the entire period from the date of suspension of order upto the date of dismissal from service has been treated as "DIES-NON" being Annexure A-9 of this original application.
- e) To quash and/or set aside the impugned order of Appellate Authority dated 12.05.2016 by which the order of Disciplinary Authority dated 17.08.2015 has been upheld being Annexure A-10 of this original application.
- f) To pass an appropriate order directing upon the respondent authority to reinstate the applicant in service to the post of MTS with full back wages by quashing and/or setting aside the impugned show-cause notice dated 12.11.2015;
- g) To declare that the punishment imposed by the Disciplinary Authority as well as affirmation of the Appellate Authority in respect of dismissal from service against the present applicant is a harsh one in view of the decisions passed by the Division Bench of the Hon'ble High Court at Calcutta being Annexure A-11 and A-12."

2. The case in a nutshell is as under:

The applicant was suspended due to his custody exceeding 48 hrs in connection with a 498(A) case. On his acquittal he was slapped with a charge sheet alleging unauthorised absence and was dismissed. It has assailed the entire disciplinary proceedings including the chargesheet, and appellate order.

3. The admitted facts run thus:

The applicant was appointed as a cleaner (MTS) in a temporary capacity in Geological Survey of India (GSI) Central Head Quarter (Map Dvn.), Kolkata on compassionate ground, by an order dated 23.3.06. He was detained in Jail Custody since 06.9.2011 in connection with the Gaighata Police Station, North 24 Parganas, West Bengal, case no. 383 dated 30.8.2011 u/s 498-A / 302 / 304-B / 406 IPC & 3 / 4 D.P Act, exceeding 48 hours.

Therefore, he was deemed to have been suspended with effect from the date of his arrest / detention in Jail / Police custody w.e.f. 06.9.2011 in terms of sub rule (2) of Rule 10 of the CCS (CCA) Rules, 1965 and was ordered to remain under 'suspension' until further orders, Vide order dated 29.11.11 (A-1) issued by Dy. Director General (Per) GSI.

By an order dated 21.5.15 the Dy. Director General (P&A) intimated that a competent Suspension Review Committee, in terms of DoP&T's Notification No. 11012/4/2003-Estt.(A) dated 23/12/2003 examined the records of the case on 20/05/2015 and recommended, the deemed suspension to be continued until

reviewed again on the same subsistence allowance as allowed initially, until further orders.

The applicant was acquitted of the charges by an order dated 24.4.15 with the following order:

ORDERED

That the accused persons, namely 1 Alok Halder, 2 Jharna Halder, 3 Biswarup @ Jugal Halder, 4 Minati Mondal, 5 Krishna Kanta @ Prasant Sikdar, 6 Suparna Halder @ Buli, 7 Litan Mondal are found not guilty for the charges under section 498(A)/304B/ 306/34 IPC and as such, they are acquitted U/S 235(1) Cr. P.C.

The securities are released from their respective bail bonds at once.

The seized articles be destroyed accordingly with the Law soon after the statutory period.

Note in the register.

(Nilanjan De)

Dated: 24.04.2015.
Addl. Sessions Judge,
Fast Track Court – II,
Bongaon, 24-Parganas(N)."

On being acquitted of the Cr. Charges, he prayed that "that the aforesaid suspension order may be withdrawn and I may kindly be allowed to join my normal duties".

After his acquittal, vide memo dt. 12.6.15 the applicant was slapped with a chargesheet with the following of indictments:

ARTICLE-I

Shri Alok Halder, Cleaner while functioning in Publication & Information Division, GSI, CHQ, 29, J. L. Nehru Road, Kolkata has taken frequent spell of long leave without any prior intimation/ information / application to his office as well as Controlling officer. The details of absent statement reveals that Shri Halder, Cleaner has absented himself for 658 days for the period from July, 2008 to February, 2011 in 15 spells.

Thus, Shri Alok Halder, Cleaner by his above act has exhibited indiscipline and lack of devotion to duty, and acted in a manner unbecoming of a Govt. Servant in violation of Rule 3(1)(ii)&(iii) of the CCS (Conduct) Rule, 1964.

ARTICLE-II

Shri Alok Halder, Cleaner has not even responded to the several Memos dated 10/07/2008, 23/07/2008, 19/08/2008, 23/06/2009, 07/09/2009, 04/08/2009, 16/12/2009 and 26/08/2010 issued to him for his unauthorised absence by the Competent Authority instructing him to report for duty and to submit written explanation for his absence.

By this act of not responding to the official Memoranda and non-compliance with the official instructions Shri Halder, has exhibited gross misconduct and has acted in a manner unbecoming of a Govt. Servant in contravention of Rule 3(1)(ii)&(iii) of CCS (Conduct) Rule, 1964."

