

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1272/2001

New Delhi, this the 30th day of July, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

V.K. Rawat,
WZ 209, Village Naraina
New Delhi - 28

... Applicant

(By Advocate : Shri J. Buther with
Smt. Geeta Kalra)

Versus

1. Senior Superintendent of Post Offices,
The New Delhi West Division
N.I. Estate, New Delhi - 28
2. Director Postal Services (P)
O/o Chief Post Master General
Delhi Circle, Meghdoot Bhavan
New Delhi - 1

... Respondents

(By Advocate : Shri R.P. Aggarwal with
Shri D.S. Mahendru)

O R D E R

By S.A.T. Rizvi, Member (A) :

Under challenge in this OA are the order dated 30.6.1999 passed by the disciplinary authority dismissing the applicant from service and the appellate authority's order dated 23.6.2000 by which the departmental appeal filed by the applicant has been rejected and the order passed by the disciplinary authority has been upheld. Copies of these orders are placed at Annexures A-1 and A-2 respectively.

2. The learned counsel appearing on behalf of the applicant has advanced pleas with regard to the following:-

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- i) Ex-parte departmental proceedings held against the applicant are illegal as there was no justification for conducting the proceedings on ex-parte basis.
- ii) Findings recorded by the inquiring authority are perverse. The inquiring authority has not applied his mind at the time of recording his findings with regard to various articles of charges.
- iii) This is a case of no evidence inasmuch as there is no evidence at all in support of any of the charges.
- iv) The applicant has been discriminated against in the matter of imposition of penalty.
- v) The charge sheets served on him are vague.
- vi) The PWs examined are not credit-worthy as some of them have themselves been found to be at fault during the preliminary enquiry.
- vii) Common departmental proceedings should have been conducted against the applicant as well as the others found guilty in terms of rule 18 of the CCS CCA Rules, 1965.

3. We have heard the learned counsel on either side at length and have also, to the extent necessary, perused the report of the inquiring authority as also the orders passed by the disciplinary and the appellate authorities.

4. The learned counsel appearing on behalf of the respondents has submitted that the departmental proceedings have been conducted properly and wholly in accordance with the relevant rules and there has been no mis-carriage of justice in the present case. Ex-parte proceedings had to be conducted solely because the applicant, despite notice and personal information, failed to participate in the proceedings. There has been, according to him, no discrimination against the applicant as the only other official found guilty was

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also tried departmentally. It is a different matter that due to insufficient evidence, that other official was exonerated. The charge sheet, according to him, has been drawn in clear terms and there is no vagueness in the various articles of charges shown in the charge sheet. The findings of the inquiring authority are, according to him, well founded and reasoned and cannot be termed as perverse. The allegation of lack of credit-worthiness of some of the PWs cannot be sustained either. None of them has been found to be unreliable insofar as the present disciplinary proceedings are concerned. For determining the credit-worthiness of PWs, it will not be proper, according to him, to rely on the adverse comments finding place in the preliminary enquiry report. In any case, in the list of witnesses examined on behalf of the respondents consisting of eleven persons, adverse comments had been made in the said report only against Shri Tilak Raj and Shri R.P. Sharma. Of the aforesaid two persons, Shri R.P. Sharma was, as stated, tried departmentally but had to be exonerated due to lack of evidence against him. Moreover, credit-worthiness of prosecution witnesses is more material in criminal cases and not in departmental proceedings such as the present one in which reliance has almost exclusively been placed on documentary evidence. There is application of mind in the present proceedings at all levels and, therefore, no fault can be found with the out-come of the proceedings on the ground of non-application of mind. Insofar as common departmental proceedings are concerned, the power available in rule 18 of the CCS CCA Rules, 1965 is

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discretionary and it is, by no means, necessary that in each case involving more than one Govt. servant, common departmently proceedings should necessarily be drawn up. In the circumstances of the present case, the respondents have not found it necessary to proceed against the applicant as well as the aforesaid Shri R.K. Sharma simultaneously in common departmental proceedings.

5. The learned counsel appearing on behalf of the applicant had particularly emphasised the issue of ex-party departmental proceedings by submitting that while the applicant attended the enquiry on 5.2.1997, 26.2.1997 and 12.3.1997, he failed to attend the enquiry held on the next date, namely, on 5.4.1997 due to sickness. From that date onward, according to him, the applicant has been kept in dark and the inquiring authority has proceeded against him on ex-parte basis without any justification whatsoever. The applicant was, according to the learned counsel, never informed about the dates of inquiry after 5.4.1997. On this question, we have found it necessary to peruse the departmental file produced before us by the learned counsel for the respondents. There is enough material on this file to bring home ~~that~~ the charge levelled by the respondents that the applicant has refrained from participating in the departmental proceedings deliberately and without sufficient cause. The departmental record shows that the applicant has filed hand written applications on 9.7.1997 and 30.7.1997 seeking postponement of departmental enquiry on the

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ground of sickness. Medical certificates have also been attached by him along with the aforesaid applications. Prior to that on 30.6.1997, the applicant had received a Memo dated 25.6.1997 which notifies 9.7.1997 as the next date of hearing. When he failed to turn up on 30.7.1997, the inquiring authority passed a reasoned order on that date itself stating his reasons for proceeding on ex-parte basis from that date onward. After hearing on each date, both before and after 30.7.1997, the inquiring authority has recorded orders indicating the work done and the next date fixed for hearing. It is clear from the file that copies of each of these orders had been sent to the applicant. We are, in the circumstances, convinced that the respondents were compelled to proceed ex-parte against the applicant due to the indifference and non-cooperation of the applicant.

