

(2007) 04 AHC CK 0337
In the Allahabad High Court
Case No : C.M.W.P. No. 38815 of 2001

Union of India (UOI) and Another

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 166, 220, 304A, 375
Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 —
Rule 22, 24

Citation : (2007) 7 AWC 7170

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Advocate : S.N. Misra, S.M. Misra and Uma Kant, for the Appellant; V.K. Agnihotri, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Heard Sri S.N. Misra, learned Counsel for the Petitioner and perused the record.

2. The writ petition is directed against the order dated 23.8.2002 passed by Central Administrative Tribunal allowing Original Application No. 284 of 1994, filed by Ram Prakash Dixit, Respondent No. 2 in this writ petition, setting aside his removal order dated 17.12.1992 and appellate order dated 25.11.1993.

3. It appears that Respondent No. 2 was served with a charge-sheet dated 14.8.1986 containing four charges as under :

1. While working as Dak Pal at Mohammadbad Branch, the Petitioner did not render any service from 25.5.81 to 20.8.82 and from 11.7.85 to 31.7.85 between 14.10 to 14.40 in village Ghasipur and from 15.00 to 15.30 at village Chimkuni, though charged serviced allowance for the said period, and therefore, violated the order dated 7.10.1980 issued by Regional Office, Etawah.

2. He remained absent unauthorizedly from 26.7.85 to 30.7.85 without any

information and without setting the leave sanctioned and one Sri Awadesh Kumar worked without permission and therefore, the Petitioner violated Director General (P&T) New Delhi's letter dated 25.4.81.

3. He filed a Criminal Case No. 1364 of 85 under Sections 304A, 166, 220 and 375, I.P.C. against Sri Kalicharan, Assistant Superintendent, Post Office, Etawah and Sri R.S. Suryavanshi, Inspector Post Office, Dibiyaapur in the Court of Judicial Magistrate-II and thereby violated Rule 24 of the Extra Departmental Agent (Conduct and Service) Rules, 1964.

4. He gave a representation directly to the Additional Post Master General, U. P., Lucknow and thereby violated Rule 22 of Extra Departmental Agent (Conduct and Service) Rules, 1964.

4. The Respondent No. 2 replied on 30.8.86 denying all the charges. Thereafter, department appointed enquiry committee consisting of the then S.D.I. Dibiapur and the then S.D.I. Bharthana, who submitted their enquiry report on 26.5.1987, holding charges proved. The Superintendent, Post Office, Etawah Mandal, Etawah passed a punishment order on 17.12.1992, removing Respondent No. 2 from service, whereagainst he preferred an appeal, which was dismissed by Appellate Authority, i.e., Director, Postal Services, Agra Region, Agra, vide order dated 25.11.1993. The Respondent No. 2 thereafter filed Original Application, which has been allowed by the learned Tribunal setting aside orders impugned therein directing the authorities to reinstate Respondent No. 2, but with respect to back wages, only 50% from the date of removal, i.e., 17.12.1992 till the date of reinstatement has been allowed.

5. The learned Counsel for the Petitioners contended that the learned Tribunal has erred in law by setting aside punishment and appellate orders, though charges proved against the Respondent No. 2 were of serious nature. He further contended that in respect to charge No. 1, earlier he was issued warning for non-performing mobile service in time between 25.5.81 to 20.8.82, but the warning by itself was not a punishment, and therefore, it could not have been said that he was being punished twice on charge No. 1. Similarly, in respect to charge No. 2, he contended that Petitioner did not apply for leave to the competent authority, namely, Superintendent, Post Offices and therefore, charge of unauthorized absence was proved but the learned Tribunal erred in law by holding otherwise. In respect to charges No. 3 and 4, both were found proved but the Tribunal has held that those charges did not constitute any misconduct.

6. In our view, the writ petition lacks merit and the order passed by Tribunal does not warrant any interference. From the record, it transpires that in respect to charge No. 1, the Respondent No. 2 did not render mobile service during the time mentioned but service was rendered subsequently. No provision has been placed before us showing that this by itself would amount to misconduct. In respect to charge No. 2, we find that the Respondent No. 2 sent his leave application to the Director, Post Office Services and there appears to be a valid

reason, inasmuch the Respondent No. 2 had some serious grudge against the senior officials, namely, Assistant Superintendent, Post Office, Etawah and Inspector, Post Office, Dibiyaapur, against whom he had to file a criminal case under Sections 304A, 166, 220 and 375, I.P.C. and finding substance therein, charge-sheet was submitted against the said two officials on 4.12.1985 in the Court of Judicial Magistrate-II. Coming to charge No. 3, lodging of a case, criminal or civil, by an employee cannot be said to be an act or omission constituting misconduct and it appears that in order to pressurize Respondent No. 2 for initiating such acts, proceedings in question were taken. Similarly, in respect to charge No. 4, the order of the Tribunal shows that the son of Respondent No. 2 was seriously ill and, ultimately died for want of medical facilities, as Respondent No. 2 was not allowed to shift from place of posting to any District Head Quarter. The learned Tribunal, believing the case of Respondent No. 2 that in order to harass him and exerting pressure for withdrawal of criminal case, which he had instituted against the said two senior officials, the said action was taken and we do not find any reason to take different view in the matter.

7. Moreover, it is not disputed that the impugned order of punishment was passed on 17.12.1992 and there is nothing on record to show that before passing the same, copy of the enquiry report was served upon Respondent No. 2 and he was afforded any opportunity. From the appellate order also, it is evident that the Respondent No. 2 made complaints before the appellate authority that he was not given any show-cause notice and the document, which he demanded, were not made available, but the appellate authority repelled the said observations on conjectures, as is evident from the following :

...because documents may not necessarily be shown before proceedings and the relevant documents have been shown to him. Non-availability of documents does not inter a refusal to supply....

8. The appellate authority has also observed that filing of case without permission to go to any Court of Law is a serious misconduct, which is beyond any comprehension and shows that the appellate authority has also adopted an autocratic approach instead of considering the matter in correct perspective and statutory provisions applicable in this regard. The learned standing counsel could not show any provision to us in support of the contention that before initiating a criminal case in such charges, the Respondent No. 2 was, under law, required to seek prior permission from any authority of the department.

9. In view of the aforesaid discussions, we do not find any merit in the writ petition. It is accordingly, dismissed.