The applicant chose not to participate in the enquiry and hence Dy. Director (P&A) and Inquiry Officer, CHQ, GSI, Kolkata held as under:

"Conclusion:

During the entire inquiry proceedings the C.O. had escaped from attending the preliminary hearings except the 1st one. Besides, the C.O. made no communication about his inability to attend the hearings or otherwise till date though the notices of hearings were received by the C.O. as per records of the speed post tracking.

As sufficient fair and reasonable opportunities were extended to the C.O. and his continuous escapement from attending preliminary hearings without intimation, the I.O. had left no other option but to go ahead with the inquiry proceedings without the participation of the C.O.

All the Daily order sheets and copy of written briefs of the P.O. were sent to the C.O. from time to time but no response were received from the C.O. Drawing the conclusion in this particular inquiry proceedings, it is submitted that all the charges levelled against the C.O: Shri Alok Halder, Cleaner, P&I Division, GSI, CHQ were proved beyond doubt and Disciplinary Authority may like to take appropriate action in this case as considered necessary."

The DA in his order dated 17.8.15 observed:

"A N D WHERE'S. Shri Alok Halder, Cleaner (now MTS), GSI & Charged Official (C O) has received the above-mentioned Charge Memorandum on 23.08.2011, but did not bother to submit any reply representation against the said Charge Memorandum. He was given another opportunity by the Disciplinary Authority vide letter dated 08/09/2011 to submit his reply and also to state whether he desires to be heard in person against the said Charge Memorandum within 03 (three) days from the date of receipt of the letter but the C.O. again failed to submit his reply. Further, the Disciplinary Authority acquainted with the information that the said C.O. – Shri Alok Halder has been placed under deemed suspension w.e.f. 06/09/2011 vide Office Order No. 1240/C – 13013/27/AH/2011 – Vig dated 29/11/2011 for

detention in Police/Jail custody beyond 48 (Forty-eighty) hours. Considering the above facts and in exercise of power conferred under CCS(CCA) Rules, 1965 appointed Shri Snehangshu Das Roy, Dy. Director(P&A), GSI as Inquiry Officer(I.O.) vide Order No.7208/C-13014/01/2009-Vig.(Admn.); dated 10/02/2014 and Shri Tarit Das, Administrative Officer [now Assistant Director (P&A)], G.S.I. as Presenting Officer (P.O.) vide Order No. 7212/C-13014/01/2009-Vig.(Admn.); dated 10/02/2014 in the said case to inquire into the charges framed against Shri Alok Halder, Cleaner(now MTS), Publication & Information Division, Geological Survey of India, CHQ, 29, J.L. Nehru Road, Kolkata.

AND WHEREAS, inquiry Officer vide his report dated 03/03/2015 submitted his findings concluding that during the entire inquiry proceedings the Charged Official Shri Alok Halder had attended the preliminary hearings on 26/06/2014. Thereafter, the C.O. made no communication about his inability to attend the hearings or otherwise till the conclusion of enquiry, though the notices for enquiry were received by the C.O. as per records of the speed post tracking. Although, ample reasonable opportunities were extended to the C.O. by the Inquiry Officer, requesting him to attend the enquiry on 10/07/2014, 31/07/2014, 25/08/2014, 25/09/2014 and 24/10/2014, the I.O. had left no other option but to go ahead with the inquiry proceedings without the participation of the C.O. and concluded the enquiry as ex-parte.

All the Daily order sheets and copy of the written brief of the P.O. were sent to the C.O. from time to time but no response was received from the C.O. All the charges leveled against the C.O. Shri Alok Halder, 'Cleaner(now MTS), P&I Division, GSI, CHQ, Kolkata proved by the Inquiry Officer with reference to the documents held on record.

AND WHEREAS, the Disciplinary Authority accepted the Inquiry Officer's report dated 03/03/2015 and the same was sent to the Charged Official at his office as well as to the known residential address by Speed/Registered Post with A D vide Letter No. 8758-8760/C-13014/01/2009-Vig.(Admn.) dated 12.06.2015 (Speed Post EMS no. EW401655907IN dated 15/06/2015 and No. EW449386617IN dated 19/06/2015); giving an opportunity to submit his reply submission, if any, in this regard. The Charged Official Shri Alok Halder, Cleaner (now MTS), GSI has received the letters on 16/06/2015 & 27/06/2015 respectively, which is confirmed from "India Post" track records, though he did not submit any reply in this regard even after a lapse of stipulated period.

