

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.258/99

New Delhi this the 25th day of October, 2000. (7)

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

Prem Prakash,
S/o Shri Madan Lal,
working as Asstt. Postmaster, Indraprastha H.P.O. n
New Delhi.Applicant

(By Advocate Shri Sant Lal)

-Versus-

1. The Union of India through
the Secretary,
Ministry of Communications,
Dept. of Posts,
Dak Bhawan,
New Delhi-110001.
2. The Member (Development),
Postal Services Board,
Dak Bhawan,
New Delhi-110 001.
3. The Chief Postmaster,
Indraprastha Head Post Office,
Indraprastha Estate,
New Delhi-110002.Respondents

(By Advocate Shri K.R. Sachdeva)

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant challenges the minor penalty imposed under Rule 16 of the C.C.S. (C.C.A.) Rules, 1965 (the Rules for short), withholding the next increment due from 1.5.96 for two years without cumulative effect, by the impugned order dated 19.6.95, which has been confirmed by the revisional authority under Rule 29 of the Rules, by its order dated 24.7.96. The facts of the case are as under:

2. While the applicant was working as a Postal Assistant, a chargesheet has been issued on 15.1.94 on the allegation that he lodged a false complaint dated 14.10.93

with the Chief Postmaster General, Delhi Circle, levelling false allegations against Shri Jogi Ram Saini, Assistant Postmaster (Admn.) that he behaves rudely with the staff of the office and he also misguides the Chief Postmaster and the Deputy Chief Post Master. During the course of a preliminary enquiry (PE) it was found that the allegations were utterly false. The applicant was asked to make his representation against the allegations and in response to the same he filed an application dated 24.1.95, desiring the copies of documents including the statements made by the witnesses during the PE for preparation of the statement of his defence. The request was, however, rejected. He was allowed to inspect his statements recorded during PE and the enquiry report. The applicant in his statement dated 1.7.94 refuted the allegations. The explanation made by the applicant has not been accepted and the punishment as stated supra was imposed. Aggrieved by the order the applicant filed an appeal and the same has been allowed and the impugned order has been set aside and de-novo proceedings were ordered from the stage of punishment. Accordingly the enquiry has been held and the same punishment has been imposed. Thereafter the applicant filed a revision petition before the Member (Personnel), Postal Service Board on 20.12.95 under Rule 29 of the Rules, which was disposed of by the Member (Development) by order dated 24.7.96, rejecting the revision petition.

3. The learned counsel for the applicant Shri Sant Lal has advanced several contentions before us. It was contended that the respondents had committed breach of Rule 16 (1)(b) of the Rules, as the disciplinary authority has not considered whether it was necessary to hold a regular enquiry in the case under Rule 14 of the Rules, or

(3)

not. It is his contention that the facts of the instant case required holding of such an enquiry and penalising the applicant without holding the enquiry caused grave prejudice to the applicant in establishing his innocence. He also contends that the revision petition was disposed of by an officer not competent to do so. The learned counsel for the respondents Shri K.R. Sachdeva, however, contends that the minor penalty proceedings do not require holding of oral enquiry and as the penalty imposed does not fall under sub Section (1) (a) of Rule 16 it was not incumbent upon the respondents to hold any enquiry in accordance with sub rule (3) to (23) of Rule 14 and that there is no infirmity in the impugned order.

(9)

4. We have given careful consideration to the contentions advanced. In order to appreciate the contentions Rule 16 (1)(b) has to be noticed, which reads as under:

"16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except after--

(a)

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c)

(d)

(e)"

5. It is thus not necessary to hold an enquiry in every case. But sub rule (1) (b) contemplates to hold an enquiry in the same manner as applicable to the

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enquiries for imposing major penalty, if the disciplinary authority forms an opinion from the nature of facts of a case that such an enquiry was necessary in the interests of both the parties. (10)

6. It is, however, to be seen whether on the facts of the present case any oral enquiry was indeed necessary in order to do justice to the applicant. The learned counsel for the applicant submits that the disciplinary authority has not applied its mind to the nature of the facts in the present case as it requires to hold an enquiry before imposing the penalty. This contention appears to be acceptable. The allegations against the applicant are that he had levelled false allegations against Sh. J.R. Saini in his complaint dated 14.10.93. A perusal of the disciplinary authority order shows that in order to ascertain the truth of the complaint, a secret enquiry had been conducted by the department and in that enquiry it was found that the allegations made by the applicant were found baseless and unfounded. It was also stated that during the course of the enquiry it was found that Sh. J.R. Saini was a very polite and well mannered and amicable with the fellow employees. Thus, it is obvious that the disciplinary authority has conducted an enquiry and relied upon the statements made by the witnesses during the enquiry and the report given by the enquiry officer and came to the conclusion that the complaint was false. The applicant was not present during the enquiry, he was not allowed to cross examine the witnesses to test their veracity. In all fairness, therefore, the applicant should have been furnished with the statements recorded during the PE to enable him to file his defence statement and the witnesses

produced for his cross examination. It is seen that when the applicant was asked to file his written statement he made specific request for supply of the same but they were not supplied. Only the report of the enquiry was supplied. We have perused the enquiry report but in the said report the statements of witnesses have not been extracted. It is also the case of the applicant that he had filed several documents in the case viz. Annexures A-11, A-12 and A-13 Resolutions passed by various associations but they were not considered and the disciplinary authority has stated that no documents have been filed in support of his plea.

7. It is also the grievance of the applicant that several allegations have been attributed to the applicant, though they were not part of the allegations in the chargesheet. A perusal of the impugned order of the disciplinary authority supports the grievance of the applicant.

8. In S. Govindarasu v. The Supdt. of Post Offices, Nagapattinam and Others, OA No.416/88, Madras Bench of CAT, it was held on similar facts, where statements of witnesses in a preliminary enquiry were relied upon, that the disciplinary authority has not applied its mind in not holding an enquiry. In our view, this is a fit case where the disciplinary authority should have held that an enquiry was necessary to prove the allegations. In that view, it should be held that the disciplinary authority has failed to apply its mind. The order of revisional authority is also without jurisdiction as under Rule 29 of the rules the competent authority to decide revision petition is Member (Personnel) of the Postal Services Board and in fact the revision was also directed to him. But it was disposed of by the Member

(Development) of Postal Services Board. No doubt he is of equal rank but he is not authorised under the rules to dispose of the revision petition. Its order, therefore, is non-est in the eye of law.

9. The OA, therefore, succeeds. The impugned orders are set aside. The matter is remitted to the disciplinary authority to hold an enquiry in the manner laid down in sub rules (3) to (23) of Rule 14 of the CCS (CCA). Rules and pass the final order as per law within three months from the date of receipt of a copy of the order.

10. The O.A. accordingly allowed. We do not, however, order costs.

Govindan S. Tampi
Member (Admnv)

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(V. Rajagopala Reddy)
Vice-Chairman(J)