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Court : Central Administrative Tribunal CAT Madras

Decided On : Aug-04-2009

Judge : K. Elango, Judicial Member & R. Satapathy, Administrative Member

Appeal No. : Original Application No. 468 of 2008

Appellant : M. Palanimuthu

Respondent : Union of India Rep by the Principle Chief Postmaster General, Tamil Nadu Circle and Others

Advocate for Pet/Ap. : For the Applicant: R. Malaichamy, Advocate. For the Respondent: K.M. Venugopal, Advocate.

Judgement :

R. Satapathy, J.

This is an application under Section 1 of the Administrative Tribunals Act, 1985. The applicant Shri Palanimuthu has come before this Tribunal seeking the following relief:

“1. To call for the records pertaining to the order of the 1st respondent which is made in Memo No. WLF/15-1/2006 CPMG dated 12.12.2007 and the 3rd Respondent which is made in Memo No. STB/14010-4/SLE/2005 dated 14.9.2005

and set aside the same, consequent to

2. Direct the Respondents to reinstate the applicant into service with all service benefits; and

3. To pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. Facts leading to finding of this case are as follows:

The applicant while working as Sub Divisional Inspector, Atur, the Respondent No.4 i.e. Senior superintendent of Post Office, Salem East Division, Salem has issued memo dated 29.10.2004 proposing to hold an inquiry under Rule 14 of the CCS (CCA) Rules, 1965. the following articles of charge were framed against him:

"Article I

Shri M. Palanimuthu, SDI (P) (under suspension), Atur sub division, Atur 636 102 while working as such had not submitted his fortnightly diaries since first fortnight of March, 2004 till first fortnight of May 2004, violating the provisions of sub rule (1) and (2) of Rule 293 of Postal Manual Volume VIII (Third edition) and thereby failed to maintain devotion to duty contravening the provisions of Rule 3(1) (ii) of CCS (Conduct) Rules, 1964.

Article II

Shri M. Palanimuthu, SDI (P) (under suspension), Atur Sub division, Atur 636 102 while working as such had not visited and inspected Pungavadi BO, a/w Pudupet SO for the year 2003 violating the provisions of sub Rule (1) of 293, Rule 300 and Rule 301 of Postal Manual Volume VIII (Third edition) and thereby failed to maintain devotion to duty contravening the provisions of Rule 3 (A) (ii) of CCS (Conduct Rules, 1964.

Article III

Shri M. Palanimuthu, SDI (P) (under suspension), Atur sub division, Atur 636 102 while working as such had not visited and inspected Periakombai Bo a/w

Thammampatti SO Physically on the date recorded in the BO records violating the provisions of sub Rule (1) of 293, Rule 300 and Rule 301 of Postal Manual Volume VIII (Third edition) and thereby failed to maintain devotion to duty contravening the provisions of Rule 3 (A) (ii) of CCS (Conduct Rules 1964.

Article IV

Shri M. Palanimuthu, SDI (P) (under suspension), Atur sub division, Atur 636 102 while working as such had not carried out the direction of Sr. Supd. Of Post Offices, Salem East division regarding termination of stop-gap arrangement made in the post of GDS MD, Ammapalayam and thereby failed to maintain devotion to duty contravening the provisions of Rule 3 (1) (ii) of CCS (conduct) Rules, 1964”

Inquiry Officer dated NIL has been communicated to the applicant by the 3rd respondent by his letter dated 04.7.2005. The conclusion of the Inquiry Officer reads as follows:

“In view of foregoing and in view of the unconditional and unequivocal admittance of all the four articles of charge leveled against Shri M. Palanimuthu, SDI (P) (under suspension) Atur Sub division, Atur 636 102 in Memo No. IR/TP/SDI (P) /Atur dated 29.10.2004, I hereby hold that all the four charges are proved.

The applicant in his representation dated 21.7.2005 has given his reply and requested the respondents to excuse him for the omissions and short-comings. After considering the report of the Inquiry Officer and the reply of the applicant, the Respondent No.3 holding all the charges as proved in his proceedings dated 14.9.2005 passes the following orders:

“Hence I, Shri V. Rajarajan, Director of Postal Services, Western Region-TN, Coimbatore hereby order that Shri M. Palanimuthu, IP, Atur sub division be compulsorily retired from service with immediate effect.

