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W.P.No.25876 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	22.04.2025
<i>Pronounced on</i>	10.06.2025

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.25876 of 2023
and
W.M.P.No.25314 of 2023

1.The Union of India,
Rep. by its Secretary,
Department of Posts,
Ministry of Communications and
Information Technology,
Dak Bhawan, Sansad Marg,
New Delhi – 110 116.

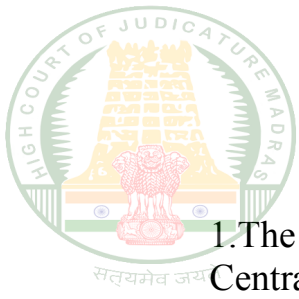
2.The Post Master General,
Central Region,
Tiruchirappalli.

3.The Senior Superintendent of Post Offices,
Virudachalam Division,
Virudachalam,
Cuddalore District.

4.The Inspector of Posts,
Tirukoilur Sub Division,
Villupuram District.

...Petitioners

Vs.



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1.The Registrar,
Central Administrative Tribunal,
Madras Bench Court Building,
Chennai – 104.

2.S.Moorthi

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Tribunal in its impugned order dated 03.02.2023 in O.A.No.1477 of 2016 passed by the 1st respondent, Central Administrative Tribunal, Madras Bench and to quash the same.

For Petitioners : Mr.M.Karthikeyan

For R2 : Mr.G.Murugendran

ORDER

M.S.RAMESH, J.

The 2nd respondent herein, while working as a Gram Dak Sevak Mail Packer GDSMP, was levelled with a charge, through a charge memo dated 24.03.2014/04.04.2014, alleging that he had taken leave without allowances (LWA) from 30.01.2013 to 11.01.2014 in various spells for 179 days in a year and thereafter remained unauthorizedly absent from duty from 12.01.2014 to 05.02.2014 for 25 days without applying for LWA and thereby contravened the Director General's instructions.



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Though the charge memo was received by the 2nd respondent, he had neither submitted his written statement nor did he express his desire to be heard in person. In the inquiry report dated 30.09.2014, the Inquiry Officer had recorded the admission of the charges and held the charge as 'proved'. Consequently, the Disciplinary Authority had imposed the punishment of removal from engagement, through the order dated 30.12.2014. The challenge to the said order of punishment before the Appellate Authority was also rejected on 05.11.2015. When the 2nd respondent herein had challenged both the punishment order, as well as the appellate order, before the Central Administrative Tribunal, Chennai Bench, (hereinafter referred to as 'the Tribunal') in O.A.No.1477 of 2016, the application was partly allowed by holding that the punishment was harsh and shockingly disproportionate to the levelled charges, through its order dated 03.02.2023. This order of the Tribunal is under challenge in the present Writ Petition.

2. The learned counsel for the petitioners would submit that as per the Director General's circular, when an ED agent remains on leave for more than 180 days at a stretch, he is liable to be proceeded against with departmental action. Since the 2nd respondent was on unauthorized



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absence after expiry of 179 days and had admitted the levelled charge against him, the punishment of removal from service was imposed in accordance with Rule 7 of the GDS Conduct and Engagement Rules, 2011 and therefore, the Tribunal ought not to have interfered with the order of punishment. He further submitted that the 2nd respondent himself has admitted the charge of unauthorized absence and therefore, the punishment order, as well as the appellate order, ought not to have been interfered with.

3. Per contra, the learned counsel for the 2nd respondent would submit that the employee was on severe medical ailment, owing to which he had availed leave for 179 days, which was sanctioned by the department. He further submitted that for the remaining period of 25 days of unauthorized absence, he had submitted his medical certificate and therefore, the Tribunal had rightly interfered with the order of punishment by holding it as disproportionate to the charges.

4. We have given our anxious consideration to the submissions made by the respective counsels.



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5. The claim of the 2nd respondent that he was medically unwell is not disputed by the department. As a matter of fact, the department themselves had granted him LWA for 179 days, thereby recognizing that he was under medical ailment. Thereafter, the 2nd respondent is alleged to have remained unauthorizedly absent for 25 days for the period between 12.01.2014 and 05.02.2014. The explanation rendered by the 2nd respondent herein is that he was absent owing to medical ailment. He had also submitted the necessary medical certificates to substantiate the reasoning.

6. As per the instructions contained in D.G., P&T, General Circular No.23, dated 24.02.1970, as well as the consequential letters of the department, when an ED Agent remains on leave for more than 180 days at a stretch, he will be liable to be proceeded against under Rule 8 of EDAs (Service and Conduct) Rules, 1964. For the sake of convenience, the said circular is extracted below:-

“a) If an ED agent remains on leave fore more than 180 days at a stretch, he will be liable to be proceeded against Rule 8 of EDAs (Service and Conduct) Rules, 1964.

b) Leave shall not ordinarily be availed by an ED agent at frequent intervals. If an ED agent is



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found to have taken leave at frequent intervals for a total period of 180 days or more in a period of one year, he shall cease to be an ED agent.”

