

the general complaints against the Janakpuri Post Office, we also find no substance in the same as the competent authorities have, based on the evidence adduced before them, come to the conclusion that there are lapses on his part. The applicant has not disputed the fact that although he was a Sorting Assistant, he had been posted on deputation during the relevant period in the Janakpuri Post Office. Therefore, his contention that he did not know the postal work at all cannot absolve him of the responsibility and duties assigned to him while working in that Post Office. The show cause notice letter dated 18.8.1994 has been issued to the applicant in pursuance of the Tribunal's order in O.A.187/94. In the circumstances of the case, we are also unable to agree with the other contentions of the learned counsel for the applicant that this was nothing but an empty formality as the competent authority has given the reasons why he differs from the findings arrived at by the Inquiry Officer based on the relevant evidence before him. The penalty imposed on the applicant for his lapses in carrying out the duties has now been passed in accordance with the procedural rules and we do not find any justification to interfere in the matter. Similarly, the appellate authority's order gives the reasons for his conclusions for rejecting the appeal on merits.

✓ 9. One other important issue raised by the learned counsel for the applicant is that a show cause notice had not been issued to the applicant under FR 54-B (5) and (7). In the present case, the disciplinary authority had vide his order dated 1.7.1996 imposed a penalty of reduction in pay of the applicant to the

9/11

minimum in the scale, that is from Rs.1150/- to Rs.975/- during which period he will not earn increments and on expiry of that period of reduction, it will not have any effect of postponing his future increments of pay. The punishment would fall within the provisions of Rule 11 (v) of the CCS (CCA) Rules, 1965. The disciplinary authority, after passing the punishment order had treated the suspension period as leave of the kind due to the applicant. The relevant provision applicable to the facts of this case is sub-rule (6) of FR 54-B, where the suspension had been revoked by the competent authority while the disciplinary proceeding was still pending, which could be reviewed by that authority on its own motion after the conclusion of the proceedings as done in the present case. In the circumstances of the case, there is no infirmity in this order also and under the Rules, the suspension period was not required to be treated as duty as contended by the applicant's counsel.

10. We have also considered the other contentions raised by the learned counsel for the applicant but do not find any merit in the same warranting setting aside the penalty orders, which are neither arbitrary, perverse or have been passed against the procedural rules. The O.A. accordingly fails and is dismissed. No order as to costs.

(Govindan S. Tampi)
Member(A)

(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

'SRD'

18
20/5

01.05.2006

Item No.21.

OA No.1315/1999

Present: Shri Sant Lal, counsel for the applicant.
None for the respondents.

This case has been remanded back from High Court of Delhi. Issue notice
to the respondents.

List the case before Court on 25.05.2006.

Om 01/5/06

(O.R.Om Prakash)
Deputy Registrar

/jk/

*Remanded back case
Bleeding complete*

22/5/06

Item-R-7

25.5.2006

OA-1315/2005

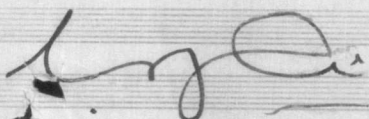
MA-1169/2005

Present: Sh. Sant Lal, counsel for applicant.

Sh. V.P.S. Tyagi proxy for

Sh. Rajeev Bansal, counsel for respondents.

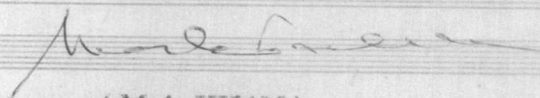
Counsel for parties have requested for a short adjournment as the matter has been only recently remanded back by the Hon'ble High Court for hearing on two limited issues mentioned in para 8 of the remand order dated 29.3.2006. Case is to be disposed of within 6 months from the date of first appearance. List on 30.5.2006 for final disposal.



(V.K. AGNIHOTRI)

Member (A)

'sd'



(M.A. KHAN)

Vice Chairman (J)

Remand back case

Reading complete


R-9


May 30, 2006
OA 1315/1999
MA 1169/1999

Present: Shri Sant Lal, counsel for applicant

Shri Rajeev Bansal, counsel for respondents

On the joint request, list on 7.6.2006.