This order was appealed by the applicant and the Appellate Authority has rejected the appeal and upheld the punishment of compulsory retirement from service. The applicant therefore submits that the order of compulsory retirement by the Respondent No.3 and its confirmation by Respondent No.1 is too harsh and

therefore, it should be set aside.

3. Shri R. Malaichamy has appeared for the applicant and Shri K.M. Venugopal has appeared for the respondents.

4. Learned counsel for the applicant Shri Malaichamy has stated that though the charges have been admitted by the applicant, yet, for a major punishment like compulsory retirement from service, a full-fledged inquiry should have been conducted, witnesses should have been examined and cross examined. In the instant case, the Inquiry Officer has accepted has held the charges proved as admitted by the applicant. Therefore, such an inquiry report should not be relied upon. He also submits that comparing the gravity of charges, the punishment is disproportionate. In support of his arguments, he has submitted the following judgments:

1. T. Narayanan Vs. Deputy Chief Mechanical Engineer Carriage and Wagon Works, Madras and Ors reported in 1999 (1) ATJ 403.

2. M. Jamaludheen Vs. the Director of School Education, College Road Chennai 600 006 reported in 2007 Writ L.R. 27.

3. Jagdish Prasad Saxena Vs. the State of Madhya Bharath (now Madhya Pradesh reported in AIR 1961 SC 1070.

4. S. Shanmugam Vs. Presiding Officer, Labour Court, Vellor and another reported 2005-II-LLJ 315.

and prayed that the OA may be allowed.

5. Per contra, the respondents, on the other hand, submitted that the plea of the applicant that he was unwell and therefore, he could not discharge his duties properly is not acceptable since at the end of his medical leave he has produced fitness certificate and joined duty. More over, he has admitted all the charges before the Inquiry Officer and therefore, order passed are valid and the OA should be dismissed.

6. We have heard the arguments of both the parties and gone through the records and documents. This is a case where the charges are that the applicant was not able to submit fortnightly diary and therefore, he failed to show devotion to duty. The other charges also speak about his inability to visit and inspect other branch offices etc. Having gone through the report of the Inquiry Officer, it is seen that though the charges have been held proved, yet they are not so grave in nature. There is no economic loss to the government. No case of misappropriation or malpractice attributed to the applicant in this case. We, therefore feel, that when the charges are not so grave and they only related to incidents like failure to submit diary or inspect post office or to perform an administrative duty, the Disciplinary Authority should have taken into account the nature of charge and the gravity of offence and accordingly he should have passed an order which is proportionate to the charges proved. In the instant case before us, the respondents have taken away the service and livelihood of the applicant when the charges are not so grave. We are of the view that a lesser punishment would have met the ends of justice.

7. In this connection, it is pertinent to refer to the Supreme Court judgment in Civil Appeal No. 292/83 in case of Bhagat Ram Vs. State of Himachal Pradesh decided on 24.01.1983 reported in AIR 1983 SC 454. Relevant portion of para 15 of the judgment reads as under:

“..... Keeping in view the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50% of the arrears from the date of termination till the date of reinstatement.”

The above judgment of Supreme Court goes to prove that the punishment should be proportionate to the gravity of charge. Similar view has also been taken by Supreme Court in the case of Director General, R.P.F and Others vs. Sai Babu reported in (AIR 2003 SC 1437). The same view was also expressed by the Hyderabad Bench of Central Administrative Tribunal in case of S.S. Zama vs.

Director of Postal Services, A.P. Norther Region, Hyderabad and Others reported in (1992) 21 ATC 582. We are conscience about the law. Although the choice and quantum of punishment is within the jurisdiction of Disciplinary Authority, yet it should not be very harsh and vindictive.

8. Therefore, keeping in view the above judicial citations and the facts that has been narrated above, we modify the punishment of compulsory retirement to that of withholding of one increment for a period of three years with cumulative effect commencing the date of compulsory retirement. The applicant should be reinstated in service immediately with all consequential benefits. The OA is allowed to the above extent. No costs.

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