

(2003) 12 AP CK 0002

Andhra Pradesh High Court

Case No: Writ Petition No. 10881 of 2003

Assistant Superintendent of Post

Office, Bhadrachalam

Sub-Division and Others

APPELLANT

Vs

T. Ramappa Rao

RESPONDENT

Date of Decision: Dec. 16, 2003

Acts Referred:

- Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 - Rule 5

Citation: (2004) 1 ALT 779

Hon'ble Judges: S. Anand Reddy, J; G. Bikshapathy, J

Bench: Division Bench

Advocate: T. Suryakaran Reddy, for the Appellant; Siva, for the Respondent

Final Decision: Allowed

Judgement

G. Bikshapathy, J.

The Writ Petition is filed by the Central Government challenging the Order passed by the Central Administrative Tribunal in O.A.No. 3 of 2001, dated: 12-3-2003.

2. The respondent filed an O.A. challenging the Order dated: 29-9-1997 passed by the Assistant Superintendent of Post Office, Bhadrachalam, Khammam Division removing the respondent from service as confirmed by the appellate and revisional authorities. The respondent, who is an applicant before the tribunal was appointed as Extra Departmental Delivery Agent (for brief "E.D.D.A."), Pinapaka in Bhadrachalam sub-area with effect from 15-9-1981. While he was working at Pinapaka, he applied for leave from 6-2-1996 to 25-2-1996 on the ground that his brother-in-law fell sick and he has to be treated at Hyderabad. Ultimately, his brother-in-law expired. It is also his case that on account of the tremendous stress, he also fell sick and could not resume duty. A charge memo dated: 30-12-1996 was

served alleging that he was unauthorisedly absent from duty after 26-2-1996 after expiry of the sanctioned leave and finally an enquiry was held and Order of removal of service was passed on 29-9-1997. Aggrieved by the said Order, he filed an appeal under Extra Departmental Agents Conduct and Service Rules, 1964 (hereinafter called the "Conduct Rules") and the appellate authority also dismissed the appeal by an Order dated: 11-3-1998. He filed a revision to the next-higher authority and the same was also rejected on 8-12-1998, after availing the statutory remedies provided under EDA Conduct and Service Rules.

3. It is the case of the respondent-employee that after expiry of the sanctioned leave, he applied for further extension and that no reply was received. It is also his contention that enquiry was conducted in violation of the provisions of the Conduct Rules and thus the entire enquiry proceedings are vitiated. The Writ Petitioners who are the respondents before the tribunal filed counter therein stating that the employee remains absent for more than 180 days at a stretch and therefore, it attracted Rule 5 of Conduct Rules. It is also stated that the employee did not submit any leave application for extension of leave at all. It is further stated that a charge sheet was issued to him stating that he was unauthorisedly absent and therefore, an enquiry was conducted and the Enquiry Officer fixed the first sitting on 21-2-1997 at Pinapaka Branch, but the memo sent to the employee was received with remarks "addressee absent for continuously 8 days". Thus, the employee did not attend. The 2nd sitting was held on 10-3-1997 and the memo sent for attending the enquiry was also returned with the same endorsement. Third sitting was fixed on 25-3-1997 where the prosecution witnesses were examined. After departmental witnesses were examined, the employee was directed to submit his defence statement. This letter was also returned back. Fourth sitting was held on 24-7-1997 in response to the intimation memo, the employee presented before the Enquiry Officer at the 4th sitting. The employee submitted written brief on 13-8-1997. The Enquiry Officer found the employee guilty of the charges. The employee also submitted his defence to the Enquiry Officer's report on 22-9-1997. Considering the nature of the misconduct and also the fact that the charges were proved against the employee he was removed from service on 29-9-1997. It was confirmed by the authorities. Therefore, the learned counsel for the petitioner submits that the enquiry was conducted in accordance with rules. The tribunal on challenge made by the employee held that employee was not in a position to report to duty after expiry of leave and he could not apply for extension of leave in advance. Therefore, the tribunal held that the award of imposition of extreme punishment was held to be illegal and consequently directed the reinstatement of the employee without any back wages. Against the said Order, the present Writ Petition has been filed by the petitioner.

