

Central Administrative Tribunal
Principal Bench

(1A)

O.A. No. 642/2001

New Delhi, dated this the 15th May, 2002.

HON'BLE MR. S.A.T.RIZVI, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

K.P.Soni, aged about 49 years,
S/o Shri Beni Prasad Soni,
R/o 13/180, Purani Bazar, Karvi,
District - Chitrakoot.Applicant.
(By Advocate: Shri D.P.Sharma)

Versus

1. Union of India through the
Secretary, Ministry of Communication
(Department of Posts),
New Delhi.
2. The Director Postal Services,
Office of the Postmaster General,
Agra Region, Agra-282 001.
3. The Senior Superintendent of
Post Offices, Jhansi Division,
Jhansi 284 001.Respondents.
(By Advocate: Shri S.Mohd.Arif)

ORDER(ORAL)

By Hon'ble Shri S.A.T.Rizvi, Member(A)

Under challenge in this OA is the order dated 22.9.1998, passed by the disciplinary authority, Respondent No.3 herein, imposing, on the applicant, the penalty of reduction in pay by three stages from Rs.7500/- to Rs.6900/- for a period of three years without cumulative effect with a further direction that during the continuance of the aforesaid penalty, the applicant shall not earn any increment. Likewise, the order dated 11.4.2000 passed by the appellate authority, Respondent No.2 herein, on his appeal dated 6.10.1998 filed by the applicant upholding the aforesaid order of penalty, has also been challenged. *2*

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. The disciplinary proceedings taken up against the applicant relate to the appointment of one Shri C.P.Khare on the post of E.D.Packer in preference over one Shri Sanjeev Kumar Namdev by giving a wrong interpretation to the relevant rules. According to the charge-sheet, the aforesaid Shri Namdev had scored 60.3% marks in his High School Examination whereas the aforesaid Shri Khare was awarded 50.3% marks only. On this basis, the applicant should have offered appointment to the aforesaid Shri Namdev and not to Shri Khare. The charge-sheet in question goes on to provide further that the applicant has, in giving appointment to the aforesaid Shri Khare, incorrectly relied upon the order passed by the Principal Bench of this Tribunal in OA No.677/1994. That matter related to Aligarh Division. The judgement rendered by this Tribunal in that case was a judgement in persona. Thus, the Tribunal's ruling in that case could be relied upon and followed in other cases only after the respondents had, after considering the aforesaid judgement, made necessary changes in the relevant rules. No such change has been made by the respondents. In the circumstances, according to charge-sheet, the appointment offered to the aforesaid Shri Khare was totally illegal.

d

(3)

4. Learned counsel appearing on behalf of respondents has vehemently argued that the applicant has not only failed to adhere to the relevant rules but has also committed other acts of misdemeanour calling for action against him. For instance, according to him, the aforesaid Shri Khare was allowed to join the post even in the face of an order dated 13.11.1998 passed by the Allahabad Bench of this Tribunal in favour of maintenance of status quo as on that date. The services of the aforesaid Shri Khare had earlier been terminated by the respondents on 23.9.98 and one Shri Gauri Shanker, an employee of the respondents, was given the charge of the said post on that very day, i.e. on 23.9.98. The aforesaid status quo order was passed in an OA filed by the aforesaid Shri Khare. According to the learned counsel, this action on the part of the applicant amounted to flouting the status quo order passed by the Allahabad Bench of this Tribunal and was also contrary to the arrangement already made by the respondents whereunder aforesaid Shri Gauri Shanker held the charge of the post from 23.9.98 onward. Learned counsel appearing on behalf of respondents has thereafter proceeded to bring to our notice the matter regarding 8th Class pass certificate held by the aforesaid Shri Khare issued to him from two different schools. Accordingly the two marksheets show that the aforesaid Shri Khare had secured 52.1% and 77.3% marks respectively for the same 8th Class from different schools. The applicant, according to the learned counsel, needed

dw

to be proceed against on the basis of this allegation as well. The aforesaid acts of misdemeanour and the illegality committed by him in offering appointment to the said Shri Khare by wrongly interpreting the Recruitment Rules have weighed with the respondents in imposing the penalty in question on the applicant. The penalty imposed cannot therefore be interfered with.

5. We have carefully considered the submissions made by the learned counsel on behalf of respondents and have also heard the learned counsel appearing on behalf of applicant on the issue of appointment by relying on the marks obtained in the High School Examination. Class 8th pass is the educational qualification prescribed in the Rules for appointment to the post of E.D.Packer. It is also stated that preference will be given to those who have passed High School Examination. The respondents have interpreted these provisions to mean that where all the applicants happen to be High School pass, the relative merit must be judged on the basis of marks awarded in the High School Examination, and accordingly, in that event, lower educational qualification of 8th pass has to be ignored. We do not agree. The implication of the aforesaid provisions, in our view, is that if after taking into account the prescribed qualification of 8th class pass, two or more candidates are found to possess equal merit ⁱⁿ _{inter alia} terms of marks obtained in 8th Class Examination, preference in the matter of

(5)

appointment will be given to that candidate or those candidates who are found to have obtained higher marks in the High School Examination. This interpretation of the rule position appears to have found favour with the Principal Bench of this Tribunal in OA No.677/1994 referred to in the charge-sheet issued to the applicant. In any case, from what we have been observed above, it is clear that more than one interpretation of the aforesaid rule position is possible. In such a situation, in our view, it will not be fair to find fault with the applicant who has, in the absence of written departmental instructions to the contrary, relied on his own understanding of the rule position. Moreover, in imposing a penalty, the respondents also could not keep in view the misconduct which is not reflected in the charge-sheet. The OA accordingly succeeds and the impugned orders passed by the disciplinary and the appellate authorities are quashed and set aside.

6. Before we part with this order, we will like to point out that if the respondents have found, during the consideration of the facts and circumstances of this case, that the applicant has committed certain acts of misdemeanour or has misconducted himself by flouting the status quo order dated 13.11.1998 or by ignoring the fact that the aforesaid Shri Khare's qualifications as 8th class pass were suspect in view of the different schools which he is supposed to have attended for clearing

(22)

the said class, they (respondents) could well proceed against the applicant in whatever manner they deemed fit in accordance with law and if so advised. The aforesaid misconduct could not be taken into account for determining the quantum of punishment in proceedings confined to a misconduct/charge different from aforesaid misconduct.

7. In the light of foregoing, the OA is allowed in the aforesated term. No costs.

S. Raju
(Shanker Raju)
Member (J)


(S.A.T. Rizvi)
Member (A)

/kd/