

(2008) 08 OHC CK 0022

In the Orissa High Court

Case No : Writ Petition (Civil) No. 14901 of 2004

A. Dandapani Dora

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 — Rule 8

Citation : (2009) CLT 143 Supp

Hon'ble Judges : L. Mohapatra, J; I. Mahanty, J

Bench : Division Bench

Advocate : Biren Sankar Tripathy, M.K. Rath and S. Pati, for the Appellant;

Final Decision : Dismissed

Judgement

I. Mahanty, J.—In the present writ application, the Petitioner-A. Dandapani Dora has sought to challenge the Order Dated 4.2.2003 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 204 of 1999 whereby the Tribunal has dismissed his challenge to the order of his removal from service by the disciplinary authority & confirmed by the Appellate authority.

2. In brief, the case of the Petitioner is that he had been employed as an Extra Departmental Branch Post Master of Talasara Branch Post Office in the year 1982 and due to a certain "serious illness", which inflicted the Petitioner, he could not perform his normal duty and applied for leave by providing a substitute. On his application, leave for a period of 60 days was granted from 2.8.1982 to 30.9.1982. But after expiry of leave period, since the Petitioner continued to suffer from ailment, he could not join his duty and was shifted to M.K.C.G. Medical College & Hospital, Berhampur for better treatment. It was asserted that on his recovery, he wanted to join in his duty on 17.9.1986, but as the authority did not allow him to join in his duty, he submitted a representation on 17.9.1986 to the Superintendent of Post Offices, Berhampur with a request to take him back into service. It appears that a disciplinary proceeding was initiated against

the Petitioner under Rule-8 of the EDDA (C & S) Rules, 1964 on 21.4.1987, on the allegation that he remained absent without obtaining permission for the period from 1.10.1982 to 17.9.1986.

The Petitioner sought to challenge initiation of the disciplinary proceeding before the CAT in Original Application No. 156 of 1987 and the same came to be disposed of by the Order Dated 9.3.1989 with a direction to the disciplinary authority to pass final order within a period of 45 days.

Pursuant to the aforesaid direction, it appears that, a copy of the inquiry report dated 6.6.1988 was supplied to the Petitioner from which it reveals that the Inquiring Officer held that the charge of "unauthorized absence" was not proved. Thereafter, the disciplinary authority disagreeing with the opinion of the Inquiring Officer, vide his Order Dated 12.9.1991, imposed penalty of "removal from service". The Petitioner being aggrieved by the said order, preferred an appeal before the Appellate authority and the same came to be rejected by the Order Dated 10.4.1992. The Petitioner sought to challenge the orders passed by the disciplinary authority as well as rejection of his appeal by approaching the Central Administrative Tribunal, Cuttack Bench in O.A. No. 3, of 1993. The Learned Tribunal quashed the impugned order of removal from service & remanded the matter to the disciplinary authority to proceed with the Departmental Inquiry after providing copy of the Inquiry report to the Petitioner. It appears that pursuant to the aforesaid direction of the Tribunal, the Petitioner was supplied with a copy of the inquiry report as well as the reasons of disagreement of the disciplinary authority with the finding reached by the Inquiry officer on 20.6.1998. The Petitioner submitted his explanation through his representation dated 16.7.1998. The explanation provided by the Petitioner was found inadequate & the disciplinary authority issued a fresh order of removal from service with effect from 24.8.1998 with immediate effect.

Once again the Petitioner preferred an appeal before the appellate authority and the same was rejected by affirming the order of the disciplinary authority. Being aggrieved by the order of the appellate authority, the Petitioner preferred O.A. No. 204 of 1999 before the CAT, Cuttack Bench & the same was dismissed vide the Order Dated 4.2.2003. Hence the present writ application seeking to challenge the said order.

3. Learned Counsel for the Petitioner submitted that the Petitioner suffered from serious ailment for which he could not perform his duty for the relevant period & submitted that the punishment of removal from service being a major punishment, is highly disproportionate to the charges leveled against the Petitioner especially when the Inquiring Officer originally concluded that the charges had not been proved in inquiry.