4. The learned Standing Counsel submits that the Order of the tribunal is wholly illegal and contrary to law. He submits that the tribunal did not consider the relevant material at all for coming to the conclusion that the Order of removal was not

sustainable. The learned counsel would submit that this is a case where the employee exhibited a total irresponsible attitude. Having been sanctioned leave for 20 days, he failed to report for duty after expiry of leave nor did he extend leave in advance. Thus, he submits that the employee remained unauthorisedly absent. Further, he adopted strange attitude before the tribunal stating that he had sent the leave applications for extension, no evidence was adduced in support of forwarding the applications for extension of leave. Even before the Enquiry Office when he appeared, he filed his written statement and did not oppose the enquiry at all. The employee was furnished to the copy of the enquiry report and after considering the explanation, he was awarded with the punishment of removal. Thus, the learned Standing Counsel would submit that the enquiry was quite legal and valid and the same is in accordance with rules.

5. On the other hand, the learned counsel for the respondent-employee Mr. Siva submits that the Order of the tribunal is quite legal and valid. He contends that the employee was not given proper opportunity to defend his case in the enquiry and the enquiry was conducted ex parte without serving the notices of enquiry. He also submits that the extension applications were sent from time to time and they were intentionally suppressed by the petitioner so as to build up their case to support the Order of punishment. He submits that when the employee was not available at the address given before going on leave, the authorities ought to have sent the notices to the address where he was staying. Thus, there was no proper communication at all. Under those circumstances, the Order of the tribunal is quite legal and valid and the same is unassailable. He relies on the decision of the Supreme Court reported in [Union of India and Others Vs. Dinanath Shantaram Karekar and Others,](#).

6. The admitted facts are that the respondent-employee was working as Extra Departmental Delivery Agent (for short "E.D.D.A) and he applied for leave from 6-2-1996 to 25-2-1996. The said leave was granted. There is no dispute on this.

7. The question that calls for consideration is whether he reported for duty or extended the same when the sanction leave of the employee expired. It is his duty to extend the leave or report back to the department and join services. It is also on record that after receiving the charge sheet, he submitted the explanation, but thereafter did not participate in the enquiry on the premise that he did not receive the notices. It is to be noted that when once the charge sheet is issued when it was served on him, and when he has changed the station from Pinapaka to other stations, he ought to have furnished the leave addresses, but the same was not done for the reasons best known to him. Even to the notices sent by the Enquiry Officer for conducting the enquiry, they were returned unserved on the ground that addressee was not available for eight consecutive days, It is only in the 4th sitting, he presented himself before the Enquiry Officer and submitted his defence.

8. Therefore, the question that calls for Consideration is whether he was absent from duty unauthorisedly? Even though it was the contention of the employee that

he sent leave application for extension of leave, no such record has been produced by him at any point of time either before the Enquiry Officer or appellate authority or revisional authorities. It appears only to be a ruse rather than reality. Even, the Enquiry Officer recorded the statement of the employee on 24-4-1997 and in the enquiry he stated before the Enquiry Officer that he has applied for extension of leave and sent leave applications in ordinary post. However, he accepted that after first extension, he did not apply for further leave. We have perused the statement given before the Enquiry Officer. We find that it was given in a most casual manner. We don't want to extract the questions and answers, but the question No. 20 is a last question and the answer there to is extracted below:

"Question: Did you agree that you remained absent all these days without applying for leave?

Ans: I am agreeing. This is due to ill health."

Thus, it is clear that the employee remained unauthorisedly absent from 26-2-1996 onwards and he did not bother to report back to duty or extend leave by sending applications. Even in the written brief, he has categorically accepted that his absence exceeded 180 days. He tried to find fault with the department rather than realising that he failed to discharge the duties as a responsible civil servant. In the case relied on by the respondent that there was no proper communication, the Supreme Court observed that where disciplinary proceedings are intended to be initiated by issuing a charge sheet, its actual service is essential as the person to whom the charge sheet is issued is required to submit his reply and, therefore, to participate in the disciplinary proceedings. Similarly, when show-cause notice is issued the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and [actual service] must be proved and established. Neither the charge sheet nor the show cause notice were ever served upon the original respondent. Consequently, the entire proceedings were held vitiated. In the said case, the entire proceedings were conducted ex parte and no charge sheet served on him. The enquiry was held ex parte and the show cause notice was also not served and finally the Order of removal was passed. But, in the instant case, the charge sheet was issued against him and he submitted the explanation and thereafter he did not attend the enquiry. Even though notices were not served, as he was not available at the address given by him, but ultimately he attended the enquiry on one day and gave statement. He has also submitted written brief and thereafter he submitted written statement also to the Enquiry Officer's report. Thus, it cannot be said to be a case where the employee was denied opportunity. On the other hand, the employee himself conducted in such a way that there was no other alternative for the authorities except to proceed with the enquiry in his absence. Therefore the decision relied on by the learned counsel for the respondent is not applicable to the facts of the

