

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2204/2003
NEW DELHI THIS 20TH JULY 2004
HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Shri Ishwar Saran
S/o Shri Sees Ram
last employed as Packer in Group 'D' in
Foreign Post Office New Delhi,
R/o Vill, Singrauli,
P.O.Rataul via Loni Distt.Bagpat.

Address for service of notices:
C/o Shri Sant Lal, Advocate,
CAT Bar Room, New Delhi-110001.

.....Applicant

(By Advocate: Shri Sant Lal)

VERSUS

1. The Union of India through the Secretary,
MO Communications, Deptt. of Posts,
Dak Bhawan, New Delhi - 110001
2. The Chief Post Master General,
Delhi Circle,
Meghdoot Bhawan, New Delhi - 110001
3. The Director Foreign Post,
Indraprastha Estate, New Delhi - 110002

.....Respondents

(By Shri J B Mudgil, Advocate)

ORDER

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant who was a Packer (Group 'D') in the
Foreign Post Office Delhi was issued with the charge sheet
on 20.10.97 for unauthorised absence and overstaying leave

o

-2-

w.e.f. 11.5.1996 till the date of issue of the charge sheet. The disciplinary proceedings were initiated which culminated with the penalty of removal from service. Aggrieved by these orders the applicant has prayed for quashing of the impugned orders dated 23.8.1999, 18.4.2000 and 24.1.2002/6.2.2002.

2. The main argument of the applicant is that the punishment order has been passed by the Director Foreign Post Office New Delhi who is not the prescribed disciplinary authority. The correct disciplinary authority to impose penalties are the Assistant Controller (Foreign Mails)/Supdt. (Foreign Mails)/Asstt. Director (Foreign Posts) and the appellate authority is the Controller Foreign Mails/Director Foreign Posts. Therefore, it is seen that in the case of applicant the disciplinary authority and appellate authority have not passed the orders and in view of the law laid down by the apex court in the case of Surjit Ghosh Vs. Chairman and Managing Director of United Commercial Bank & Ors. (1995 (1) SC SLJ-296) the punishment needs to be set aside on this ground alone. Moreover the revision petition dated 17.4.2001 which was addressed to the prescribed Revisional Authority namely the Member (Personnel) Postal Service Board under Rule 29 of the CCS (CCA) Rules, 1965 was not forwarded to the said competent authority and was rejected by the Chief Post Master General and that too by a non-speaking and non-reasoned order. Therefore, the revisional order was also bad in law and liable to be quashed.



3. The applicant has been denied the reasonable opportunity to defend his case as the Inquiry Officer chose to proceed ex parte knowing fully well that the notices of the dates fixed for the Enquiry had not been received by the applicant. The applicant was also not given the additional documents asked for and which were directed to be produced by the Presenting Officer. The applicant had participated in enquiry on various dates but could not attend on few dates which was not sufficient ground to proceed ex parte. The ground laid down in the case of Dr.Ramesh Chandra Tyagi Vs. UOI & Ors. (1994 SC SLJ 12 & 1994 (53 DLT 718 SC) holding that the Inquiry Officer cannot proceed ex parte unless it is conclusively established that the applicant is deliberately or knowingly not accepting the notices. The applicant pleads that as regards the article 1 and 2 of the charges he was not unauthorizedly absent and had not violated any rules as alleged in the charges. He could not attend to his duties due to compelling circumstances beyond his control. He was sick and submitted applications for leave along with medical certificate issued by Registered Medical Practitioners from time to time. Besides sickness he was also suffering from serious family problems. As per rule 19 (3) of CCS (Leave) Rules of 1972 the competent authority had the discretion to secure a second medical opinion by requesting the Government medical officers not below the rank of Civil Surgeon or Staff Surgeon to have the government servant examined if he is in doubt about the genuineness but this was not done. As such rejection of his leave application is incorrect as it was accompanied by

d

-4-

medical certificates. In the case of Shri Bihari Lal Asstt. Post Master Fazilka Vs. UOI & Ors. (OA No. 121 PB of 1987) decided on 11.5.88 by the Chandigarh Bench of CAT in which it had been held that unauthorised absence covered by the registered medical practitioner should be treated as dies non and that the case of the applicant is even on a stronger footing as the competent authority has neither sanctioned the leave ^{work} rejected it.