(Chitra Chopra)
Member (A)


(Shanker Raju)
Member (J)

/sunil/

Remand Back case
1. Complete

CA 1315/98

MA 1168/98

19
20E

1/6/06

Present: The Court had, considered the
applicant.

The Registrar General, considered the
respondents.

Agreement heard. order

reservant by D.B. of

honble Mr Justice M.A. Kurek V.C. &

honble Mr J. Agnietri member (A)

BY

Mahesh
7/6/06

CA/CIV

28.9.06

CA 1315/98

MA 1168/98

Judgment pronounced in open
court by the Bench comprising of Honble
V.C. & Honble Mr J. Agnietri
members of the Bench of order on response
sheet.

BD

by

COO

24

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1315/99

This the 26th day of September, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. V.K.AGNIHOTRI, MEMBER (A)

Sh. Anil Kumar Bhambri
Son of Sh. S.P.Bhambri
Employed as Sorting Asstt. Gol Dak-khana under
New Delhi Sorting Division,
Resident of New Delhi,
Address for service of notices,
C/o Sh. Sant Lal, Advocate
C-21 (B) New Multan Nagar,
Delhi-110056.

(By Advocate: Sh. Sant Lal)

Versus

1. Union of India through the Secretary,
Ministry of Communications,
Deptt. of Posts,
Dak Bhawan, New Delhi-110001.
2. The Director Postal Services (R),
Delhi Postal Circle,
Meghdoot Bhawan, New Delhi-110001.
3. The Senior Superintendent,
New Delhi Sorting Division,
Meghdoot Bhawan, New Delhi-110001.

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant who was working as Sorting Assistant in New Delhi Sorting Division of Railway Mail Service Wing of the Postal Department was subjected to a disciplinary proceeding under Rule 14 of CCS (CCA) Rules, 1965 (Rules, 1965 in short). He was served charge memo dated 12.3.86 which, inter alia, alleged that the applicant had fabricated certain documents and had also misappropriated certain amount received from the depositors of the money orders while he was working as a counter clerk in Janakpuri Post Office etc. On conclusion of the enquiry proceeding the enquiry authority submitted a report to the disciplinary authority that the charge of the applicant was not proved. Disciplinary authority disagreed with the said finding and imposed a penalty on the applicant by order dated 14.12.90 reducing his pay from Rs.1150/- to Rs.975/- i.e.

minimum of the pay scale of Rs.975-1660 for a period of 3 years stipulating that he will not earn increment in his pay during the period of deduction and after expiry of the said period the deduction it will not have the effect of postponing future increments of his pay. The appellants filed an appeal against the order which was dismissed. The orders of the disciplinary authority and the appellate authority were then challenged by the applicant in OA-187/94 which was disposed of by the Tribunal on 31.3.93. The orders of the disciplinary authority and the appellate authority was quashed leaving it open to the disciplinary authority to pass fresh order after giving an opportunity to the applicant to explain after serving a disagreement note. The disciplinary authority thereafter served a disagreement note and show cause notice on the applicant, who submitted his representation thereto, but the disciplinary authority by order dated 1.7.96 imposing the following penalty on the applicant:

".... the pay of Shri Anil Kumar Bhambri Stg. Asstt. be reduced to minimum from Rs.1150 to 975 in the time scale of Pay Rs.975-25-1150-EB-30-1660 for a period of three years with immediate effect. It is further added that he will not earn the increments of his pay during the period of reduction and on expiry of this period the reduction will not have any effect of postponing the future increments of his pay."

2. The appellate authority by its order dated 23.10.97 dismissed the appeal against the said order.
3. The aforementioned orders of the disciplinary authorities were again challenged by the applicant in the present OA. In addition, the applicant also challenged the order of the authorities of the respondent dated 31.3.98 and the order dated 26.8.98. By the first order Senior Superintendent New Delhi Sorting Division has regularized the period of suspension of the applicant from 17.3.86 to 13.1.88 by treating it to be a period of leave of the kind due and admissible to the applicant. By the second order the representation of the applicant that the penalty order should be treated as a minor penalty was rejected.
4. The OA was contested by the respondents on diverse pleas. After hearing the learned counsel for the parties at length a coordinate bench of this Tribunal dismissed the OA by order dated 23.1.2001. Amongst others the Tribunal considered the plea of the applicant that the punishment awarded to him in the disciplinary proceeding is a minor penalty and that the order dated 31.3.98 by which the suspension period was treated as

72

leave of the kind due as admissible ought to have been passed in conformity with sub-rule (6) of FR 54-B and not under FR 54-B (7).

