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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 730/97.

New Delhi: this the 28th day of October, 2000.

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALI, MEMBER (J)

Shri Om Prakash Sardhana,
S/o Shri Rishi Dev Sardhana,
employed as Sorting Assistant-Hisar
under Superintendent RMS 'D' Div.
New Delhi

.....Applicant

(By Advocate: Shri Sant Lal).

Versus

1. Union of India,
through
the Secretary,
Ministry of Communications,
Dept. of Posts,
Dak Bhawan,
New Delhi-1

2. The Member (Personnel),
Postal Service Board,
O/o the Director General Posts,
Dak Bhawan,
New Delhi-1.

3. The Director Postal Services,
Haryana Circle,
Ambala Cantt. 133001.

4. The Superintendent RMS 'D' Division,
Asaf Ali Road,
New Delhi-2

.....Respondents

(By Advocate: Shri K. R. Sachdeva).

ORDER

Mr. S. R. Adige, VC (A):

Applicant impugns the disciplinary authority's orders dated 11.10.94 (Annexure-A1); the appellate order dated 25/26.7.95 (Annexure-A3) and the revisional order dated 13.2.97 (Annexure-A4). He seeks restoration of his pay as if the penalty order had not

been issued, with consequential benefits.

2. Applicant was proceeded against departmentally under Rule 14 CCS (CCA) Rules on the imputation that while on strike at Hissar Sorting Office on 26.8.92 he hurled a shoe which struck Shri Gopi Chand Mail Man a Govt. servant in contravention of Rule 3(i) (iii) CCS (Conduct) Rules and also resorted to coercion and physical duress as per rule 7(ii) ibid.

3. The Enquiry Officer in his report dated 18.10.93 (Annexure-A2) held the charge against applicant as proved.

4. A copy of the Enquiry Officer's report was furnished to applicant on 4.11.93 for representation if any. Applicant submitted his representation on 4.12.93 and upon consideration of the same, as also the other materials on record, the disciplinary authority agreed with the Enquiry Officer's findings and by impugned order dated 11.10.94 ordered the penalty of reduction to a lower stage in the time scale of pay for 2 years at the stage of Rs 1270/- in the scale of Rs 975-1590/- with immediate effect.

5. Applicant's appeal was rejected vide impugned order dated 25/26.7.95 and his revision petition was likewise rejected vide impugned order dated 13.2.97 against which applicant has now filed this OA.

6. We have heard applicant's counsel Shri Sant Lal and respondents' counsel Shri Sachdeva.

7. The first ground taken is that the Disciplinary

Authority prejudged the issue in as much as he expressed a definite opinion in the charge sheet that applicant had hurled a shoe..... Applicant has not established that prejudice was caused to him, merely because the word "allegedly" was not inserted between the words "had" and "hurled". Hence this ground fails.

8. It has next been urged that the disciplinary proceedings were initiated without any basis or foundation. Even if Gopi Chand Mailman or the Post Master, Hissar or Asstt. Supdt. did not submit any complaint/report, that by itself cannot be construed to imply that the alleged misconduct by applicant was without any basis or foundation, when the same has been established on the basis of the testimony in the DE. Hence this ground also fails.

9. It has next been urged that the inquiry was not held according to the prescribed procedure in as much as

(a) opportunity to inspect listed documents was denied. This allegation has been rejected by respondents. Applicant himself admits that copies of the same were supplied to him. No rule or instruction has been cited mandatorily requiring copies of the same to be attested, nor has prejudice been established merely because of non-attestation of documents.

(b) Production of certain additional documents was refused. Respondents point out that these documents were not relevant, and applicant's counsel during hearing before us has not succeeded in establishing that these documents were relevant, such that their non-production prejudiced applicant in his defence in the DE.

(c) Right to cross-examine the PWs 1 to 6 was denied to applicant. This contention is baseless because applicant was present during the examination of PWs 1 to 6 on 28/29.4.93. It is true that the application of the applicant for the appointment of one Shri R.S. Shukla who was posted neither at applicant's H.Q. nor at the place where the enquiry was held, was rejected under Rule 14(8) C.S.(CCA) Rules on 22.2.93, but applicant has not satisfactorily explained why he could not nominate another assistant in accordance with the provisions of Rule 14(8) ibid for over two months between 22.2.93 and 28/29.4.93 and finally appointed him only on 18.5.93. There is merit in respondents' contention that the DE could not be kept pending for 3 months for the nomination of the defence assistant by applicant on flimsy grounds. Furthermore as pointed out above, applicant was present all throughout the examination of PWs 1 to 6 and it was open to him to have cross-examined them had he so wished.

(d) Previous statements of PWs 5 and 6 relied upon by the EO and the Disciplinary Authority which were not confirmed by them during the DE. As pointed out by respondents in their reply their depositions were duly considered by the EO and the Disciplinary Authority before arriving at the conclusion in the case.

Hence this ground also fails.

10. It has next been urged that this is a case of no independent evidence. Applicant does not claim that it is a case of no evidence. He asserts that it is a case of no independent (emphasis supplied) evidence. It is

well settled that when there is some evidence against a defaulter in a disciplinary proceeding which brings home the charge against him on the basis of the preponderance of probability, the Tribunal would not interfere while exercising its writ jurisdiction. In the present case, tested on the aforesaid touchstone, it is clear that applicant is guilty as charged. Hence this ground also fails.

11. It has next been urged that the Enquiry Officer acted as a prosecutor and judge in as much as he cross-examined all the DWS after their examination by the presenting officer. It is true that the questions put by the E.O. to the witnesses have been described in the departmental proceedings as "Jiraha", which in criminal proceedings is a term used generally to describe examination cross-examination, but we have to go by the contents of the questions put and not by the term used to describe the questions. Rule 14(14) CCS (CCA) Rules permits the E.O. to put questions to the witnesses to clear doubts and obtain clarification and the content of the questions put, clearly indicates that the EO has not transgressed the bounds of Rule 14(14). Hence this ground also fails.

12. It has next been urged that the disciplinary authority has not applied his judicial mind in dealing with this case. A bare perusal of the disciplinary authority's impugned order, which is a detailed, reasoned and speaking order makes it clear that this contention is baseless. If applicant has not been restored his pay of Rs.133/- on expiry of the penalty period on 11/10/96, it is open to him to approach the competent authority.

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separately in this regard, but that is no reason to interfere with the impugned penalty order. Furthermore merely because applicant's misconduct was also referred to in his ACRs for the relevant year cannot be construed to mean that the results of the DE itself were pre-determined. Hence this ground also fails.

13. Lastly, it has been urged that the penalty is too severe and that the appellate and revisional orders are also arbitrary and applicant was given no opportunity for personal hearing by the appellate authority. Having regard to the seriousness of the misconduct, it cannot be said that the penalty is too severe. Applicant has not succeeded in establishing that a personal hearing was refused to him by the appellate authority despite his praying for the same. Both the appellate and revisional orders are detailed, reasoned and speaking orders. Hence this ground also fails.

14. The OA is therefore dismissed. No costs.

A. V. D. A. V. A. L. L. I.
(DR. A. V. D. A. V. A. L. L. I.)
MEMBER (J)

S. R. A. D. I. G. E.
(S. R. A. D. I. G. E.)
VICE CHAIRMAN (A).

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