4. Regarding Article 3 of the charge the applicant submitted that he has not committed any misconduct or insubordination by not accepting the official communications addressed to his residential address as the letter dated 4.9.96 sent through ASPOs Noida of Gazetted Division was duly accepted.

5. The appellate and revisional authorities have taken into consideration the following additional charges that were not included in the original charge sheet.

- 1) The appellate Authority on page 3 of the appellate order has mentioned as under:-

".....Piecemeal Medical Certificates from private doctors were also sent by him from 11.12.98 to 30.6.99 and that too not on time and were therefore not accepted as according to rules medical certificates only from AMA/Govt. dispensary/Hospital can be treated as valid.

and

- 2) The Revision Authority in para 5 of the Revisional Order has mentioned as under:-

".....I have carefully perused all the articles including the Service Book of the petitioner and I find that the petitioner is habitual in absenting

Dr

-5-

himself without prior approval
resulting in disruption of Govt.
work

6. The appellate authority has taken into consideration a period of absence that was after issue of the charge sheet and the revisional authority has introduced a new charge of habitual absence which was not part of the charge sheet. On these grounds the impugned orders should be quashed.

7. The respondents have strongly contested the case of the applicant stating that the applicant was habitual remaining absent for long period. He also refused to take delivery of official communications. The period of unauthorised absence from 23.3.1996 to 10.5.1996 was regularised by granting him leave as due. However, thereafter he remained absent for a period of more than 17 months continuously, hence under rule 14 of CCS(CCA) Rules, 1965, he was issued with a charge sheet and based on the finding of the enquiry he has been punished as per rules. The applicant attended the enquiry proceedings only a few occasions. The Inquiry Officer was forced to hold the proceedings ex-parte because number of communications were sent to him to ~~attend~~^{attend} the inquiry, that he refused to accept. The enquiry report was sent on 16.4.1999 to the residential address but the same was received back as undelivered as "refused". Only when the documents and enquiry report were delivered through the Public Relation Inspector (Postal) was it accepted by the applicant on 25.5.1999. The applicant did not submit any representation against the inquiry report so the final orders were passed on 23.8.1999

14

-6-

imposing the penalty for removal from service. The applicant made an appeal dated 18.10.99 to the PMG, Delhi Circle which was rejected. Similarly the revision petition filed before the Member(P), Postal Service Board which was rejected by the Chief PMG, Delhi Circle.

8. The contention of the applicant that the Director, Foreign Posts is not the disciplinary authority for Group D is not tenable as there is no post of Assistant Controller (Foreign Mails) or Asstt. Director (Foreign Post) in this office, hence the Director, Foreign Posts is disciplinary authority of Group D employees. The Asstt. Supdt. Foreign Post who is assisting the Director, Foreign Post is only competent to impose the minor penalty hence the major penalty was awarded by the Director, Foreign Mail and as such is in order.

9. The Inquiry Officer had issued notices for holding the inquiry and there is documentary record to show that summons/notices issued at the applicant's last known address, had been sent but refused by the applicant. Hence he avoided taking part in the enquiry.

10. The averments of the applicant that he could not submit the representation against the enquiry report because he was quite unwell is wrong. In fact during the period of absence the leave has been applied on the grounds of his wife's sickness and death of brother's wife etc. As such referring the case for second medical opinion does not arise. He had further submitted a medical certificate for

d

-7-

the period from 11.12.1998 dt. 30.6.1999 which was not accepted because as per the then existing instructions the medical certificate from the AMA/Govt. dispensary/Hospital were only acceptable, hence the OA deserves to be dismissed.