6. In support of his contention that rule 18 of the CCS CCA Rules, 1965 should have been followed and accordingly formal departmental proceedings should have been conducted against the applicant and the aforesaid Shri R.P. Sharma, the learned counsel appearing on behalf of the applicant has relied on the State Bank of Patila and Others vs. S.K. Sharma decided by the Supreme Court on 27.3.1996 and reported in (1996) 3 SCC 364. He has in particular drawn our attention to the following principle laid down by the Supreme Court in the aforesaid case:-

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"Para 33 (iv)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee".

We do not quite see as to how prejudice has been caused to the applicant due to the respondents not proceeding against him as well as against the aforesaid Shri R.K. Sharma simultaneously in one formal departmental proceedings. The two employees in question occupied different positions and had different duties and responsibilities to discharge. The extent of their involvement will have to be adjudged in the light of the duties assigned to them and the evidence forth-coming against them. Admittedly the applicant and the aforesaid Shri R.P. Sharma held different posts and were discharging different responsibilities and duties. The aforesaid Shri R.P. Sharma was admittedly tried departmentally on the basis of the evidence available against him. The fact that he was exonerated, in our view, cannot imply ^{that} prejudice has been caused to the applicant. Rule 14 of the CCS CCA Rules is a procedural provision and its non-observance has not caused any prejudice to the defence of the applicant. In the circumstances, placing reliance on the aforesaid principle upheld by the Supreme Court will not assist the applicant.

7. The inquiring authority has after recording the evidence of the witnesses in detail recorded his reasons

for arriving at each of the findings. For instance, in relation to the first article of charge, which is the core charge, reliance has been placed by him, inter alia, on the applicant's own admission/confession together with the fact clearly brought out that a shortage of Rs.2,98,086.82 undoubtedly existed ^{on} ~~from~~ the material date. He has recorded his reason as to why he has refused to accept the applicant's contention that the aforesaid admission/confession was made under pressure. Like-wise, in relation to the other charges, he has relied on the relevant rules available in the Financial Hand Book and the Postal Manual for arriving at the finding of guilt. In relation to the fourth article of charge which deals with the applicant's refusal to give a statement on 19.10.1994, the inquiring authority has referred to the applicant's own statement of that date supported by the evidence of one of the witnesses. On a perusal of the report of the inquiring authority we have failed to come across any evidence of non-application of mind nor are we in any way convinced that the findings recorded by him are in any manner perverse.

8. The disciplinary authority in his turn has passed ^{ra} ~~is~~ detailed order taking into account all the points raised by the applicant in his representation. The order passed by him, in our judgement, is a reasoned and a speaking order without any display of bias. Like-wise, the order passed by the appellate authority is also, in our view, a fairly reasoned and a speaking order which deals with the various points raised by the

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applicant in his appeal. It is settled that this Tribunal cannot reappraise the evidence with a view to substituting the findings arrived at by the inquiring authority by its own findings. For the same reason we cannot find fault with the orders passed by the disciplinary and the appellate authorities unless malafide and perversity are alleged and proved or when the principles of natural justice have been violated in a manner as to cause prejudice to the legitimate defence of the applicant. We have failed to notice any such circumstance in the present proceedings at any stage.

9. The learned counsel appearing on behalf of the applicant had also contended that the chain of events in the course of departmental proceedings do not indicate fair procedure and also discloses bias against the applicant. Accordingly, the impugned orders should be quashed and set aside by following the ratio of the judgement of the Supreme Court in Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others decided by that Court on 18.10.2000 and reported in 2001 I LLJ 583. We have perused the aforesaid judgement and find that the same is distinguished. In that case, the Inquiry Officer on supposed examination of the records and admittedly without giving any notice and without fixation of any date or time or any venue for the inquiry or for examination or cross-examination of the witnesses and upon purported consideration of the so-called reply of the respondent therein had proceeded to complete the inquiry. No Presenting Officer was appointed in that case and the Inquiry Officer dealt

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with the entire matter himself. Further, in response to a show cause notice issued in that case levelling 13 allegations against him, the respondent could not submit a proper and effective reply for want of several documents which were not supplied despite repeated requests made. The proceedings in that case also showed unseemly haste on the part of the authorities. A copy of the inquiry report was sent to the respondent in that case on 9.11.1993 with a direction to give a reply thereto positively by 10.30 AM on 10.11.1993. At the stage of personal hearing, the Managing Director informed the respondent on 26.11.1993 to appear before him on that very date at 4 PM. Again on that very date, namely, on 26.11.1993 the said authority passed an order dismissing the respondent from service at 7.30 PM. The facts and circumstances of the present case are entirely different and do not disclose haste nor any breach of the principles of natural justice in the way noticed in the aforesaid case. The applicant in the present case has, as already noticed by us, deliberately refused to participate in the departmental proceedings. The applicant's response to the charge sheet dated 16.11.1995 and the detailed representation filed by him on 30.3.1999 in reply to the report of the Inquiring Authority have both been considered by the authorities before passing the impugned orders. A copy of the brief prepared by the Presenting Officer was also sent to the applicant. Bias against the Inquiring Authority though alleged was never made the subject matter of the petition before the higher authorities. For these reasons, the plea advanced by the learned counsel by

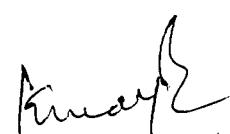
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placing reliance on Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others (supra) is found to have no force and is rejected.

10. In the light of the foregoing, we find no substance in the OA which is dismissed. There shall, however, be no order as to costs.


(S.A.T. RIZVI)
Member (A)


(KULDIP SINGH)
Member (J)

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