5. The order of the Tribunal was challenged by the applicant before the Hon'ble High Court by filing writ petition No.4002/2001. The High Court decided it by order dated 29.3.2006. The challenge of the applicant to the penalty order was rejected but the case was remitted back to this Tribunal for deciding the two questions which are mentioned in para 8 & 9 of the order. The relevant extract of the order of the Hon'ble High Court dated 29.3.2006 is as under:-

"7. After perusing the order of the disciplinary authority, we are satisfied that the punishment imposed on the petitioner does not warrant any interference under Article 226 of the Constitution of India.

8. The petitioner, however, pointed out that an order on 31.3.1998 was passed against him purporting to be in compliance of FR-54-B/7, the Tribunal has referred to this to be under FR-54-B/6. This appears to be an apparent error. The Tribunal, in its order in paragraph 9, has treated the relevant provision applicable to the facts of the case to be sub-rule 6 of FR-54-B. In our view, this is not the relevant provision. The Tribunal's order to that extent, therefore, cannot be sustained. Consequently, we set aside this part of the order wherein the period of suspension has been treated to be under FR-54-B/6 and direct the Tribunal to reconsider the plea in the light of the Government of India Instructions dated 3.12.1985 and also the petitioner's plea that the procedure under FR-54-B/3 and B/5 ought to have been followed resulting in vitiating of that portion of the order treating the period of suspension as leave due to the petitioner.

9. The other plea raised by the petitioner is that even after the earlier punishment order passed in 1990 was set aside by the Tribunal orders dated 15.3.1994, the disciplinary authority did not take any action to pay increments due for the intervening period from 14th December, 1990 till the second order of imposition of punishment dated 1.7.1996. This plea of the petitioner though noticed in the impugned order of the CAT had not been dealt with. Accordingly, we remand the matter to the CAT on the two limited issues of the increments claimed by the petitioner for the period from 14th of December, 1990 to 1st of July, 1996 and the plea as to the relevant F.R. applicable as recorded in para 8 of this judgment. The Tribunal is directed to dispose of the OA on this limited issue not later than six months from the date of first appearance before the CAT after this judgment. Petitioner to appear before the CAT on 1st of May, 2006.

10. All other challenges to the CAT's order stand rejected and the writ petition is disposed of."

6. From the above order it is clear that the penalty imposed upon the applicant was held to be in order and was not interfered with. It is also evident from para 10 that all other challenge to the order of this Tribunal impugned in the writ petition, were rejected. This Tribunal in its order dated 23.1.2001, as noticed above amongst others, has recorded a finding that, "the punishment would fall within the provisions of Rule 11 (v) of the CCS (CCA) Rules, 1965", i.e. it is a major penalty and rejected the contention of the

applicant that it was a minor penalty. The Hon'ble High Court did not differ with this finding and has rejected the challenge to this finding by its order dated 29.3.2006. This bench cannot reconsider the plea of the applicant that the punishment which has been awarded to the applicant by the disciplinary authority is a minor punishment within the purview of Section 11. The oral argument which have been advanced during the course of hearing of this case to the same effect can also not be entertained and decided by this bench.

7. As per the direction of the Hon'ble High Court the case has been remitted to this Tribunal for deciding only two questions. The first question, as discussed by the Hon'ble High Court in para 8, is whether the authorities of the respondent were required to pass the order in regard to the period of suspension from 17.3.86 to 13.1.88 by following the procedure of sub-rule (3) & (5) of FR 54-B. The second question is whether the applicant was entitled to receive the increments for the period from 14.12.90, (the date on which the penalty was imposed upon the applicant by the disciplinary authority initially which order was set aside in earlier OA) to the date of passing of the penalty order on 1.7.1996 impugned in the present OA. The Tribunal in view of the clear directions of the Hon'ble High Court will not have any power and jurisdiction to decide any other question raised in the OA or at the time of hearing of this order.

