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Court : Central Administrative Tribunal CAT Delhi

Decided On : Sep-21-2011

Judge : The Honourable Mrs. Meera Chhibber, Judicial Member & the Honourable Dr. A.K. Mishra, Administrative Member

Appeal No. : OA-1336 of 2010

Appellant : Sh. Mani Ram

Respondent : Union of India Through the General Manager, New Delhi and Another

Advocate for Pet/Ap. : For the Applicant: Sh. H.P. Chakravorty, Advocate. For the Respondents: Sh. Shailendra Tiwary, Advocate.

Judgement :

Dr. A.K. Mishra, Member (A)

1. The applicant has challenged the order of the Disciplinary Authority (DA) dated 09.03.1999, order of the Appellate Authority (AA) dated 30.10.2003 modifying the order to that of reduction in rank and the order dated 01.07.2008 of the Revising Authority upholding the Appellate order. His prayer is to set aside these orders and grant him all consequential benefits at par with his junior counterparts.

2. The applicant, who was originally appointed as Khallasi and granted three promotions thereafter, was proceeded against for unauthorized long absence from duty from 09.08.1995 to 02.07.1996. According to his own averments he suffered from mental disorder and his whereabouts were not known to his family. Meanwhile the disciplinary proceedings were concluded ex-parte against him as he failed to respond to the notices and was removed from his service by the impugned order dated 9/16.03.1999. At paragraph 4.7 of the O.A. he states that only after coming to know about his removal that he made representation on 06.04.1999 to the respondent authority. Subsequently, he preferred a regular appeal on 20.05.1999, which was rejected. He filed a Revision Petition on 10.12.1999 which was again rejected on 20.09.2001. He filed OA-1078/2002, which was disposed of on 27.06.2003 with a direction to the AA to consider the proportionality of punishment in the light of the observations made by the Tribunal. Pursuant to this, the AA passed the impugned order dated 30.10.2003 modifying the punishment of removal to reduction of his pay scale to the lowest grade of Rs. 2550-3200 fixing the pay at Rs.3200/-. He filed a Revision Petition on 05.02.2004, which was rejected; hence this O.A.

3. At the time of hearing, learned counsel for the applicant tried to advance grounds that the chargesheet was issued by an incompetent authority. Since the matter was remitted by this Tribunal to the AA with a direction to consider the proportionality of the penalty imposed, he confined himself to the proportionality of the order now passed by the respondent authorities.

4. The AA took into consideration the fact that the absence from duty alleged in the chargesheet was first of its kind, but at the same time of the fact that the applicant was also not responding to the registered letters sent to him to appear in the inquiry and that he failed to intimate his whereabouts during the period of his long absence. It was only after taking a considerate view of the whole matter, his removal order was set aside and converted to reduction to the lowest grade of Rs. 2550-3200 fixing pay at Rs.3200/-. It was also further directed that the period of his absence from duty from the date of removal till his date of reinstatement would be treated as dies non. It is seen from the averments of the applicant that he remained absent not only for the period he was chargesheeted but also for long

thereafter. Even his wife had no intimation about his whereabouts and had to publish a missing report in Dainik Jagran dated 01.02.1999 (vide para 4.17 of the OA). On our query whether “dies-non” would involve complete obliteration of the past service referred by the applicant, we were informed by the learned counsel that “dies-non” would mean that the period of absence would be treated as not duty. It would not involve a complete break in service implying that the applicant would not be treated as a fresh entrant in service from the date of resumption on duty. In other words, his previous service would be admissible for pensionary benefits.

5. The learned counsel for respondents produced letter dated 19.09.2011 which clarifies that the applicant's previous service before his removal will count towards pensionary benefits. In view of this clarification, we do not find any merit in this application, which is accordingly dismissed. No costs.

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