11. We have heard the counsel for the parties and also gone through the documents brought on record. It is not contested that the applicant was absent during the period mentioned in the charge-sheet. There are three short questions before us namely:-

- (i) were the orders for removal from service passed by incompetent authorities;
- (ii) was the Inquiry Officer justified in proceeding ex-parte; and
- (iii) have the appellate and reviewing authorities taken into account the matter not forming part of the charge-sheet.

12. The respondents were directed on 25.3.2000 by the Tribunal to file additional affidavit showing the disciplinary authority in the case of the applicant. Vide their additional affidavit dated 22.4.2004 they have placed on record copy of letter No.12/6/89-Vig. III dated 12.10.89 showing the revised schedule of appointing/disciplinary/appellate authorities. The schedule shows that Director of Foreign Post is the disciplinary authority in the case of the applicant.

16

-9-

Therefore, in view of this document it is clear that the orders have been passed by the competent authorities. Thus there is no need to dwell on this issue any further.

13. It is clear from the enquiry report that the applicant participated in the preliminary hearing on 18.2.98. Subsequently, he did not attend the enquiry fixed for 3.6.98 nor on 30.7.98. As he was not attending, daily order sheet notification was sent to the applicant at his last known residential address and these were returned undelivered with the remarks of the postman "refused". It was mentioned in the daily order sheet that if the applicant failed to attend on 26.8.98 the enquiry will be decided ex-parte but the applicant did not attend the proceedings. After number of further opportunities, the enquiry was started ex-parte on 20.10.98 as the postman had given remarks on registered letter No.177 dated 21.10.98 as "refused".

14. From the above it is clear that the applicant had stopped attending the enquiry even though number of opportunities were given to him. His claim that he could not attend the proceedings on medical ground is difficult to accept as he was not available at home when the postman came to deliver the letters ^{even} as he has claimed that he was bed ridden. From the ^{endorsement} ~~endorsement~~ made by the postman on the undelivered letters, it is clear that he was avoiding to attend the enquiry, leaving no alternative to the Inquiry Officer but to proceed ex parte.

de

-9-

15. Now we take up the issue whether the appellate and revisional authorities have taken into consideration matter not forming part of the charge-sheet. The original are as under:-

Article-I

Alleged to have remained absent from duty and overstayed his leave without prior permission and also refused to take official communications sent to him. The official's unauthorised absence upto 10.5.96 was regularised by granting him the leave due. Thereafter, w.e.f. 11.5.96 and till date the official has continued to remain absent unauthorisedly, thereby violating Rule 63 of Postal Manual VI.III. By this act the official has exhibited misconduct and lack of devotion to duty which is unbecoming of a Govt. servant infringing thereby Rule 3(i)(ii)(iii) of CCS(Conduct) Rules, 1964.

Article II

Alleged to have wilfully remaining absent from duty w.e.f. 11.5.96 to date has violated Provisional Rule 25(2) of CCS(Leave) Rules, 1972. By this conduct he has exhibited lack of devotion to duty and has acted in a manner unbecoming of a Govt. servant, infringing thereby Rule 3(i)(ii) & (iii) of CCS(Conduct) Rules, 1964.

Article of Charge-III

Shri Ishwar Saran, Packer, Fan. Post, New Delhi alleged to have shown misconduct and unsubordination by not accepting or claiming several official by not accepting or claiming several official communications addressed to his residential address-village-Singrauli, Post Office Rataul via Lodi Distt. Meerut (UP)-2-1101 by his employer. This act is unbecoming of a Govt. servant and is in violation of Rule 3(i)(iii) of CCS(Conduct) Rules, 1961.

16. Applicant has pleaded that the appellate and revisional authority have taken into consideration additional charges not forming part of the original charge sheet and in support he has reproduced the relevant portion

18

in his OA which we have already reproduced under para 5 above. We take up, first, the order of the appellate authority. Relevant portion of which is appended below:

"After going through the records of the case I find that there is no evidence on record to show that Shri Ishwar Saran was a Chronic TB patient and no Medical certificate/leave application was ever sent by him to this effect in this regard. In fact during his period of absence he applied for leave due on the grounds of illness of wife, death of brother's wife etc;; he at no stage produced proper Medical Certificate to prove that he or his wife was a Chronic TB patient. Attending one hearing with a fracture does not mean that he had all intentions of participating in the inquiry. The Inquiry Officer has also opined that this is a ploy used by the charged official to save himself from punishment.