4. We have perused the impugned order as well as various documents annexed to the writ application. We are of the considered view that whereas it is well settled that the disciplinary authority is not bound by the findings expressed by

the Inquiry Officer, yet a Disciplinary Authority is competent to do so but by noting cogent and clear reasons for his disagreement, if any. Annexure-3 to the writ application is the order of the disciplinary authority i.e. the Senior Superintendent of Post Offices, Berhampur. On a perusal of the said order of the disciplinary authority, it is abundantly clear that the disciplinary authority has dealt with the charges, issues, evidence as well as the documents of the proceeding in great detail. It is a fact that there was only one article of charge framed against the charged officer and the charge related to "absence from duty without obtaining prior permission", from the competent authority with effect from 1.10.1982 to 17.9.1986 (4 years).

5. The disciplinary authority also took note of the fact that although the Petitioner-delinquent had sought for sixty days leave from 2.8.1982 to 30.9.1982 on medical ground and the same had been granted to him, thereafter, the Petitioner never intimated his employer or his superior authority of his whereabouts and/or condition., It is most important to take note of the order of the disciplinary authority that the Petitioner-delinquent provided a medical certificate dated 5.6.1986 issued by Dr. R.C.C. Patnaik, M.D. stating that the delinquent was suffering from Peptic Ulcer and had been advised to take rest from 25.9.1982 to 5.6.1986. The discharge certificate produced by the Petitioner issued by the M.K.C.G. Medical College & Hospital, Berhampur indicates that the Petitioner had been treated as "indoor patient" from 6.6.1986 to 12.6.1986, i.e., for the period of six days. There is no other medical evidence produced by the Petitioner for the period from 1.10.1982 to 5.6.1986. In other words, we are constrained to observe that even if the Petitioner was suffering from peptic ulcer & had been admitted as an indoor patient of M.K.C.G. Medical Hospital for a period of 6 days, that too in the year 1986, no documentary or other evidence exists to justify or even to suggest as to why the Petitioner could not make further application/intimation to the employer/superior officer for seeking leave. Although under Ext.S/7, the doctor has certified that on 5.6.1986 the Petitioner-delinquent was not under his treatment from 25.9.1982 to 5.6.1986. All that certificate indicates that the doctor has advised the Petitioner to take rest & the Petitioner during his period of absence of nearly 4 years, was confined to the Hospital for only 6 days.

6. We are not at all satisfied by the evidence produced by the Petitioner in course of the disciplinary proceeding and do not find any documentary evidence to suggest anything other than the Petitioner was suffering from any grave disability or infliction which could have prevented him from intimating the employer/superior officer for grant of leave.

7. It is further found that the disciplinary authority also took note of Ext.S/3 which is a letter dated 6.4.1987 of the Headmaster, Govt. Secondary Training School, Khalikote in which the Headmaster has stated that, "Sri A. Dandapani Dora (Petitioner) ex-pupil teacher of his school took his admission as in-service teacher on 24.7.1982 and continued up to 3.5.1983". It appears that the name

of the Petitioner was struck off from the rolls as the District Selection Committee declared his selection for C.T. training as null and void. The Headmaster Sri Pravakar Panda has also been examined in course of enquiry and he had deposed that he had given evidence as per the school records which indicate that the Petitioner had undergone in-service training at the Govt. Secondary Training School for C.T. examination for the period 24.7.1982 to 3.5.1983. The Disciplinary Authority also took note of the fact that in the written brief submitted on behalf of the Petitioner, it was stated that the Petitioner was admitted in Khalikote Training School on 24.7.1982 till 3.5.1983 but the aforesaid training had been declared null and void.

8. From the aforesaid facts, the disciplinary authority came to conclude that the Petitioner had in fact attended the Training school for the aforesaid period and therefore, the doctor's certificate which indicates a general instruction to the Petitioner, to take rest is of no consequence and, therefore, concluded that the absence of the Petitioner from discharging his duty as E.D.B.P.M. was not due to illness, but due to in service C.T. Training he has undergone in the aforesaid school.

9. We are of the view that the order of the disciplinary authority is in great detail and he has discussed all documentary as well as oral evidence recorded in course of inquiry & we find that the order of the disciplinary authority satisfies the requirement of law by providing vivid & clear reason for not agreeing with the conclusion reached by the Inquiry officer.

10. In view of the above, we find no error of law or of fact either in the order of removal from service passed by the disciplinary authority or in the impugned order of the Tribunal dismissing the Petitioner's original application. Therefore, we find no merit in this writ application, which is, accordingly, dismissed.

L. Mohapatra, J.

11. I agree.