8. As regards the first question, i.e., treatment of the period of suspension from 17.3.86 to 13.1.88 as a period of leave of the kind due the order was purported to have been passed by the Senior Superintendent New Delhi Sorting Division in accordance with FR 54-B (7). This Tribunal in its order dated 23.1.2001 had observed that the relevant provision applicable to the fact of the case was sub-Rule (6) of FR-54-B. The Hon'ble High Court in para 8 of the order aforementioned held that sub-Rule (6) of FR-54-B is not applicable so the order of the Tribunal to that extent was set aside.

9. The question arises whether sub-Rule (3) & (5) of FR-54-B would be applicable to the case and the order about treatment of the suspension period is required to be passed in accordance with these rules or the relevant rule as submitted on behalf of the respondent is sub-Rule (7) of FR-54-B.

10. Sub-rule (3) to (9) of FR-54-B may be reproduced below:-

“(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government

24

servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rule (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that, if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE – The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53.

25

11. As per sub-Rule (3) above-mentioned, the Government servant will be paid full pay and allowances to which he would have been entitled, had he not been suspended for the period under which he remained under suspension, in case the authority competent to order such reinstatement "is of the opinion that the suspension was wholly unjustified". Entitlement of the payment of full pay and allowances of suspension period is subject to the competent authority forming an opinion that the suspension was 'wholly unjustified'. The order under this sub-rule (3) is subject to sub-rule (8) and (9), i.e., the order made would be subject to all other conditions under which the allowances are admissible and further the amount determined shall not be less than the subsistence allowance and other allowances admissible under Rule 53. The proviso to the sub-rule (3) allowed the competent authority to order payment of "such amount (not being the whole) of such pay and allowances as it may determine" in case the authority is of the opinion that the disciplinary proceedings have been delayed due to "reasons directly attributed to the Government servant". The order under this proviso is to be passed after providing an opportunity of making representation to the applicant and upon consideration of the representation, if any, submitted by him. The competent authority is also required to record reasons in writing for exercising powers vested by proviso to sub-rule (3).

12. Under sub-rule (4) if the case is covered by sub-rule (3) above mentioned, the period of suspension shall be treated as a period spent on duty for all purposes.

13. Sub-rule (5) of FR-54-B applies to the cases other than those falling under sub-rule (2) & (3). Sub-rule (2) is not attracted in the present case as it applies when a Government servant, who was suspended, dies before the disciplinary or court proceedings instituted against him are concluded which is not the facts of the case in hand. The order under sub-rule (5) is to be passed in those cases in which in the opinion of the competent authority suspension was 'not' wholly unjustified. In the present case the competent authority in its order dated 31.3.98, Annexure A-3 has not recorded its opinion that the suspension of the applicant during period from 17.3.86 to 13.1.88 was wholly unjustified. This order also does not show that the Senior Superintendent was of the opinion that delay in the conclusion of the disciplinary proceeding is directly attributable to the applicant. Therefore, the order concerning suspension period could not have been passed under sub-rule (3) of FR-54-B in the present case.

26

14. This leaves sub-rule (5) and (7) of FR-54-B which can be invoked by the competent authority, sub-Rule (5) to determine the amount of pay and allowances which the applicant would be entitled for the period of suspension from 17.3.86 to 13.1.88 and sub-Rule (7) to decide treatment of that period as a period 'spent on duty', or 'not on duty' or converting into leave of any kind due and admissible to the Government servant. Sub-rule (5) requires service of a show cause notice on the applicant before the quantum of the pay and allowances payable to the applicant for the suspension period is determined. Under this sub-rule the pay and allowances payable to the applicant for the period of suspension shall be determined at an amount, not being the whole, by the competent authority after hearing the applicant by service of a notice. This procedure laid down in sub-rule (5) has not been followed by the Senior Superintendent while passing the order dated 31.3.98, Annexure A-3. Sub-rule (7) under which the impugned order is purported to have been made is applicable to the case falling under sub-rule (5) and empowers the competent authority either to decide that the suspension period shall be treated as spent on duty for certain specified purpose or to convert the said period into leave of any kind due and admissible on the request of the Government servant. The Senior Superintendent had treated the period of suspension as leave of the kind due admissible to the applicant. Sub-rule (7) is to be read with sub-rule (5) aforesaid and the suspension period shall not be treated as spent on duty for any specific purpose without a specific order of the competent authority. But the competent authority, on the request of the Government servant, may order that the period of suspension would be converted into leave of the kind due and admissible to him. Without the request of the Government servant it was not within the power of the competent authority to have treated the period of suspension as a period of leave of the kind due and admissible to the applicant as has been done by the impugned order dated 31.3.98 (Annexure A-3). For the above said reasons it is held that the order is not in accordance with sub-rule (5) and (7) of FR 54-B and has to be set aside.

