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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1520
T.A. No.

1987.

DATE OF DECISION 13.7.1988

Shri Dina Nath, _____ Petitioner

Shri Sant Lal, _____ Advocate for the Petitioner(s)

Versus

Union of India & Others _____ Respondent


Shri P.P.Khurana, _____ Advocate for the Respondent(s)

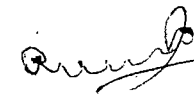
CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (Judicial).

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*


(S.P. Mukerji)
Administrative Member


(P.K. Kartha)
Vice Chairman(Judl.)

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PRINCIPAL BENCH, NEW DELHI
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Regn.No.OA-1520/1987

Date of Decision: 13.7.1988

Shri Dina Nath

.... Applicant.

Versus

Union of India & Others.

.... Respondents.

For applicant.

... Shri Sant Lal,
Advocate.

For respondents.

... Shri P.P.Khurana,
Advocate.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman(Judl.)
Hon'ble Mr. S.P. Mukerji, Administrative Member.

JUDGMENT

(Judgment of the Bench delivered by
Shri P.K.Kartha, Vice Chairman(Judl.)

The applicant who had been working as Postman in the Janakpur Post Office, New Delhi filed this application under Section 19 of the Administrative Tribunals Act praying that the impugned order dated 1.10.1986 whereby he was removed from service should be set aside, that the respondents should be directed to reinstate him in service and that the period from the date of removal from service to the date of reinstatement should be declared as duty for all purposes with full back wages.

2. The facts of the case in brief are that the Assistant Superintendent of Post Offices, New Delhi served a charge sheet on the applicant on 29.3.1986 under Rule 14 of the CCS(CCA) Rules, 1965 alleging delivery of intimations of certain inward foreign registered packets to a wrong person. ^{It is} ~~He~~ was alleged that he did not fully observe the provisions of Rules 700 and 709 of the P & T Manual Vol.VI Part III, in this regard.

3. In the written statement filed by the applicant on 11.4.1986, he contended that the disciplinary proceedings

were patently irregular and illegal and requested the concerned authority to drop the proceedings. Despite this, the Assistant Superintendent of Post Offices appointed an Enquiry Officer on 7.6.1986 to proceed with the enquiry.

4. On 22.8.1986, the proceedings started in the presence of the applicant and the Presenting Officer. The charges were explained to the applicant in Hindi and he was specifically asked either to admit or to deny them. On 3.9.1986, the Enquiry Officer wrote to the Assistant Superintendent of Post Offices stating that the applicant has admitted in writing all the charges and in view thereof, all charges levelled against him are proved beyond doubt. The impugned order of removal from service was imposed on the applicant on the basis of the alleged admission and without holding any further enquiry.

5. The applicant has contended in the present application that the Enquiry Officer obtained the statement of admission of charge under threat of police action and also promise of no harm to him. The respondents, however, have contended in their counter affidavit that the applicant made the statement before the Enquiry Officer voluntarily and that his contention in the application that the same was obtained from him under threat or by holding out a promise is an after thought.

6. We have gone through the records of the case carefully and heard the learned counsel for both the parties. One of the contentions raised by the learned counsel for the applicant was that the Assistant Superintendent of Post Offices was not a Disciplinary Authority of the applicant and, therefore, he had

no jurisdiction and competence to issue the charge-sheet. Consequently, the disciplinary proceedings were vitiated.

7. The aforesaid contention is not legally sustainable. In the present case the penalty of removal from service was imposed by the Senior Superintendent of Post Offices who is the disciplinary authority. Rule 14(3) of the CCS(CCA) Rules, 1965 empowers the disciplinary authority to draw up the charge-sheet himself or cause the same to be drawn up. Under Sub Rule (4), the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the charge-sheet etc. As has been held by the Supreme Court in State of Madhya Pradesh & Others Vs. Shardul Singh, 1970(1)SCC 108 at 110 and 112:-

"Article 311(1) does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that enquiry should be done at its instance. But for the incorporation of Article 311 in the Constitution even in respect of matters provided therein, rules could have been framed under Article 309. The provisions of article 311 confer additional rights on the civil servants. It is not possible to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in the Article."