present case. The tribunal without going into these aspects has observed "it is possible due to severe strain, the applicant himself fell sick and thereafter he attended the enquiry along with medical certificate, which was not admitted to have been received by the respondents. The entire discussion was made in paras 14, 15 and 16, which reads thus:

"14. The applicant was appointed as EDDA on 15-9-1981 and since then he worked as such sincerely and without any complaints from the respondents for nearly two decades. It was only in the year 1996 when his brother-in-law fell sick and the applicant had to bring him to Hyderabad that he had applied for leave from 6-2-1996 to 25-2-1996, which was duly sanctioned by the respondents. The seriousness of the illness of the applicant's brother-in-law can be known from the fact that he ultimately expired. It is possible that due to severe strain, the applicant himself fell sick and could not resume his duty and thereafter applied for leave along with medical certificate which has not been admitted to have been received by the respondents. The respondents have nowhere stated either in the counter reply or in their submissions before this Tribunal that the applicant was not serious with the job or was in the habit of taking leave frequently from work. From the facts of the case, it is clear that such an incident of the applicant applying for long leave happened for the first time because of the serious illness of his brother-in-law and thereafter his own sickness.

15. We have considered the judicial pronouncements, as cited by the learned counsel for the applicant. After going through at the facts and the judicial pronouncements, we are of the view that the present applicant was not in a position to report for duty on expiry of the leave and he could not apply for extension of leave in advance. However, the action of the disciplinary authority in imposing the extreme penalty of removal from service was highly improper and the same cannot be upheld.

16. Accordingly, the Order of removal from service dated 29-9-1997 passed by the respondent-authorities as well as the appellate Order dated 11-3-1998 along with the Orders dated 8-12-1998 and 4-7-2000 are all quashed, the respondents are directed to reinstate the applicant into service in the same capacity forthwith. The applicant is, however, not entitled to any back wages."

Thus, we find that the tribunal has not applied its mind to the facts of the case. The tribunal ought to have considered whether enquiry conducted against the petitioner was valid or not and whether findings of the Enquiry Officer are sustainable or whether there was violation of principles of natural justice. But instead of concentrating on these issues, the Tribunal recorded a finding that the employee was not in a position to report to duty on expiry of the leave and he could not file an application for extension of leave. This finding is absolutely unsustainable. There is no material whatsoever before the tribunal to come to such a conclusion. In fact, the employee himself admitted that he was absent for more than 180 days and he did

not produce any document to establish that he sent application for extension of leave supported by medical certificate.

9. Thus, we find that the tribunal has recorded a finding on mere surmises and conjectures. The power of judicial review cannot extend to the extent of converting the tribunal into an original authority and recording a finding without there being any reliable and acceptable material. The respondent, who is having experience of more than two decades having went on leave for 20 days, did not report for duty nor did he sent any extension application by Registered Post. His evasive replies would indicate that he conducted himself in a most reprehensible manner. We do not find fault with the procedure adopted by the Enquiry Officer and we are also of the view that sufficient opportunity was given to the respondent employee and there is no violation of the principles of natural justice. The findings recorded by the Enquiry Officer holding the employee guilty of the charge is quite tenable. Consequently, the Order of removal is quite legal and appropriate in the facts and circumstances of the case. Accordingly, we hold that the tribunal exceeded its jurisdiction by interfering and setting aside the Order of removal. Accordingly, we set aside the Order of tribunal and dismiss the O.A.No. 3 of 2001 filed by the respondent - employee.

10. The Writ Petition is allowed. No costs.