15. Before passing on to the second question, we may recapitulate that by the first order dated 14.12.1990 the disciplinary authority had imposed the penalty on the applicant of reduction of his pay from Rs.1150 to Rs.975/-, i.e., the minimum of the pay scale of Rs.975-1660, for a period of three years with stipulation that the applicant would

27


not earn increment in his pay during the period of penalty and on the expiry of this penalty period the reduction in his pay would not have the effect of postponing his future increment in his pay. The penalty order is exactly similar to the order which has been passed by the disciplinary authority vide order dated 1.7.96 (Annexure A-1) and which had been confirmed in appeal by the order of the appellate authority dated 23.10.97. This order has been affirmed by this Tribunal in its order dated 23.1.2001 and by the Hon'ble High Court by order dated 29.3.2006. In other words the penalty order dated 1.7.1996 has attained finality. The first order, as noticed above, was dated 14.12.90 and was based on the pay which the applicant was getting in the pay scale of Rs.975-25-1150-EB-30-1660 and was operative for 3 years. The said order was set aside by this Tribunal by order 15.3.94. Here it will not be out of place to mention that the applicant who was placed under suspension in contemplation of the disciplinary proceedings against him on 17.3.86 was reinstated in service on 13.1.98 on revocation of the suspension order. The applicant was on duty when the penalty order dated 14.12.90 was passed. Consequence of the setting aside of the order dated 15.3.94 was that the applicant, who was on duty, would have continued to earn increment in the pay scale in which he was working but as admissible under rules.


16. The second order of penalty is dated 1.7.96 and the pay of the applicant has been reduced from Rs.1150/- to the minimum of the pay scale of Rs.975-1660. The pay of the applicant was again reduced to the minimum of the said pay scale, i.e., Rs.975/- for a period of 3 years. It is so because admissible increments were not added to his basic pay from 1990 to the date of the order dated 1.7.96. The penalty order has been upheld by this Tribunal and the order of this Tribunal has been confirmed by the High Court in the writ petition. As a result the penalty order that his pay shall be reduced to the minimum of the pay scale, i.e., Rs.975/- has been confirmed.

17. The respondents are required to grant increments to the applicant which are admissible to him during the period between 14.12.90 and 16.7.96 as per rules applicable with consequential monetary benefits. But from the date of the order dated 1.7.1996 his basic pay shall be reduced to the minimum of the pay scale Rs.975-1660, i.e. to Rs.975/- (or the minimum of the pay scale in which he is getting his pay as on 1.7.1996) and during the three years penalty period he would be paid the basic pay of Rs.975/- (or the

minimum of the pay scale in which he was getting pay as on 1.7.1996) with other allowances as admissible to him under rules and after the penalty period is over he would be entitled to the pay and allowances and benefits as per the penalty order.

18. The result of the above discussion is that the order dated 13.3.98 (Annexure A-3) is set aside. The case is remitted back to the Senior Superintendent New Delhi Sorting Division for passing an order about payment of pay and allowances for the period of suspension from 17.3.86 to 13.1.88 and treatment of the said period in accordance with the procedure laid down by sub-rules (5) & (7) of Rule 54-B. The order shall be communicated to the applicant within two months from the date on which the certified copy of this order is received by him. The respondents are also directed to grant increments admissible as per rules to the applicant during the period from 14.12.1990 to 1.7.1996. Differential pay/allowances shall be released to the applicant within two months from the date on which the certified copy of the order is received by the respondents. OA stands disposed of in terms of the above order. No costs.


(V.K. AGNIHOTRI)
Member (A)


(M.A. KHAN)
Vice Chairman (J)

'sd'