After considering the above facts and circumstances of the case, other related documents and findings of the Inquiry Officer etc., has arrived at a conclusion that unauthorized absence for a prolonged period of 658days for the period from July, 2008 to February, 2011 in 15 spells from duty is a serious act of misconduct, sheer negligence and dereliction to duty for which normal duty assigned to the Charged Official affected badly, which also tarnished the image of the Organization as well as the code of discipline. Even after giving reasonable opportunity to the Charged Official, he did not mend his attitude towards his duties and absenting himself from duties abruptly. The Charged Official also failed to respond the Official

correspondences sent to him from time to time, directing to report for duty. I find that the charges framed against the Charged Official have been clearly established.

NOW, THEREFORE, the undersigned being the Disciplinary Authority in the above case finds that the Charged Official failed to improve his conduct and discipline. Hence, the penalty of "**dismissal from service which shall ordinarily be a disqualification for future employment under the Government**" in accordance with Sub-Rule (ix) of Rule 11 of the CCS(CCA) Rules, 1965."

By a separate order dated 18.8.15, it was held:

"The authority competent is of the opinion that the suspension period of Shri Alok Halder, Cleaner(Re-designated as MTS). GSI from 06/09/2011 to 12/08/2015(A.N) i.e. upto the date of dismissal from service in another disciplinary proceeding as stipulated in foregoing para is to be regularized in terms of FR 54-B(3), subject to the provisions of Sub-Rule 8 of FR 54-B and he be paid the full pay & allowances to which he would have been entitled had he not been suspended as his detention in police/jail custody was found not guilty for the charges u/s 498(A)/304B/306/34 IPC and as such, he has been acquitted u/s 235(1) Cr.P.C. as per the Judgment Order dated 24/04/2015 pronounced by Hon'ble Shri Nilanjan De, Additional Sessions Judge, Fast Track Court-II, Bongaon, North 24-Pargans, West Bengal."

On 27.8.15 the applicant preferred appeal to the Director General. He apologised:

"for not appearing before the departmental enquiry committee. During departmental enquiry I was under deemed suspension wef 06.09.2011 for detention in police custody beyond 48 hours. The court case and departmental enquiry were running at the same period. The charge framed against me u/s 498A/304b/ 306/34 IPC & 3/4 DP Act was not proved and acquitted from all the charges vide judgment order dated 24.04.2015 against the Gaighata PS case No. 383/2011 Dt. 24/4/2015."

The Appellate Authority held:

"There is no material irregularity or miscarriage of justice with regard to conduct of the inquiry. Since the Appellant attended the preliminary hearing on 26/06/2014, his plea for detention in police custody beyond 48 hours does not have any merit as he was released on bail and thereby he attended the preliminary hearing on 26/06/2014 and therefore if had he tried to

appear before the IO for depositing his statement he could have attended the same on 10/07/2014, 31/07/2014, 25/08/2014, 25/09/2014 and 24/10/2014 for which the IO fixed the date to conduct inquiry and issued notices directing him to attend the inquiry, which he received as per the records of the India Post-Speed Post tracking. Thus, he intentionally did not turn-up to attend the inquiry.

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The charges found proved against the appellant in the duly conducted departmental enquiry beyond any iota of doubt. Unauthorized absence without any valid authority and prior permission from the Competent Authority, is a serious act of misconduct and cannot be accepted in the disciplined organization like GSI. Hence, I am of the opinion that the Disciplinary Authority has rightly awarded the penalty of "Dismissal from service" to the appellant for good and sufficient reasons, which commensurate with the proven acts of misconduct committed by him."

4. The applicant in this O.A. has pleaded that dismissal from service in a case of unauthorised absence has been held as shockingly disproportionate to the charge, by Hon'ble High Court at Calcutta in **Maitrade Ghosh vs. Kolkata Port Trust & ors.** reported in 2008 (2) CHN 85 Hon'ble High Court in the said matter held as under:

"...The prolonged absence from duty in absence of sanctioned leave is an act of indiscipline which is also an act of misconduct, but the same is not grave enough to justify the penalty of removal from service in the circumstances of the case. (Para 28)

(viii) When an employee applies for leave and the same is granted then the concerned employee is under an obligation to return to duty on expiry of the period of sanctioned leave. We, are, however, of the opinion that absenting from duties by reason of overstay would amount to misconduct for which the concerned employee cannot avoid penal consequences. (Para 30)

(ix) Scrutinising the order passed by the appellate authority, we also find that the same is an unreasoned order. The appellate authority is required to apply its mind to the respective findings of the inquiring authority and the decisions of the disciplinary authority.

(x) In any event, the penalty of removal from service on the appellant herein is shockingly disproportionate in view of the facts that the said appellant admittedly, sent intimation regarding her absence from duties immediately after expiry of the sanctioned leave."