8. In view of the above, there is no infirmity in the initiation of the disciplinary proceedings.

9. The learned Counsel for the applicant further contended that it was obligatory on the part of the disciplinary authority to hold an enquiry as contemplated in the CCS(CCA) Rules, 1965 and that this obligation would apply even in a case where ^{as there was an} admission of guilt, as was alleged in the present case. In this context, he referred to the decision of the Supreme Court in Jagdish Prasad Saxena Vs. The State of Madhya Bharat, AIR 1961 SC 1070 at 1074. In that case, ^{on a} Constitution Bench of the Supreme Court observed as follows: -

"The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services."

10. There are other judicial pronouncements to the same effect that imposition of penalty on the sole basis of admission and without holding regular enquiry as contemplated in the rules would not be legally permissible as it amounts to denial of reasonable opportunity.

(Vide, Food Corporation of India Vs. Garib Singh, 1984(1)SLJ 424; D.N.Kulshreshtha Vs. State of Rajasthan, 1986(4) SLR 734; Udaivir Singh Vs. Union of India & Others, 1987(1)SLR213; and Kamlesh Chandra Singhal Vs. Union of India and Others, 1988 (1)SLJ 476).

11. In the charge-sheet issued to the applicant, the allegation was that by giving the information to a wrong person in respect of inward foreign registered packets, the applicant displayed lack of integrity, devotion to duty and acted in a manner ~~unbecoming~~ ^{unbecoming} of a Government servant. However, the disciplinary authority while imposing the penalty of removal on the applicant, was influenced by extraneous considerations. This is borne ^{out} from the last para of his order dated 1.10.1986 which inter alia reads as follows: -

as
" No doubt the official has admitted his guilt, but it is such of severe nature that the official cannot be trusted upon. He has betrayed with the department with the connivance of anti-social elements. This action has tarnished the image of department. The case on record amply proves that he has delivered the intimations of 29 Inward Fgn.Pkts. to a wrong person for consideration. Such nefarious acts warrant to be viewed seriously and official be dealt deterently. His act constitutes moral turptitude."

Learned Counsel for the applicant contended that there was

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no evidence to establish the charges mentioned in the last para of the order passed by the disciplinary authority on 1.10.1986, extracted above and, therefore, the impugned punishment order was illegal and beyond jurisdiction.

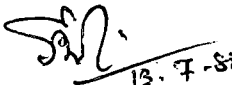
12. There is force in the above contention. In Y.K. Verma Vs. Union of India, 1988(1) SLR 15 at 25 and 27, the Jabalpur Bench of this Tribunal had observed that "findings on a charge other than those included in the charge-sheet are not legally sustainable."


13. Another contention raised by the learned Counsel for the applicant was that the penalty imposed on the applicant was grossly disproportionate. The allegation of wrong communication of intimations of arrival of certain inward foreign packets to a wrong person cannot be held to be of such serious ^{a nature as} ~~as~~ to warrant the award of the major penalty of removal from service. In this context, he relied upon the decision of the Supreme Court in Ved Prakash Gupta Vs. M/s. Delton Cable India (P)Ltd., 1984(1) SLJ 569. In this case, the Supreme Court held that the dismissal of an employee from service on the charge of delivery of challan in an irresponsible manner was disproportionate and was not sustainable.

14. In the facts and circumstances of the present case, we are of the view that the punishment of removal from service imposed on the applicant was grossly disproportionate and not commensurate with the misconduct. The learned Counsel for the respondents did not seriously contend that the penalty imposed in the present case is reasonable. In the interest of justice, we consider that having regard to the nature of the misconduct, only a minor penalty should be imposed on the applicant. Remitting the case back for reconsideration of the quantum of punishment would subject the applicant who is a dismissed postman to further hardship. We therefore, wish to

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end the matter here. Accordingly, the impugned order dated 1.10.1986 whereby the applicant was removed from service is quashed. The applicant shall be reinstated in service and he would be entitled to the arrears of pay and allowances from the date of removal from service to the date of reinstatement. However, we order and direct that the increments of pay of the applicant shall be withheld for a period of three years without ^{or} cumulative effect. The parties shall bear their own costs.


13.7.88
(S.P. Mukerji)
Administrative Member


13/7/88
(P.K. Kartha)
Vice Chairman (Judl.)