7. Rule 7 of the Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011, provides for grant of leave to the Sevaks in the following manner:-

“7. Leave

The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government from time to time:

Provided that -

(a) where a Sevak fails to resume duty on the expiry of the maximum period of leave admissible and granted to him, or

(b) where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave.

He shall, unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.”



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8. In the reply statement filed by the petitioners herein before the Tribunal, the various spells of leave spread over 14 occasions for the period between 30.01.2013 and 11.01.2014 has been detailed. On the whole, the petitioners have sanctioned leave without allowances for 179 days over 14 occasions. We find from the said statement that for the 179 days of leave availed by him, the petitioners themselves have sanctioned the leave and thus, we are inclined to accept that the 2nd respondent herein had some serious medical ailment. The charge against him is that in view of his unauthorized absence for 25 days, he was liable to be subjected to disciplinary action. The 2nd respondent has not disputed that he was on unauthorized leave. On the other hand, he had made a request to the Disciplinary Authority, as well as the Appellate Authority, that such leave was due to his medical condition and therefore, sought for lenience. In these given circumstances, the petitioners herein ought to have considered for a lesser punishment than imposing him with a major penalty of disengaging his services.

9. Incidentally, Rule 7, which provides for removal from service of a Sevak who goes on unauthorized leave after the maximum period



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admissible to him, is not an absolute Rule by itself. From the very words incorporated in the proviso to Rule 7, it could be seen that the Government, in exceptional circumstance of the case, is empowered to deviate from the imposition of maximum punishment.

10. In this view of the matter, we have no difficulty in holding that the proviso to Rule 7 is only directory in nature and not mandatory. While that being so, the petitioners ought to have taken into consideration the facts and circumstances of the case of the 2nd respondent and considered for imposing a minor punishment.

11. The incidental issue that may arise for consideration in this Writ Petition is, as to whether the Tribunal would be justified in interfering with the punishment? It would be useful to refer to the decision of the Hon'ble Supreme Court in the case of ***B.C.Chaturvedi Vs. Union of India and Others*** reported in ***AIR 1996 SC 484***, wherein it was held as follows:-

“..... A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider



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the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

12. Similarly, in the case of ***Union of India and Others Vs. Giriraj Sharma*** reported in ***AIR 1994 SC 215***, when the charge against the Government servant was for over-staying of the leave period, the Hon'ble Supreme Court held the punishment of dismissal to be harsh and disproportionate and ordered for reinstatement with all benefits, together with liberty to the authorities to visit minor punishment.



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13. In a case of unauthorized absence for seven days resulting in a punishment of dismissal, the Hon'ble Supreme Court, in the the case of ***Syed Zaheer Hussain Vs. Union of India and Others*** reported in (1999) **9 SCC 86**, had recorded the disproportionateness of the punishment to the levelled charges and imposed a lesser punishment.

14. In the light of these decisions, it is clear that the Tribunal or the High Court will be well within its powers to adjudicate on the proportionateness of the punishment to the charges and recommend for a lesser punishment.

15. The Tribunal had also taken a similar view and held that the punishment was shockingly disproportionate to the charges levelled against the 2nd respondent herein and recommended for imposing a lesser punishment. We do not find any reason to interfere with the same.

16. It is now brought to the notice of this Court that the 2nd respondent herein has reached the age of superannuation. As such, the question of his reinstatement back into service will not arise. However, in view of the aforesaid findings and observations, he would be entitled for



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the retirement and pensionary benefits.

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17. In the result, the Writ Petition stands dismissed. Consequently, there shall be a direction to the petitioners herein to pass appropriate orders, notionally retiring the 2nd respondent herein from service on the date of his superannuation and disburse all the retirement and pensionary benefits, including his service benefits. Such orders shall be passed at least within a period of one (1) month from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

[M.S.R., J] [N.S., J]
10.06.2025

Index: Yes
Neutral Citation: Yes
Speaking order
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M.S.RAMESH, J.
and
N.SENTHILKUMAR, J.

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To

1.The Secretary,
Department of Posts,
Ministry of Communications and
Information Technology,
Dak Bhawan, Sansad Marg,
New Delhi – 110 116.

2.The Post Master General,
Central Region, Tiruchirappalli.

3.The Senior Superintendent of Post Offices,
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4.The Inspector of Posts,
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5.The Registrar,
Central Administrative Tribunal,
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Chennai – 104.

Pre-delivery order made in
W.P.No.25876 of 2023

10.06.2025