The contentions of the charged official that the postman came to deliver the various communications when he was away to the doctor cannot be accepted as there is no evidence produced by the charged official in this regard. On the one hand he says that he was bed ridden and on the other he was continuously going to the Doctor for days on end and that too when the postman went to deliver official letters. The remarks of the postman on the returned letters clearly show that the official has refused to accept the official communications sent to him by the disciplinary authority intentionally.

The charges against Shri Ishwar Saran have therefore rightly been held as proved by the Inquiry Officer on the basis of oral as well as documentary evidence. It is seen that he has been absenting himself continuously from 11.5.96 till date. Piecemeal Medical Certificates from private doctors were also sent by him from 11.12.98 to 30.6.99 and that too not on time and were therefore not accepted as according to rules medical certificates only from AMA/Govt. dispensary/Hospital can be treated as valid.

The charges against Shri Ishwar Saran have therefore been proved against him. He has wilfully absented himself from his duties as packer Foreign Post and refused delivery of letters and intentionally did not attend the hearing. Full and reasonable opportunity was

-11-

provided to him for defending himself and all rules of Natural Justice have been followed by the Inquiry Officer while conducting the Inquiry. The fact that the charged official did not give any reply to the Charge Sheet, intentionally absented from duty as well as Inquiry on false pretext and did not even react to the findings of the Inquiry Officer shows that he has no defence to offer and he is not in need of the present employment for earning his livelihood as concluded by the Disciplinary Authority."

From the reading of the above it is clear that the period 11.12.1998 to 30.6.1999 is the period which is ~~the~~ beyond the date of charge sheet. However reference to this period is not for purposes of adding additional charge to the charge sheet but reference to the certificates sent by the applicant as support of his inability to attend the enquiry proceedings. Hence, the contention of the applicant that the additional charge had been added by the appellate authority is not borne out from the reading of the order.

17. Now we take up the order dated 6.2.2002, passed by the revisional authority about his habitual absence. The relevant portion of the order is reproduced below:

"5. I the undersigned have read the petition of Shri Ishwar Saran, ex-Packer Foreign Post, New Delhi against the impugned penalty. The charge sheet against Shri Ishwar Saran, ex-Packer lists a number of occasions when he remained absent unauthorised and submitted application for leave after the commencement of the leave. Article 2 of the charge-sheet also states that the petitioner refused to accept communication addressed to his residence at Meerut even though the letter was subsequently got delivered through SSPs Ghaziabad but the petitioner ignored the letter as he did not reply to the same. I have carefully perused all the articles including the Service Book of the petitioner and I find that the petitioner is habitual in absenting himself without prior approval resulting in disruption of Govt. work. The charges against the petitioner are documentary in nature and therefore, there can be little


de

-12-

dispute regarding the factual accuracy. It is also on record that though the petitioner initially attended the enquiry proceedings; subsequently he avoided the enquiry proceedings when he had ample opportunity to prove his innocence. In view of this, I am not inclined to modify the punishment or removal from service as the petitioner appears to be a habitual absentee and lack self-discipline. The petition is, therefore, rejected."

18. From the sentence that "I have carefully perused all the articles including the Service Book of the petitioner and I find that the petitioner is habitual in absenting himself without prior approval", it is apparent that the revisional authority has come to the conclusion based on the facts brought out in the proceedings. He has perused the service book in the normal course for ascertaining if there ~~are~~ any *extenuating* circumstances which would call for taking a view concerning the quantum of punishment awarded by the disciplinary authority. Hence reference to the service book and habitual absenteeism is not adding an additional charge.

19. In view of the above we find no merit in the OA and accordingly it is dismissed. No order as to costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

Patwal/