Ld. Counsel would also rely upon an unreported decision of Hon'ble High Court in **Haren Bauri Versus Coal India Ltd. & Ors.** in GA 2892 of 2010, APOT 513 of 2010.

5. At hearing Ld. Counsel for the respondents would submit that intermittent leave accumulating to 658 days over a span of less than three years, July '08 to Feb. 2011, deserved no mercy.

6. We heard the Ld. Counsel for the parties, perused the materials on record.

7. We note that the applicant was under custody from 20.11.11. He was acquitted on 24.4.15 and all the while he was facing criminal trial and departmental proceeding. It was only after his suspension that the authorities fished out his delinquency for a period from July '08 to February '11 in 15 spells in alleging exhibiting indiscipline and lack of devotion to duty.

8. The leave statement of the applicant is extracted hereunder:

LEAVE STATEMENT

Shri Aloke Halder, Cleaner P&I Div. GSI, Kolkata

SI No	Period of absence		No of days absence	Date of leave application with date of application and receipt	Whether leave granted	Particulars of warning/caution, notice if any issued and copies thereof	Remarks
<i>Last leave sanctioned upto 30.6.2008 and absenting without intimation w.e.f. 8.7.09.</i>							
1	8.7.2008	3.10.2008	88	22.1.09 and received 5.2.09	Not granted	enclosed	Resumed duty on 04.10.2008 With M/C
2	15.10.08	21.01.09	99	22.1.09 and received 5.2.09	Not granted	enclosed	Resumed duty on 22.01.2009 With M/C
3	24.3.09	9.4.09	18	13.4.09 and received on 17.4.2009	Not granted	enclosed	Resumed duty on 13.04.2009
4	20.4.09	24.04.09	5	27.4.09 and received on	Not granted	enclosed	Resumed duty on 27.04.2009

				14.5.09			With M/C
5	1.6.09	19.7.09	49	20.7.09 and received on 23.7.09	Not granted	enclosed	Resumed duty on 20.07.2009 With M/C
6	27.08.09	5.10.09	40	06.10.09 and received on 08.10.09	Not granted	enclosed	Resumed duty on 6.10.2009 With M/C
7	20.10.09	21.10.09	2	22.10.09 and received on 23.10.09	Not granted		
8	08.12.2009	24.03.2010	106	25.3.2010 received on 7.04.2010	Not granted	enclosed	Resumed duty on 25.03.2010 With M/C
9	30.4.2010	13.05.2010	14	Application not received by this office			
10	19.5.2010	21.05.2010	3	Application not received by this office			
11	7.6.2010	25.6.2010	18	Application not received by this office			
12	29.6.2010		1	Application not received by this office			
13	22.7.2010	23.10.2010	2	Application not received by this office			
14	28.07.2010	25.11.2010	121	26.11.2010 and received 07.12.2010	Not granted	Enclosed Lt No. 580/A- 20012/478(AH)/ 44-Pub dt. 26.8.2010	Resumed duty on 26.11.2010 With M/C. But not sign in the attendance register.
						Enclosed Lt. No. 414/SP/A- 20012/478(AH)/ 44-Pub dt. 18.11.2010	
15	26.11.2010	25.02.2011 (till date not joined in the office)	92		Without intimation		

Sd/-
(T.K. Das)
A.O. & D.D.O (PID)
for H.O.O. (PID)"

The chart supra reveals that leave for even 2-5 days have been clubbed together.

Further the applicant's absence from 8.12.09 – 24.3.10, of 106 days, was due hepatitis which ailment is supported by Medical certificates and after every leave he has been allowed to resume duty upon production of Medical certificate which debilitates the intensity of his delinquency to a large extent ~~misconduct~~ and condones his absence. Therefore extenuating circumstances, due to which the applicant would deserve some leniency, do exist.

We further discern that the last spell of 26.11.2010 – 25.2.2011, of 92 days, was without intimation as well as without supporting medical certificates, yet he was probably allowed to resume duties on his return, as nothing is spelt out in the leave statement. He was however taken into custody in November, 2011 whereafter it was not humanly possible for him to attend.

9. In the aforesaid backdrop, and having agreed with the proposition as in decisions supra, that a penalty of removal or dismissal is shockingly disproportionate to the charge of unauthorised absence, we are of the considered opinion that the applicant deserves some leniency and therefore we direct the Appellate Authority to consider his appeal afresh, in the light of the decisions cited by the applicant herein, and issue orders untrammelled by earlier observation, reducing the penalty suitably, within 2 months of receipt of a copy of *order &*
this letter.

10. Accordingly, with the aforesaid order the O.A. stands disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh