CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2257/97

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 5th day of July, 2000

Shri M.N.Chowdhary
s/o Shri Ram Naresh Choudhary
retired Sub-Postmaster
N.E.P..Z Ghaziabad post office
r/o Ghaziabad, address for service
of notices c/o Shri Sant Lal, Advocate
C-21(B) New Multan Nagar
Delhi - 110 056. ... Applicant

(By Shri Sant Lal, Advocate)

Vs.

1. Union of India
through the Secretary
Ministry of Communication
Deptt. of Posts
Dak Bhawan
New Delhi - 110 001.

2. The Member (D)
Postal Service Board
Dak Bhawan
New Delhi - 110 001.

3. The Director Postal Services
O/o the Postmaster General
Dehradun Region
Dehradun-248 001.

4. The Sr. Superintendent of Post Offices
Ghaziabad Division
Ghaziabad - 201 002. ... Respondents

(By Shri N.S.Mehta with Shri V.K.Mehta, Advocate)

O R D E R (Oral)

By Reddy. J.

While the applicant was working as Sub Post Master (SPM), a Charge Memo was served on 20.8.1993. The articles of charge relate to violation of Rule 90 and 106 of the P&T Manual and also a charge of misappropriation of Rs.590/- from the customer. The applicant denied the charges. An enquiry officer has been appointed who after examining the witnesses and

considering both the oral and documentary evidences found that four articles of charge were established. The disciplinary authority agreeing with the ~~the~~ findings of the enquiry officer imposed the penalty of dismissal from service by the impugned order dated 22.8.1994. The applicant filed an appeal against this order which was however rejected confirming the order of the disciplinary authority. Thereafter, the revisional authority has modified the penalty from Dismissal to the 'Compulsory Retirement' by order dated 18.7.1996. These orders are under challenge in this OA.

2. Heard the counsel for the applicant and the respondents and considered the contentions raised by them carefully.

3. The learned counsel for the applicant has raised the following contentions:

(a) Adequate opportunity was not given to the applicant in defending his case.

(b) Rule 14(18) of CCS (CCA) Rules, 1965 was not complied with.

(c) This is a case of 'no evidence', hence, the impugned order is liable to be set-aside.

(d) Not only the enquiry officer is biased but also the disciplinary authority was biased against him. Hence the impugned order is vitiated.

(e) Lastly it is contended that the applicant was entrusted with heavy work as a result of which he was unable to concentrate upon his duties.

4. In the absence of the supply of the other documents, the applicant suffers in his defence. In the application dated 17.11.1993, Annexure-A10 it is seen that there are as many as 20 documents were requested to be supplied, out of which the enquiry officer has supplied documents No.2, 3 to 8, 12, 13 and 20. Thus about 10 documents have been supplied to him. The enquiry officer has disallowed the other documents on the ground that either relevance has not been clarified or the purpose for which they were asked for, would be served by other documents. Thus it is clear that relevant documents have been supplied by the enquiry officer and hence it cannot be said that applicant suffers in his defence by not supplying the other documents or the applicant had suffered prejudice in his defence. It is also not stated by the learned counsel for the applicant how the applicant suffered prejudice in his defence by the non-supply of the other documents. Hence it cannot be said that the applicant was not given adequate opportunity in defending his case. This objection is therefore rejected.

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5. The next contention is as to the non compliance of the Rule 14(18) of the Rules. Sub Rule 18 reads as under:

"(18) Engaging Defence Assistant posted in another station:- Sub-rule (8) of Rule 14 provides that a Government servant may take the assistance of any other Government servant posted at any other station on being permitted by the Inquiry Authority to do so. It does not totally prohibit having a Defence Assistant from any station other than the headquarters of the charged Government servant or the place of inquiry. It is open to the Inquiring Authority to permit the appointment of a Defence Assistant from any other station, having regard to the circumstances of each case. However, at present, there is no provision for appeal against the decision of the Inquiring Authority in the matter, should it decide to refuse permission.

2. It has been decided, that a Government servant should be allowed to make a representation to the Disciplinary Authority if the Inquiring Authority rejects a request for permission to take a Defence Assistant from a place other than the headquarters of the charged Government servant or the place of inquiry. Accordingly, in all cases where the Inquiring Authority rejects the request of the charged Government servant for engaging a defence assistant, from any station other than the headquarters of such Government servant or the place where the inquiry is conducted, it should record its reasons in writing and communicate the same to the charged Government servant to enable him to make a representation against the order, if he so desires, to the Disciplinary Authority. On receipt of the representation from the charged Government servant, the Disciplinary Authority, after applying its mind to all the relevant facts and circumstances of the case, shall pass a well-reasoned order either upholding the orders passed by the Inquiring Authority or acceding to the request made by the charged employee. Since such an order of the disciplinary authority will be in the nature of a step-in-aid of the inquiry, no appeal shall lie against that order."

6. From sub rule 16 and 17, it is clear that after the disciplinary authority has closed its evidence, it is open to the Government servant either

to state his defence, orally or to file a statement of defence. Then the government servant has to produce his evidence and he may examine himself in his own behalf if he so prefers. If he does not examine himself, it is the duty of the enquiry authority to question him generally on the circumstances appearing against him in the evidence, to enable the government servant to explain any circumstances that appears in the evidence against him.

7. It is the case of the applicant that in this case this requirement which is mandatory, according to him, is not complied with. The learned counsel relies upon the judgment of the Tribunal in OA No.2757/92 dated 23.1.1998 of the Principal Bench.

8. In the reply, it was stated that the applicant was questioned by the enquiry officer and he was submitted his written defence statement and he submitted his written defence statement dated 23.3.1994. The learned counsel for the respondents therefore submits that requirement under the rules has been complied with.

(12)

9. We have directed the learned counsel for the respondents to produce record of the enquiry to satisfy ourselves whether sub-rule 18 of Rule 14 of the RULES has been complied with. Learned counsel accordingly produced the record. A perusal of the same makes it clear that after the evidence of the DA was closed on 4.3.94 the applicant was asked to give his defence statement on 23.3.94. He accordingly gave the statement on 23.3.94 itself. Applicant had given on 14.4.94 written brief touching upon the evidence against him. We do not however find from the record that there was any questioning of the applicant by the EO. Thus it appears that sub-rule 18 was lost sight of. We are however of the view, in view of the facts and circumstances of the case that the applicant had not suffered prejudice on account of the absence of general questioning in the question and answer format on the circumstances appearing in the evidence against him. As the applicant had given written brief explaining the circumstances that were found in the evidence in the case against him and when he had thus explained his position in the written brief, we are of the view that mere failure of the EO in not examining him generally in question and answer format has not prejudiced the defence in this case. The learned counsel also has not brought to our notice that any prejudice was in fact caused to the applicant in this regard.

10. The decision cited by the learned counsel for the applicant in OA 2757/92 of the Principal Bench dated 23.1.98 has not kept in mind the question as to whether any prejudice has been caused to the applicant in his defence. It is not discussed in the above case whether

any written brief was given by the applicant after the defence evidence was closed but before the conclusion of the enquiry.

11. The other judgement cited by the learned counsel for the applicant is that of Ministry of Finance & Anr. Vs. S.B.Ramesh 1998 (1) SC SLJ 417. It has not however directly dealt with the mandatory nature of the requirement under sub-rule 18 of Rule 14. In the above case, the validity of the order passed by this Tribunal was under consideration before the Supreme Court. The Supreme Court confirmed the order of the Tribunal. In that order it was stated that the Tribunal dealt with the mandatory provision of sub-rule 18 of Rule 14 of CCS(CCA) Rules holding that omission to question him under the above sub-rule was irregular. In that case the enquiry was held against the charged officer ex-parte and the Tribunal held that omission to give opportunity to cross-examine the witnesses in support of the charge and to question sub-rule 18 of Rule 14 was a serious error. All other findings were also given on the basis of the evidence in that case. Supreme Court considered the findings given by the Tribunal and held that the enquiry conducted was totally unjustified. Hence, from this it cannot be said that the Supreme Court ruled about mandatory nature of sub-rule 18 of Rule 14.

12. We are therefore of the view that in the absence of causing any prejudice to the applicant, we are unable to agree that mere absence of questioning by the EO as required under Rule 18 of Rule 14 would vitiate the enquiry.

13. The next ground taken by the counsel for the applicant was that it is a case of no evidence. We do not find any substance in this contention. The EO has examined two witnesses and brought on record several documents in support of the charge. On the basis of evidence of witnesses the EO found that the stamp affixed on the parcel was lesser in value than that noted on the receipt by Rs.592/-.

14. In this case there were four articles of charges against the applicant including that of misappropriation. The EO after considering the entire evidence on record has given clear and cogent reasons for his conclusion holding that all the articles of charges were proved. Exercising judicial review jurisdiction, we cannot reappreciate the evidence and come to a different conclusion. These contentions are therefore rejected.

15. As already stated the contention as regards bias of the EO or the DA cannot be accepted as no grounds were alleged in support of the bias. It is stated by the learned counsel for the applicant that he made a complaint against the EO and hence he was biased. If in fact the applicant apprehended any victimisation at the hands of EO, the applicant could have made a request for change of the EO. For whatever reasons no such representation was made. It is next argued that the applicant was overburdened with the work in the post office as he was discharging all the functions single handedly without any assistance of any clerk or other attendant. It should be noticed that temporary increase

in work or doing heavy work cannot be a ground for taking a lenient view. In the present case the charge against the applicant was misappropriation. It is the case of the department that the applicant was taking more money than the stamps that were affixed on the parcels. This practice cannot be let off by giving a light punishment.

16. In the circumstances, we do not find any merit in the OA. The OA is accordingly dismissed. No costs.

(Smt. Shanta Shastry)
Member(A)

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

KSTV/